

*CANDIDATE: JUDGE DANIEL VUMINKOSI DLODLO*

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**COURT FOR WHICH CANDIDATE APPLIES: SUPREME COURT OF APPEAL**

**1. The candidate's appropriate qualifications**

1.1. BProc (University of Zululand) – 1979

1.2. LLB (University of Zululand) – 1982

1.3. Employment history:

1.3.1. Court Interpreter: Nqutu Magistrate Court: 1980.

1.3.2. Public Prosecutor: Nqutu Magistrate Court: 1980;

1.3.3. Professional Assistant: George-Hattingh Kie Attorneys, Vryheid, KwaZulu Natal: 1981;

1.3.4. Attorney: Dan Dlodlo and Company, Vryheid, KwaZulu-Natal 1982;

1.3.5. Commissioner: Small Claim Court, Vryheid, Kwazulu-Natal 1991;

1.3.6. Right of Appearance: 1996;

1.3.7. Acting Judge: Labour Court: 2002  
Judge: Western Cape Division of the High Court: 2004;

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- 1.3.8. Acting Judge: Labour Appeal Court (Two terms): 2013;
- 1.3.9. Acting Judge: Labour Appeal Court (Two terms): 2014;
- 1.3.10. Acting Judge: Supreme Court of Appeal (Two terms) 2016;  
Acting Judge: 29 January 2018 – 07 December 2018;
- 1.3.11. Acting Judge: Supreme Court of Appeal: February – March  
2019;

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

- 2.1. A review of his judgments provides no indication that he is unfit for the position for which he has applied.
- 2.2. The candidate's judgments provide strong support for the conclusion that he is a fine jurist.
- 2.3. The candidate's judgments bare testimony to the fact that he is a fit and proper candidate for the position for which he applies.

**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. The Supreme Court of Appeal bench currently composes 22 Justices of Appeal, of whom 15 are men (5 white, 6 black, 3 Indian and 1 coloured) and 7 are women (5 black, 1 white and 1 Indian).

3.3. The appointment of Black, male candidates would further the goals of racial transformation, but would not further the goals of gender transformation.

**4. The candidate's commitment to the values of the constitution**

4.1. In the judgments reviewed, the candidate has consistently been conscious of testing the legal principles before him against the precepts of the Constitution.

4.2. The reviewers wish to draw attention to the following judgments:

4.2.1. In the matter of *Barley and another v Moore and another* [2017] JOL 38213 (WCC) the candidate's commitment to the values enshrined in the Constitution is clear and the provincial Department of Social Development was held liable for delictual damages for the death of a minor at a day-care centre due to the fact that the Department failed in its constitutional and legislative duty to regulate, manage and control the provision of early childhood development services within the province.

4.2.2. In his judgment, the candidate found that it is the Department's obligations to facilitate the protection and promotion of the rights of children in line with section 28 of the Constitution and the UN Convention on the Rights of the Child. It is subject to no dispute that the Department has to ensure that ECD facilities, services and programmes are well managed, equipped, staffed and maintained. There is a duty on the Department to monitor the quality of ECD facilities, services and programmes in order to

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ensure adherence to safety standards. It is of importance that the Department recognises that the registration of partial care facilities in accordance with the Children's Act 38 of 2005 is a necessary safeguard for young children and to ensure that basic and adequate health and safety standards have been met at their facilities.

4.2.3. From the judgment it is clear that the candidate has an understanding of the values enshrined in the Constitution and correctly applied such values to the facts of the case.

4.2.4. The candidate however on appeal found to have incorrectly applied the principles of delict as against the Department and his decision to hold the provincial Department of Social Development liable for delictual damages was overturned by the Supreme Court of Appeal in *Government of the Western Cape: Department of Social Development v Barley & others* (1220/2017) [2018] ZASCA 166 (30 November 2018).

4.3. The candidate's aptitude for grasping complex legal principles and for interpreting intricate provision of Statutes is clearly evidenced by the judgments in *Afriline Civils (Pty) Ltd v Minister of Rural Development & Land Reform and another; Asla Construction (Pty) Ltd v Head of the Department of Rural Development and Reform and another* [2016] 3 All SA 686 (WCC) ; [2016] JOL 36312 (WCC); [2016] ZAWCHC 78 (WCC). The issues in this case related to a tender process. The candidate considered, and applied the provision of the relevant legislation, and the judgment clearly reflects this.

4.4. In the Constitutional Court case of *Ahmed and others v Minister of Home Affairs and another (People Against Suffering, Oppression and Poverty and others as amici curiae)* | 2018 (12) BCLR 1451 (CC) the Court had to consider the nature, legal status, and enforceability of the different types of directives. The directive was relevant to the rights of immigrant and asylum seekers. The Court found that the impugned directive offended against the right to dignity. In a unanimous judgment (per Theron J with Zondo DCJ, Froneman, Jafta, Khampepe, Madlanga JJ, Cachalia, Dlodlo, Goliath and Petse AJJ concurring) the directive was declared inconsistent with the provisions of the Immigration Act of 2002.

4.5. The candidate's review judgments underscore the fundamental principles of an accused person's right to a fair trial, entrenched in the Bill of Rights. The brevity of the judgments in *S v Adams* [2008] ZAWCHC 50 (C); 2009 (1) SACR 394 (C), *S v Mbezi* 2010 (2) SACR 169 (WCC) and *S v Ruiters* [2011] ZAWCHC 265 (WCC) emphasises the candidate's meticulous research methodology, and his extensive knowledge of Criminal Law.

## **5. The candidate's knowledge of the law, including constitutional law**

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

5.2. Where the issues to be determined were novel and highly complex, the various judgments written by the candidate reflect that he took the time

to research the applicable law in detail, considered it in light of the facts and applied the law to the facts.

5.3. Where applicable, the candidate has had regard to legal principles enunciated in foreign case law as well as customary law.

5.4. From the judgments reviewed, the candidate appears to possess good knowledge of constitutional law.

5.5. The reported judgments that have been reviewed also show that the candidate is able to consider and determine complex factual disputes and applies appropriate case law in his judgments.

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

6.1. *Barley and another v Moore and another* [2017] JOL 38213 (WCC)  
The SCA overturned the decision to hold the Provincial Government liable for damages as a result of an infant's death at a day-care centre. The SCA held, amongst others that even if the conduct of the Province gave rise to legal liability it is difficult to understand how such conduct could be causally linked to the infant's death.

6.2. In *Primedia Broadcasting, A Division of Primedia (Pty) Ltd and others v Speaker of the National Assembly and others* | 2015 (7) BCLR 835 (WCC) ; [2015] 3 All SA 340 (WCC); [2015] ZAWCHC 72 (WCC); 2015 (4) SA 525 (WCC) the SCA overturned the candidate's dismissal of an application which was heard by a full bench of three judges. The candidate wrote for the majority. The SCA upheld the appeal, essentially upheld the minority judgement of the High Court and granted the following relief:

*“The order of the court a quo is set aside and replaced with the following:*

*(a) It is declared that clause 8.3.3.2 of Parliament’s Policy on Broadcasting and Rule 2 of the Parliament’s Television Broadcasting Rules of Coverage, headed ‘Disorder on the Floor of the House’ are unconstitutional and unlawful in that they violate the right to an open Parliament.*

*(b) It is declared that the manner in which the State of the Nation proceedings in February 2015 was broadcast was unconstitutional and unlawful.*

*(c) It is declared that the use of a signal jamming device in Parliament, without the permission of the Speaker of the House of Assembly and the Chairperson of the National Council of Provinces, is contrary to s 4(1) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 and is unlawful.’*

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

7.1. The candidate was appointed as a Judge of the High Court since 2004 and has acted in the Labour Appeal Court, the Supreme Court of Appeal and the Constitutional Court since 2002.

7.2. Prior to his appointment as Judge of the High Court he practised as an attorney and was in his early years a public prosecutor and court interpreter.

7.3. It is clear from the candidate's resume that he has considerable experience in diverse fields of law including criminal law.

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

8.1. The candidate's judgments are well-researched, structured and competently written.

8.2. The candidate's judgments show a linguistic flair. He is very well versed in English. The judgments are comprehensive, and logically set out.

8.3. It was however noted that in some judgements the candidate's drafting could be more succinct to reach a specific point, resulting in reasoning not flowing as well as it could.

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

9.1. The candidate advised that he has no outstanding judgments at the time of the application.

9.2. From the judgments reviewed it appears that the candidate takes approximately three months to deliver his judgments from date of hearing.

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

10.1. The candidate's fairness and impartiality are demonstrated in his judgments, which resonate with humanity and a determination to do justice to the parties see for example *Barley and another v Moore and*

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*another* [2017] JOL 38213 (WCC) and *Visser v Hull & others* [2009] JOL 23670 (WCC).

- 10.2. From the judgments reviewed it appears that the candidate applies the law to the facts with fairness and impartiality.
- 10.3. The reviewers did not receive any adverse comments in respect of the candidate's fairness and impartiality.

**11. The candidate's independent mindedness**

11.1. The candidate's independent mindedness is highlighted in:

11.1.1. *S v Adams* [2008] ZAWCHC 50 (C); 2009 (1) SACR 394 (C). This is a short but authoritative judgment in which the candidate is scathing of the manner in which the Magistrates in the Court a quo handled the criminal proceedings. His comment that justice should be done and be seen to be done is particularly apt in light of the facts of this case.

11.1.2. The candidate's fairness is also evidenced from his decision in *S v Mbezi* 2010 (2) SACR 169 (WCC). The accused suffered from a hearing impairment and the candidate referred the matter back to the Court a quo. The proceedings were to be started anew, and the candidate recommended that it was desirable and advisable that the matter be presided over by another Magistrate.

11.2. The candidate's judgments reflect a fair and impartial mind that has been brought to bear in respect of the matters before the candidate. In many of his judgments, the candidate clearly expressed each party's

arguments and the candidate's view of the merits and demerits of the arguments presented.

- 11.3. The reviewers have not received any adverse comments regarding the candidate's fairness or impartiality.

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

- 12.1. The candidate has numerous reported and unreported cases. The candidate appears to have conducted proceedings efficiently.

**13. The candidate's administrative ability**

- 13.1. The candidate's experience as an interpreter, prosecutor, Attorney and Acting Judge in a number of busy Courts, coupled with his ability to deliver well-reasoned judgments reasonably promptly, demonstrate that the candidate has strong administrative abilities.

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

- 14.1. No adverse comments have been received regarding the candidate's integrity or ethical behaviour.

**15. The candidate's judicial temperament**

- 15.1. No adverse comments have been received.

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

- 16.1. The candidate is a member of the Methodist Church, a school governing body, the Rotary Club and the Association for the Physically

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Challenged. The candidate is involved in the community and clearly aware of the needs of the community and committed to its values.

16.2. The candidate's judgments consistently highlight his sensitivity and commitment to the values enshrined in the Constitution.

**17. The candidate's potential**

17.1. In general, the reviewers believe that the candidate will make a positive contribution to the Supreme Court of Appeal.

17.2. It must however be noted that the applicant is 67 years old. A younger candidate would have more time to grow into the position before retirement.

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

18.1. As mentioned above, the candidate:

18.1.1. holds a number of academic qualifications;

18.1.2. has a wide range of experience and expertise in the legal field;  
and

18.1.3. generally, displays positive qualities as a judicial officer.

18.2. Consequently, the reviewers are of the view that the candidate's appointment as a Justice of the Supreme Court of Appeal would send a positive message to the community at large.

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## ANNEXURE: LIST OF JUDGMENTS CONSIDERED

### Reported decisions

*Afriline Civils (Pty) Ltd v Minister of Rural Development & Land Reform and another; Asla Construction (Pty) Ltd v Head of the Department of Rural Development and Reform and another* / [2016] 3 All SA 686 (WCC); [2016] JOL 36312 (WCC); [2016] ZAWCHC 78 (WCC)

Judge: Dlodlo | Judgment Date: 06/23/2016 | Court Division: Western Cape Division, Cape Town

*Ahmed and others v Minister of Home Affairs and another (People Against Suffering, Oppression and Poverty and others as amici curiae)* / 2018 (12) BCLR 1451 (CC); [2018] ZACC 39 (CC); 2019 (1) SA 1 (CC)

Judge: Dlodlo | Judgment Date: 10/09/2018 | Court Division: Constitutional Court

*Arends and others v South African Local Government Bargaining Council and others* / [2015] 1 BLLR 23 (LAC); (2015) 36 ILJ 1200 (LAC); [2014] JOL 32506 (LAC); [2014] ZALAC 69 (LAC)

Judge: Dlodlo | Judgment Date: 11/06/2014 | Court Division: Port Elizabeth

*Barley and another v Moore and another* / [2017] 3 All SA 799 (WCC); [2017] JOL 38213 (WCC); [2017] ZAWCHC 70 (WCC)

Judge: Dlodlo | Judgment Date: 06/30/2017 | Court Division: Western Cape Division, Cape Town

*Ark City of Refuge v Bailing and others* / [2011] 2 All SA 195 (WCC); [2010] JOL 26185 (WCC); 2011 (1) BCLR 68 (WCC)

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Judge: Dlodlo | Judgment Date: 09/15/2010 | Court Division: Western Cape High Court, Cape Town

*Botha v Commission for Conciliation Mediation and Arbitration and others* / [2015] 4 BLLR 404 (LAC); [2014] ZALAC 75 (LAC)

Judge: Dlodlo | Judgment Date: 11/12/2014 | Court Division: Port Elizabeth

*Camps Bay Residents and Ratepayers Association v Augoustides* / 2009 (6) SA 190 (WCC); [2009] JOL 23339 (WCC) Judge: Dlodlo | Judgment Date: 03/24/2009 | Court Division: Western Cape High Court, Cape Town

*Clairison's CC v MEC, Local Government, Environmental Affairs and Development Planning and another* / 2012 (3) SA 128 (WCC); [2012] JOL 28483 (WCC)

Judge: Dlodlo | Judgment Date: 09/22/2011 | Court Division: Western Cape High Court, Cape Town

*Collard v Jatara Connect (Pty) Ltd and Others* / 2018 (5) SA 238 (WCC); [2017] JOL 38032 (WCC); [2017] ZAWCHC 45 (WCC)

Judge: Dlodlo | Judgment Date: 03/14/2017 | Court Division: Western Cape Division, Cape Town

*Department of Home Affairs and another v Ndlovu and others* / [2014] 9 BLLR 851 (LAC); (2014) 35 ILJ 3340 (LAC); [2014] ZALAC 11 (LAC)

Judge: Dlodlo | Judgment Date: 03/27/2014 | Court Division: Durban

*Drakenstein Municipality v Hendricks and Others* / 2010 (3) SA 248 (WCC)

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Judge: Dlodlo | Judgment Date: 12/15/2009 | Court Division Western Cape High Court, Cape Town

*Economic Freedom Fighters and others v Speaker of the National Assembly and others* | [2018] 2 All SA 116 (WCC)

Judge: Dlodlo | Judgment Date: 01/29/2018 | Court Division: Western Cape Division, Cape Town

*Economic Freedom Fighters and others v Speaker of the National Assembly and others* / [2018] 2 All SA 116 (WCC)

Judge: Dlodlo | Judgment Date: 01/29/2018 | Court Division: Western Cape Division, Cape Town

*Fanti v Boto and others* | 2008 (5) SA 405 (C); [2008] 2 All SA 533 (C); [2008] JOL 21238 (C)

Judge: Dlodlo | Judgment Date: 12/13/2007 | Court Division: Cape of Good Hope Provincial Division

*Harper and others v Crawford NO and others* / [2017] 4 All SA 30 (WCC) ; [2017] ZAWCHC 78 (WCC); 2018 (1) SA 589 (WCC)

Judge: Dlodlo | Judgment Date: 06/30/2017 | Court Division: Western Cape Division, Cape Town

*ITC 1903 / 80 SATC 149* (WC)

Judge: Dlodlo | Judgment Date: 08/14/2017 | Court Division: Western Cape

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*Metropolitan Health Risk Management v Majatladi and others* | [2015] 3 BLLR 276 (LAC) ; [2014] ZALAC 70 (LAC)

Judge: Dlodlo | Judgment Date: 10/16/2014 | Court Division: Cape Town

*Ngobeni v Unknown Occupier and others* / [2014] 3 All SA 612 (WCC); [2014] JOL 32104 (WCC)

Judge: Dlodlo | Judgment Date: 06/19/2014 | Court Division: Western Cape Division, Cape Town

*Primedia Broadcasting, A Division of Primedia (Pty) Ltd and others v Speaker of the National Assembly and others* | 2015 (7) BCLR 835 (WCC); [2015] 3 All SA 340 (WCC); [2015] ZAWCHC 72 (WCC); 2015 (4) SA 525 (WCC)

Judge: Dlodlo | Judgment Date: 05/28/2015 | Court Division: Western Cape Division, Cape Town

*Propell Specialised Finance (Pty) Ltd v Attorneys Insurance Indemnity Fund NPC and others* | [2017] 3 All SA 1005 (WCC); [2017] ZAWCHC 71 (WCC)

Judge: Dlodlo | Judgment Date: 06/30/2017 | Court Division: Western Cape Division, Cape Town

*Putco (Pty) Ltd v Transport and Allied Workers Union of South Africa obo Members and others* | [2015] 8 BLLR 783 (LAC); [2015] JOL 33221 (LAC); [2015] ZALAC 14 (LAC)

Judge: Dlodlo | Judgment Date: 05/05/2015 | Court Division: Johannesburg

*Registrar of Pension Funds v British American Tobacco Pension Fund and others* | [2016] 4 All SA 812 (SCA); [2016] ZASCA 130 (SCA)

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Judge: Dlodlo | Judgment Date: 09/28/2016 | Court Division: Supreme Court of Appeal / Appellate Division

*S v Adams* / [2008] ZAWCHC 50 (C); 2009 (1) SACR 394 (C)

Judge: Dlodlo | Judgment Date: 08/22/2008 | Court Division: Cape of Good Hope Provincial Division

*S v Jacobs* | 2007 (1) SACR 474 (C); [2005] JOL 15377 (C)

Judge: Dlodlo | Judgment Date: 08/17/2005 | Court Division: Cape of Good Hope Provincial Division

*S v Mbezi* / 2010 (2) SACR 169 (WCC)

Judge: Dlodlo | Judgment Date: 03/26/2010 | Court Division: Western Cape High Court, Cape Town

*S v Ruiter* | [2011] ZAWCHC 265 (WCC)

Judge: Dlodlo | Judgment Date: 06/14/2011 | Court Division: Western Cape High Court, Cape Town

*S v Solomons* | 2004 (1) SACR 137 (C)

Judge: Dlodlo | Judgment Date: 12/11/2003 | Court Division: Cape of Good Hope Provincial Division

*S v Williams* | 2012 (2) SACR 158 (WCC)

Judge: Dlodlo | Judgment Date: 10/24/2011 | Court Division: Western Cape Division, Cape Town

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*September and Another v Nedcor Bank Ltd and Another* / [2005] 1 All SA 96 (C);  
[2004] JOL 13091 (C); 2005 (1) SA 500 (C)

Judge: Dlodlo | Judgment Date: 08/19/2004 | Court Division: Cape of  
Good Hope Provincial Division

*Solari v Nedbank Ltd and others* / [2014] 9 BLLR 884 (LAC); [2014] ZALAC 8  
(LAC)

Judge: Dlodlo | Judgment Date: 03/27/2014 | Court Division: Johannesburg

*Standard Bank of SA Ltd v Sewpersadh and Another* | 2005 (4) SA 148 (C)\*; [2005]  
JOL 13336 (C)

Judge: Dlodlo | Judgment Date: 11/18/2004 | Court Division: Cape of Good  
Hope Provincial Division

*Thatcher v Minister of Justice and Constitutional Development and Others* / [2005]  
1 All SA 373 (C); [2004] JOL 13248 (C); 2005 (4) BCLR 388 (C); 2005 (4)  
SA 543 (C)

Judge: Dlodlo | Judgment Date: 11/24/2004 | Court Division: Cape of Good  
Hope Provincial Division

*Transnet Rail Engineering v Mienies and others* / [2015] 11 BLLR 1144 (LAC);  
[2015] ZALAC 22 (LAC)

Judge: Dlodlo | Judgment Date: 06/18/2015 | Court Division: Cape Town

*Visser v Hull and Others* | 2010 (1) SA 521 (WCC); [2009] JOL 23670 (WCC)

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Judge: Dlodlo | Judgment Date: 05/21/2009 | Court Division: Western Cape High Court, Cape Town

*AB and Another v Minister of Social Development 2017 (3) SA 570 (CC)*

*Clairison's CC v MEC, Local Government, Environmental Affairs and Development Planning and another | 2012 (3) SA 128 (WCC); [2012] JOL 28483 (WCC)*

The effect of this case was to confirm a legal principle in terms of Rules 6(5)(a), (b), (d), (i), (e), 12, 6(14) of the Uniform Rules of Court with the Environment Conservation Act 73 of 1989.

The main application between the parties was for the review of the decision of the first respondent taken in terms of section 35(4) of the Environment Conservation Act 73 of 1989 and dismissing the appeal of the applicant for environmental authorisation in terms of section 22(1) of the Environment Conservation Act for a change of land use in respect of a farm.

The second respondent was a municipality against which no relief was sought. The municipality delivered a notice to abide in the matter. However, after the filing of answering papers and replying papers by the applicant and the first respondent, the municipality delivered an affidavit by one of its officials. That led to the present application by the first respondent. For the striking out of the said affidavit. Relying on the provisions of rule 6(5)(e) or rule 12 (read with Rule 6(14)) of the Uniform Rules of Court, the first respondent submitted that having delivered a notice to abide, the second respondent was not permitted to deliver an affidavit without the leave of the court.

The candidate's judgment is one of precise logic in the application of legal principles and quite suitable in that the candidate also based his decision on legal academic

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findings, i.e. Civil Practice of the Supreme Court of South Africa. The judgment is well written.

*Collard v Jatara Connect (Pty) Ltd and Others* | 2018 (5) SA 238 (WCC); [2017] JOL 38032 (WCC); [2017] ZAWCHC 45 (WCC)

The effect of this case was to confirm a legal principle, of sections, 7, 128, 131(1), 141, 152, 153, 417, 418, 424, Item 9 (1), Schedule 5 of the Companies Act, 71 of 2008; and sections 89, 99, Insolvency Act, 24 of 1936

In this matter, the candidate weighed Edcon's interest against the interests of the employees and all other creditors who voted in favour of the business rescue plan.

*Department of Home Affairs and another v Ndlovu and others* | [2014] 9 BLLR 851 (LAC); (2014) 35 ILJ 3340 (LAC); [2014] ZALAC 11 (LAC)

In this matter judgement was handed down by a full bench in the Labour Appeal Court in Durban. The Honourable Judges Tlaletsi and Mokgoatlheng concurred in the judgment of the candidate.

This judgment is well written, as it is widely supported by various cases dealt with over a number of years, thus guiding and establishing the law in this particular matter arising out of the employee's conduct.

The Court may however have considered granting costs against the respondent as the absence of a costs order against the recalcitrant respondent may deter other employees in persisting in such litigation.

*Economic Freedom Fighters and others v Speaker of the National Assembly and others* [2018] 2 All SA 116 (WCC)

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This matter was heard by a full bench comprising of the Honourable Judges Bozalek, Dlodlo and Mantame. The candidate wrote the judgement of the Court. The case dealt with legal principles arising from a Parliamentary sitting wherein the EEF felt disengaged in asserting their rights within the Parliamentary sphere of rules and the Constitution.

The judgement is impressively written, containing interesting and well thought out reasoning and legal principles.

*Fanti v Boto and others* | 2008 (5) SA 405 (C) ; [2008] 2 All SA 533 (C); [2008] JOL 21238 (C)

This matter is based on customary law, wherein the requirements for a valid customary marriage are outlined. i.e. Lobola.

The case is ground-breaking for its time. It is well thought out and reasoned.