

*CANDIDATE: JUDGE OWEN LLOYD ROGERS*

**APPLICANT: JUDGE OWEN LLOYD ROGERS**

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

**1 The candidate's appropriate qualifications**

1.1 Judge Rogers completed his BA (*cum laude*) at the University of Cape Town in 1982, an Honours degree (First Class) in Classics in 1983 and his LLB (*magna cum laude*) in 1985.

1.2 He joined the Cape Bar in 1988 and was appointed senior counsel eleven years later in 1999.

1.3 Judge Rogers has also authored articles in various publications including the following:

1.3.1 'The Action of the Disappointed Beneficiary' (1986) 103 SALJ 683.

1.3.2 'When All Else has Failed: Illegal Strikes, Ultimatums and Mass Dismissals' 1991 (12) ILJ 1171 (co-authored with Jeremy Gauntlett)

1.3.3 'Silk: Why it should go' Advocate (December 2006) 26

1.3.4 'High Fees and Dubious Practices' Advocate (April 2012) 40

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

2.1 The candidate is a sitting judge.

2.2 No adverse comments have been received.

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

1.1 The candidate is a White man.

1.2 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).

1.3 The appointment of the candidate would therefore not help to reflect the racial and gender composition of South Africa.

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

4.1 The candidate has consistently demonstrated a sound knowledge of the law including constitutional law.

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

5.1 The candidate has always demonstrated a commitment to the values of the Constitution.

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

6.1 Judge Rogers has been overturned three times by the SCA. These matters include:

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6.2 *First Rand Bank Limited v Nkata* 2015 (4) SA 417 (SCA). Leave was granted by Rogers J sitting as the court of first instance. The appeal was upheld.

6.2.1 The decision by the SCA went on appeal to the Constitutional Court in *Nkata v First Rand Bank* 2016 (4) SA 257 (CC). The Constitutional Court agreed with the decision of Judge Rogers acting in the court of first instance. Thus, his initial decision at the Cape Town High Court was good.

6.3 *Vincorp Pty (Ltd) v Trust Hungary* (061/2017) [2018] ZASCA 35 (27 March 2018) – Rogers J sitting as one of a Full Bench appeal.

6.4 *KDL Residential CC v Empire Earth Investment* 2017 (6) SA 55 (SCA)

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

7.1 The candidate was appointed to the bench in the Western Cape Division of the High Court in 2012. Prior to that he was an eminent senior counsel practising at the Cape bar.

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

8.1 The candidate demonstrates linguistic and communication skills.

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

9.1 No adverse comments were received in relation to his ability to produce judgments promptly.

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

10.1 No adverse comments were received.

**11 The candidate's independent mindedness**

11.1 No adverse comments were received.

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

12.1 The candidate is an experienced judicial officer who is well able to conduct court proceedings.

**13 The candidate's administrative ability**

13.1 No adverse comments were received.

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

14.1 The candidate has a reputation for integrity and ethical behaviour.

**15 The candidate's judicial temperament**

15.1 The candidate is known to be firm but fair.

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

16.1 The candidate's commitment to human rights well-known.

**17 The candidate's potential**

17.1 The candidate has potential to excel as an SCA judge.

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

18.1 The candidate has a proven track record as a judicial officer.

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**ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

**Reported decisions**

*Cape Point Vineyards (Pty) Ltd V Pinnacle Point Group Ltd* 2012 JDR 0013 (WCC).

Heard August 11 2011 as an acting judge. Judgement on 11 August 2011.

Dealt with the costs of a business rescue application

*Democratic Alliance v President of South Africa and Others* 2014 (4) SA 402 (WCC).

Heard on 4 and 5 March 2014. Judgment on 13 March 2014.

Dealt with whether the Transport Laws and Related Matters Amendment Act 3 of 2013 required, for its valid enactment, compliance with the procedure laid down in s 76 of the Constitution or whether, as occurred, enactment in accordance with s 75 sufficed.

*Minister of Police v Auction Alliance (Pty) Ltd* 2014 JDR 0424 (WCC).

Heard on 26 February 2014. Judgment on 28 February 2014.

Concerned the procedure to be followed in relation to various documents, hard drives and the like pending the determination of an application for a search warrant.

*Democratic Alliance v South African Broadcasting Corporation SOC Ltd ("SABC")* 2016 JDR 2330 (WCC).

Heard on 23 and 24 November 2016. Judgment on 12 December 2016.

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The issue in this case was whether the plaintiff was entitled to rely on a without prejudice letter as an acknowledgment of liability interrupting prescription.

*Tuning Fork (Pty) Ltd t/a Balanced Audio v Greeff and Another* 2014 (4) SA 521 (WCC).

Heard on 19 May 2014. Judgment on 28 May 2014.

The issue in this case was whether a creditor loses its claim against a surety if a duly adopted and implemented business rescue plan provides for the creditor's claim against the principal debtor to be compromised in full and final settlement of such claim.

*Berg River Municipality v Zelpy 2065 (Pty) Ltd* 2013 (4) SA 154 (WCC).

Heard on 28 February 2013. Judgment 8 April 2013.

The Municipality sought a final interdict preventing respondent from occupying or using certain buildings on the property constructed in violation of s 4 of the National Building Regulations and Building Standards Act 103 of 1977 (the Act) until an occupancy certificate has been issued by the Municipality in terms of s 14(1) of the Act.

The reasoning in this case was over ruled in the case of *Wierda Road West Properties (Pty) Ltd V Sizwe Ntsaluba Gobodo Inc* 2018 (3) SA 95 (SCA), where the court held that:

“While the reasoning in *Berg River Municipality* appears, on the face of it, rather attractive, the conclusion that s 4(1) contains an implied prohibition against use or occupancy presents serious difficulties. First, the effect of such

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an implication may result in an offending party falling foul of a criminal sanction by attributing an implied meaning to a statutory provision. However, penal provisions must not only be stipulated with reasonable clarity, but must also be interpreted strictly where there may be ambiguity. The second difficulty is that there is no apparent reason why one must perforce read an implied prohibition against use or occupancy in s 4(1) when ss 14(1)(a) and 14(4)(a) expressly deal with unlawful use or occupancy where there are approved building plans. Where there are none, the local authority has other remedies available to it to enforce the provisions of the Act. It is well established that great caution must be exercised when seeking to read an implied meaning into a statute. That can only be done when implication is necessary to give effect to the statutory provision as it stands.”

*De Jong and Others v Trustees, Simcha Trust, and Another* 2014 (4) SA 73 (WCC).

Heard on 11 November 2013. Judgment on 22 November 2013.

An application for compensation in terms of s 8(1)(c)(ii)(bb) of the Promotion of Administrative Justice Act 3 of 2000

*Pepsico Inc v Atlantic Industries* (983/2016) [2017] ZASCA 109 (15 September 2017)

**Judgments upheld on appeal**

Judge Rogers has been confirmed on appeal by the SCA on eight occasions.

*Dominick v Nedbank Limited* 20463/14 [2015] ZASCA 160 13 November 2015

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*Minister of Home Affairs and Others v Scalabini Centre* 2013 (6) SA 421 (SCA)  
confirmed in part

*Van Wyk v S; Galela v S* 2015 (1) SACR 584 (SCA)

*Luck Star Ltd v Lucky Brand (Pty) Ltd* 2017 (2) SA 588 (SCA)

*Commissioner of SARS v Kluh Investments* 2016 (4) SA 580 (SCA)

*Van Willing v S* 109/2014 [2015] ZASCA 52 (27 March 2015)

*Trustee of Simcha Trust v Madeleine De Jong* 2015 (4) SA 229 (SCA)

*Grainco Pty (Ltd) v Van der Merwe* 2016 (4) SA 303 (SCA)

**Judgments overturned on appeal**

Dealt with above.