

CANDIDATE: MS NOKUTHULA SYLVIA DANISO

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COURT FOR WHICH CANDIDATE APPLIES: FREE STATE DIVISION

1. The candidate's appropriate qualifications:

- 1.1. The candidate holds the following degrees:
- 1.2. The candidate is appropriately qualified.
- 1.3. The candidate was admitted as an attorney in 1999.
- 1.4. The candidate was an acting district magistrate from August 2003 – April 2004.
- 1.5. The candidate was a district magistrate from May 2004 – April 2017.
- 1.6. The candidate was an acting regional magistrate from April – May 2017.
- 1.7. The candidate has been a senior magistrate from May 2017 – present.
- 1.8. The candidate has acted as a Judge in the Free State High Court on three separate occasions, being:
 - 1.8.1. 9 – 31 October 2017 (3 Weeks);
 - 1.8.2. 3 – 30 September 2018 (4 Weeks);

1.8.3. 8 October – 14 December 2018 (Term).

1.9. Lastly, the candidate has attended numerous training courses for Magistrates and aspirant Judges.

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

2.1. The Magistrates Commission has indicated that candidate is in good standing with the commission, and that there are no pending disciplinary matters or investigations for any misconduct.

2.2. There is no information at hand to suggest that the candidate is not 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 black woman.

3.2. The appointment of the candidate would assist in reflecting the racial and gender composition of South Africa.

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

4.1. The candidate appears to have a commitment to the values of that underlie a democratic and open society.

4.2. It is noted that many of the candidate's written judgments were focused on promoting constitutional values and principles, and basic human rights.

4.3. The candidate has shown a commitment towards family law and an interest in protecting citizens from unscrupulous debt collectors. In our opinion, the candidate is willing and able to give expression to the values of the Constitution and to actively partake in the protection and development of the core values that underlie the Constitutional disposition.

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

5.1. The candidate has approximately 4 years post articles experience as an attorney (1999 – 2003) during which time she was exposed to general civil, criminal and labour law litigation.

5.2. The candidate does not submit any percentages indicating the proportional extent of the different types of matters that she dealt with as an attorney.

5.3. The candidate served as an adjudicator for the Department of Housing during 2002 – 2003.

5.4. The candidate served as the chairperson of the Small Claims Court Advisory Board during 2010 – 2012.

5.5. The candidate chaired the Gauteng Civil Forum since 2018.

5.6. The candidate has served as a board member of the Council of Debt Collectors since 2018.

5.7. Lastly, the candidate's written judgments are indicative of a willingness to research extensively and apply the law.

6. Whether any judgments have been overturned on appeal:

6.1. We have been unable to determine if there are any judgments which are pending appeal. No overturned judgments could be traced.

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

7.1. As appears from the candidate's curriculum vitae she has 16 years' experience as a Magistrate, and has dealt extensively with both civil and criminal matters.

7.2. While acting in the Free State Division the candidate was held in high regard by members of this Society

8. The candidate's linguistic and communication skills:

8.1. The candidate produces well written and reasoned judgments.

8.2. The judgments evidence not only the research that has been conducted, but the candidate's ability to consider, apply or justify a different finding. Such is conveyed coherently and logically.

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

9.1. The synopsis of judgments which is set out below indicates the date of hearing the matter and the date on which judgment was delivered.

9.2. It is quite evident that all judgments were delivered promptly and conscientiously.

10. The candidate's fairness and impartiality:

10.1. It appears that the candidate is fair and impartial and applies the Law without fear and favour.

10.2. No adverse comments have been received.

11. The candidate's independent mindedness:

11.1. The candidate appears to be independent minded. In her judgments she regularly expresses her view on the correctness of arguments that have been made before her.

11.2. No adverse comments have been received.

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

12.1. No adverse comments have been received.

13. The candidate's administrative ability:

13.1. The candidate has a background as an Attorney, Magistrate and Board Member. In addition to this, the candidate has delivered judgments promptly. It would be reasonable to assume that she has a good administrative ability.

13.2. No adverse comments have been received.

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

14.1. The candidate was held in high regard on the occasions that she acted in the Free State Division.

14.2. No adverse comments have been received.

15. The candidate's judicial temperament:

15.1. The candidate appeared to be polite, interested and dignified whilst acting in the Free State Division.

15.2. 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 appears to have the community's interest at heart.

16.2. There is a strong focus on human rights in the candidate's written judgments, and in particular the criminal matters which she has presided over.

17. The candidate's potential:

17.1. The candidate has a strong magistracy background, shows commitment to her work, and appears to be principled. We believe that she has good potential as a Judge.

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

18.1. The candidate is a black woman and her appointment will send a positive message to the community at large.

18.2. The candidate is a diligent magistrate, mother and active community member. Her appointment would demonstrate that qualifications, integrity and hard work are to valued.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

None reported in the Law Reports as of yet.

Unreported Decision

Flacodor 109 CC t/a Bell Foods v Afgri Poultry (Pty) Ltd t/a Day Break Farms – Case no 5099/2016 – Free State High Court – 14 September 2018 (Heard 6 September 2018).

This matter concerned an opposed application for rescission of justice. It was accompanied by an application for condonation for the late filing of the answering affidavit. The candidate granted both the condonation application and rescission of judgment, with costs to be in the cause.

De Wet & 2 Others v Jacobs & 5 Others – Case no 5273/2018 – Free State High Court – 13 December 2018 (Heard 22 November 2018).

This was an urgent application for the appointment of a curator ad litem and curator *bonis* for an elderly woman, together with ancillary prayers for the setting aside of two of the respondent's appointment as administrators of the patient's estate.

The candidate initially granted an order for the appointment of a curator ad litem to investigate the matter and postponed the matter to 22 November 2018. On 22 November 2018 the parties had settled all issues except costs.

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The candidate found that the applicants had conducted themselves vexatiously, but it was not so reprehensible that it warranted a punitive costs order. Consequently, the candidate held that the applicants should pay the costs of the application on a party and party scale.

The State v Petu – Case no 58/2018 – Free State High Court – 17 October 2018 (Heard 15 October 2018).

This judgment is in respect of the sentencing of an individual who was convicted of murder, housebreaking with the intent to rob, and robbery with aggravating circumstances.

In addition to the consideration of the applicable minimum sentences, the candidate weighed the personal circumstances of the convict against the nature and severity of the crimes, and what would be in the interests of society.

The candidate sentenced the convict to 15 years imprisonment for housebreaking and robbery charge, and life imprisonment for murder, which sentences are to run concurrently.

Jonker & 6 Others v Lambons (Pty) Ltd – Case no 2769/2017 – Free State High Court – 8 November 2018 (Heard 13 September 2018).

The applicants sought to review the decision of the Taxing Master, who had found that the Attorney for the applicant did not have right of appearance in the Free State High Court, and could consequently not attend to the taxation.

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After considering conflicting case law and the amendment of the relevant statute concluded that the Taxing Master had erred, and set aside the decision.

The candidate further directed that the judgment be sent to the Judge President to consider a concerning statement that had been made by the Taxing Master.

Scheepers v Master of the High Court & 3 Others – Case no 1173/2018 – Free State High Court – 16 November 2018 (Heard 20 September 2018).

In this matter the applicants sought to review and set aside the decision of the Master of the High Court to dismiss their objection to a final liquidation and distribution account. The applicants further sought to have the executor compelled to set aside the transfer of a property.

The candidate considered the facts of the matter, the relevant legislation, and submissions by Counsel, and found that there was not merit in granting the relief sought by the applicant or for referring it for oral evidence.

N H v Road Accident Fund – Case no 2843/2016 – Free State High Court – 25 October 2018 (Heard 21 September 2018).

This trial had mostly settled, with only the issue of quantum in respect of general damages remaining in dispute.

The candidate considered the evidence of the witnesses and expert witnesses, as well as submissions by Counsel and found that the extent of the plaintiff's permanent injuries, disfigurement and pain and suffering warranted an award of R1 100 000.00.

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Amsterdam v Road Accident Fund – Case no 2805/2014 – Free State High Court – 6 December 2018 (Heard 21 November 2018).

This matter related to the adjudication of quantum in a claim for loss of support and past medical expenses.

The candidate considered the evidence of witnesses and expert witnesses, as well as submissions by Counsel and found that Counsel for the defendant had not called any witnesses or disputed the evidence lead by the plaintiff.

The candidate accordingly granted the amounts claimed by the plaintiff.

Makae v The State – Case no A262/17 – Free State High Court – 29 November 2018 (Heard 19 November 2018). Daffue J and Chesuwe J concurred.

The appellant had been convicted of rape and murder, and was appealing the life sentence that had been handed down.

The candidate wrote the judgment for the Full Bench. There were no dissenting views.

The appellant contended that he had not been warned of the possibility of a life sentence during his trial. It was found that this allegation bore merit.

The candidate considered the purpose of the warning of accused and concluded that it was so that they were able to prepare themselves to make submissions in mitigation of a lighter sentence.

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The candidate found that the appellant had not been prejudiced by the failure to provide the warning, as he had in fact made submissions in mitigation. Furthermore, the prevailing lack of remorse, the heinous nature of the crime and other aggravating factors warranted the sentence.

The appeal was therefore dismissed.

Livanje v The State – Case no A143/2017 – Free State High Court – 19 October 2017 (Heard 9 October 2017). Rampai J concurred.

The appellant was convicted and sentenced for housebreaking and entering the country illegally.

The appellant appealed against the conviction and sentence in respect of the charge of housebreaking, and took issue that he had not been warned of the possibility of a minimum sentence.

The candidate weighed up the evidence before her as well as relevant case law, and found that there had been no misdirection on behalf of the court a quo.

The candidate found that the appellant had not been credible in any manner, and that the conviction and sentencing was warranted. Rampai J concurred.

The State v Setho & Mabolaseka – Case no R153/2017 – Free State High Court – 26 October 2017. Rampai J concurred.

This was a special review directed to the High Court by the acting Senior Magistrate. The accused had been convicted and sentenced for shoplifting, however the reasons of the acting magistrate could not be provided, as they

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were no longer acting. The acting Senior Magistrate was of the view that the proceedings and findings had been highly irregular.

The candidate agreed with the view of the acting Senior Magistrate, and identified additional irregularities which were of serious concern.

The candidate raised a very relevant issue in her judgment – the necessity of training and mentorship of new and acting Magistrates in order to develop not only a strong Magistracy, but also to promote the interests of justice.

In light of the serious irregularities, the candidate set aside the convictions and sentences, and referred her judgment to the Chief Magistrate. Rampai J concurred.

Judgments upheld on appeal:

None

Judgments overturned on appeal:

None