

*CANDIDATE: DARIO DOSIO*

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**COURT FOR WHICH CANDIDATE APPLIES: JUDGE OF THE  
GAUTENG HIGH COURT OF SOUTH AFRICA**

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

1.1. The candidate holds the following degrees:

1.1.1. Bachelor of Arts, University of Witwatersrand (1988); and

1.1.2. LLB University of Witwatersrand (1993);

1.2. The candidate has a Higher Diploma in –

1.2.1. Tax Law, University of Witwatersrand (1994).

1.3. The candidate has the following employment history:

1.3.1. A Public Prosecutor from 1991 until 1994;

1.3.2. A Control Prosecutor from 1994 until 1998;

1.3.3. A District Magistrate from 1996 until 2000;

1.3.4. A Criminal Regional Magistrate from 2000 until 2012; and

1.3.5. A Civil Regional Magistrate from 2012 to date.

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- 1.4. In 2011, the candidate was an assessor for a period of three months in the then South Gauteng High Court, Johannesburg assisting Justice Kathree-Setiloane with numerous criminal trial matters.
- 1.5. In 2012, the candidate was an Acting Judge in the Labour High Court on a pro bono basis dealing with review matters during the June recess of that year.
- 1.6. The candidate has acted as a Judge in the Gauteng High Court, in both the Local Division (Johannesburg) and the Provincial Division (Pretoria) during the following periods:

<b>Year:</b>		<b>Court:</b>	<b>Dates:</b>	<b>Roll / Type of matters:</b>	<b>Total Weeks:</b>
2013		Johannesburg	15 April – 26 April (2 weeks)	Civil: Opposed motion court	2 weeks
2013		Pretoria	12 May – 6 June (4 weeks)	Criminal: Appeals	1 week
				Civil: Unopposed Motion roll	1 week
				Criminal and Civil: Appeals and Full Bench Civil Appeals	1 week

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				Criminal Appeals	1 week
2014		Pretoria	12 May to 13 June (5 weeks)	Civil and Criminal Appeals	1 week
				Civil: Opposed Motions	1 week
				Criminal Appeals	1 week
				Civil Trials	1 week
				Criminal Appeals	1 week
		The candidate attended to Criminal Reviews and pre-trials during this period.			
2015		Johannesburg	13 April - 15 May and (6 July – 17 July) (7 weeks)	Criminal: Trials, appeals and petitions	7 weeks
2016		Johannesburg	18 April – 20 May (5 weeks)	Criminal: Trials	5 weeks
		Johannesburg	23 May – 24 June (5 weeks)	Criminal: Appeals Civil: Unopposed Divorces	1 week

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				Civil: Trials	1 week
				Criminal: Appeals Civil: Unopposed Divorces	1 week
				Criminal: Appeals Civil: Unopposed Divorces	1 week
				Civil: Unopposed Motions	1 week
		Johannesburg	27 June – 1 July (1 week)	Criminal: Part heard matters	1 week
			15 August – 2 September (2 weeks)	Criminal: Part-heard matters	2 weeks
2017		Johannesburg	18 April – 19 May (5 weeks)	Criminal: Trials	5 weeks
		Pretoria and Johannesburg	23 May – 30 June (6 weeks)	Civil: trials	1 week
				Criminal: Appeals	1 week
				Civil: Special Motion	1 week

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				Criminal: Appeals	1 week
				Civil: Trials	1 week
				Civil: Part heard Criminal: Leave to appeals	1 week
			3 July – 28 July (4 weeks)	Criminal: completed part heard criminal matters	4 weeks
2018		Johannesburg	29 January – 30 March (9 weeks)	Criminal: trials, appeal and petitions.	9 weeks
			2 July – 27 July (4 weeks)	Criminal: part heard matters	4 weeks
2019		Johannesburg	15 April to 28 June (11 weeks)	Civil: unopposed motions, special motion, urgent court, civil trials, opposed motion, full bench civil appeal.	11 weeks

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- 1.7. The candidate has spent a total of 71 weeks acting:
  - 1.7.1. 1 week acting in the Labour High Court;
  - 1.7.2. 21 weeks acting in the Civil Court;
  - 1.7.3. 43 weeks acting in the Criminal Court;
  - 1.7.4. 6 weeks where he acted in both the Criminal and Civil Courts during those weeks.
- 1.8. The candidate has been a magistrate in the district court, adjudicating in both civil and criminal matters during the period 1996 until 1999.
- 1.9. The candidate presided over criminal matters as a Regional Magistrate in Soweto during the period 2000 until 2012.
- 1.10. The candidate presided in the civil court in Kempton Park Magistrates Court in 2007 for a period of three months and has been a Civil Regional Magistrate from 2012 to date.

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

- 2.1. The candidate has been a Magistrate for 23 years.
- 2.2. There are no pending disciplinary matter of investigations of any misconduct against the candidate.
- 2.3. There is nothing in the candidate's application to our knowledge suggesting that he is not a fit and proper person.

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2.4. A review of his judgments and information in the public domain provides no indication that he is unfit for the position applied for.

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.

3.2. The appointment of a white male candidate will not advance the cause of gender or racial representation.

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

4.1. The candidate's application details his involvement in community projects. The candidate has taken an active role in community projects, which includes mentoring children of the Othandweni Orphanage, Soweto and helping to educate the community, specifically the children on issues such as drug awareness.

4.2. A further example of the candidate's commitment to and acknowledgement of the constitutional values can be found in the candidate's judgment in the full bench appeal of *In the case of S v Mogaramedi* 2015 (1) SACR 427 (GP), which dealt with Constitutional principles, including aspects of the Bill of Rights and the balancing of interests.

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

- 5.1. As indicated above, the candidate has been a Magistrate for 23 years and has provided over both criminal matters and civil matters.
- 5.2. The candidate has also sought to advance his knowledge and those of his peers, arranging training for magistrates not in the regional court on aspects of the Divorce Act.
- 5.3. The candidate has delivered a paper at the Commonwealth Magistrates and Judges Conference in 2006 entitled "*The Relationship between Sexual Violence and the transmission of HIV/AIDS: a perspective from a Presiding Officer working in a Specialised Sexual Offences Court in Soweto*". This led to the candidate's paper being published in the 14th Triennial Conference Report of the Commonwealth Magistrates and Judges Association.
- 5.4. This paper led to the candidate co-authoring a paper entitled "*Constructing Hope: a Multi-Agency Programme model for Young Sexual Offenders living with HIV/AIDS in South Africa*". This article was published in the 2nd issue of the 2007 electronic journal of the International Association for the Treatment of Sexual Offenders.
- 5.5. The candidate currently has 5 reported judgments from his time as an acting judge. But a search has highlighted 45 unreported judgments, of which 33 are criminal matters and 12 civil matters.

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5.6. Of the reported judgments, the candidate lists the following judgments as being most significant –

5.6.1. The candidate referred to the case which can be found in the unreported judgments on Juta as **Estate Agency Affairs Board v Guthrie 2013 JDR 1733 (GSJ)**. In this case, the candidate was called upon to determine whether Rule 35(5)(c) of the Uniform Rules of Court was applicable to the applicant (the defendant in the main action) who seeks discovery of documents from a cedant, the first respondent, who is not a party to the main action. And thereafter, if Rule 35(5)(c) was applicable, whether the applicant had made a case for the application to warrant an order sought.

The candidate found that Rule 35(5)(c) was available to the applicant. The candidate set out his reasoning for this conclusion in his judgment, citing authors and cases. The candidate was required to interpret the uniform rule with reference to the interpretation of statutes. With regard to the second determination, the candidate found that the applicant

was entitled to the relief sought having made out a case of same in his papers.

The candidate has identified and reasoned the issues of the application in a logical manner, setting out a background which is easy to follow.

5.6.2. **DDP Valuers (Pty) v Makhado Municipality 2014 JDR 1566 (GP)**

The applicant had launched an application for the review and setting aside of a tender which had been awarded by the First Respondent to the Second Respondent. In terms of the relief sought, the Applicant sought to have the tender awarded to itself, alternatively that it be ordered that the tender be referred back to the First Respondent for consideration afresh.

The candidate reviewed and set aside the tender awarded by the First Respondent to the Second Respondent, finding it unlawful and unfair due to numerous irregularities which included a fraudulent signature on a document. The candidate did not award the relief sought by the applicant granting it the tender,

finding that it had not made out a case of this, being exceptional circumstances.

In coming to the conclusion, the candidate set out the case law and legislation relied upon for his conclusion and explained his evaluation of the application under a separate heading.

The judgment enforces the need for compliance by the First Respondent with the relevant statutes.

5.6.3. **Motor Industry Staff Association v Stanmar Motors (Pty) Ltd 2012 JDR 1628 (LC)**

This case was for a review of an arbitrator's award, the Third Respondent. The candidate has set out the judgment in a clear manner. It is a comprehensive judgment which deals with the question of section 186(2)(c) of the Labour Relations Act 66 of 1995. The candidate found in favour of the applicant ordering the applicant's re-employment.

This case sets out the considerations in coming to this order. Which included the misinterpretation of the arbitrator of the contractual obligation of the employer. In coming to the conclusion, the court found that the arbitrator's finding was not

a decision a reasonable decision-maker could have reached.

This rendered the finding reviewable.

The candidate highlighted in his application that this case was important as there were no reported judgments concerning section 186(2)(c) of the Labour Relations Act.

5.6.4. **S v Seroba 2015 (2) SACR 429 GJ** – it is highlighted that the candidate incorrectly referred to the judgment as a judgment of the Gauteng Division, Pretoria, however, it appears that it is a decision of the Gauteng Local Division, Johannesburg.

The accused was charged with two counts of murder relating to the shooting of his wife and his sister in law that occurred in 2007. The accused raised the defence of pathological incapacity. There had been a substantial delay in the matter and numerous psychological evaluations. The candidate needed to deal with a report of a psychiatrist regarding a diagnosis of that was in conflict with the other 8 psychiatrists. The candidate dealt with the question of pathological incapacity in a logical manner and set out why this was not a case of pathological incapacity.

It is necessary to highlight that there had been a substantial period of 8 years before the matter was finally heard. After finding the accused guilty on 13 July 2015, the candidate was able to hand down the sentence on 14 July 2015. The trial

started on 20 April 2015 and the evidence was completed on 6 July 2015.

5.6.5. **S v Skhosana 2016 (2) SACR 456 GP**

This case is import as it dealt with an appeal, but specifically the admissibility of photographs taken on a cell phone. In this case, appellant had been observed on CCTV breaking into a house. After the appellant was arrested, the security officer took a photograph of the appellant and his co-accused on his cellphone. The photograph was used in evidence in the court a quo. This raised the important issue of whether a photograph from a cellphone was admissible. The candidate also dealt with the question of whether section 37 (1)(d) of the Criminal Procedure Act 51 of 1977 was unconstitutional and found that this section was not unconstitutional. The photograph was admissible. The case sets out some useful guidelines on the admissibility and considerations regarding the admissibility of such evidence in the future.

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

6.1. It is noted that there are two appeals which are pending against the judgments of the candidate, however, to date, these appeals have not been heard.

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

7.1. This has been dealt with extensively above.

7.2. Briefly, the candidate holds the following degrees:

7.2.1. This has been dealt with extensively above.

7.2.2. Bachelor of Arts, University of Witwatersrand (1988); and

7.2.3. LLB University of Witwatersrand (1993).

7.3. The candidate has a Higher Diploma in –

7.3.1. Tax Law, University of Witwatersrand (1994).

7.4. The candidate has the following employment history:

7.4.1. A Public Prosecutor from 1991 until 1994;

7.4.2. A Control Prosecutor from 1994 until 1998;

7.4.3. A District Magistrate from 1996 until 2000;

7.4.4. A Criminal Regional Magistrate from 2000 until 2012; and

7.4.5. A Civil Regional Magistrate from 2012 to date..

7.5. The candidate has also acted as a Judge in the labour court and in the Gauteng Division, Pretoria and Gauteng Local Division, Johannesburg for an extensive period, 71 weeks as set out above.

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

8.1. The candidate's judgments are clear, read well and show advanced linguistic and communication skills. The candidate's judgments have to date been in English.

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

9.1. The candidate has highlighted the cases in which the judgments have been reserved. The candidate managed in **S v Seroba**, to deliver his judgment promptly after the conclusion of the evidence and argument.

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

10.1. No adverse comments have been received in this regard.

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

11.1. No information or complaint was received indicating a lack of independent mindedness on the part of the candidate.

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

12.1. The candidate is an experienced presiding officer with 23 years' experience as such. With this experience it can be accepted that the candidate has the requisite ability to conduct court proceedings properly. This again has been highlighted by the numerous counsel that have come forward to support the candidate.

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12.2. Moreover, feedback received suggests that the candidate is in control of his court and is able to do so while being courteous, impartial and patient.

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

13.1. The candidate's record of producing judgments promptly appears indicative of his ability to administer his role efficiently. However, beyond this, no further comment can be made.

13.2. No adverse comments have been received.

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

14.1. No adverse comments have been received in this regard.

14.2. There is nothing else on record to indicate that the candidate's integrity or ethics have ever been compromised.

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

15.1. No adverse information was 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 has for many years been involved in the community and community projects. He has taken an active role in this regard.

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16.2. Importantly, the candidate has focused largely on the children and hardships in an impoverished community, mentoring them and attempting to better the children's understanding of certain issues, such as drugs.

16.3. The candidate has also organised training for colleagues to enable a better understanding of certain issue, thus promoting access to justice and attempting to ensure a standard of professionalism for the ordinary man to have confidence in the judiciary.

**17. The candidate's potential:**

17.1. No adverse information was received.

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

18.1. The candidate's appointment would not contribute to the project to transform the judiciary.

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**ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

*Marais v Road Accident Fund under case number 18/19420* handed down on 24 May 2019.

*S v Mbatha* 2018 JDR 0683 (GJ)

*S v Pataka* 2018 JDR 0613 (GJ)

*S v Hlatshwayo* 2018 JDR 2158 (GJ)

*Matjee v Road Accident Fund* 2017 JDR 1251 (GJ)

*S v Khumalo and Another* (SS77/2017) [2018] ZAGPJHC 444 (19 March 2018)

*S v Ganca* (SS162/2016) [2018] ZAGPJHC 111 (15 March 2018) – this is the sentence

*S v Ganca* (SS162/2016) [2018] ZAGPJHC 109 (7 February 2018)) – this is the judgment

*Matjee v Road Accident Fund* 2017 JDR 1251 (GJ)

*Mbewe v Road Accident Fund* 2016 JDR 1143 (GJ)

*S v Skhosana* 2016 JDR 1042 (GJ)

*S v Mbasigidi* 2016 JDR 1348 (GJ)

*S v Mofokeng* 2016 JDR 1144 (GJ)

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*Makwakwa v S (A14/2016) [2016] ZAGPJHC 106 (18 May 2016)*

*S v Nkosi (SS240/2014) [2016] ZAGPJHC 77 (3 May 2016)*

*S v Molahi (271/2014) [2016] ZAGPJHC 74 (21 April 2016)*

*S v Seroba 2015 (2) SACR 429 GJ*

*S v Seluma 2015 JDR 1578 (GP)*

*S v Mnganelwa 2015 JDR 2159 (GJ)*

*S v Isaac 2015 JDR 2148 (GJ)*

*DDP Valuers (Pty) v Makhado Municipality 2014 JDR 1566 (GP)*

*S v Mogaramedi 2014 JDR 1622 (GP)*

*Coetzee v Road Accident Fund 2014 JDR 1665 (GP)*

*S v Chinridze 2014 JDR 1516 (GP)*

*S v Lubisi 2013 JDR 1325 (GNP)*

*Gihwala v Meyerdricks 2013 JDR 1524 (GSJ)*

*Ukwanda Leisure Holdings (Pty) Ltd v Absa Bank Limited 2013 JDR 1636 (GSJ)*

*Estate Agency Affairs Board v Guthrie 2013 JDR 1733 (GSJ)*

*Beqfin (Proprietary) Limited v Ntane 2013 JDR 1787 (GSJ)*

*Motor Industry Staff Association v Stanmar Motors (Pty) Ltd 2012 JDR 1628 (LC)*

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*De Almeida v S (728/2018) [2019] ZASCA 84 (31 May 2019)* (This is not a judgment of the candidate, but it is an appeal of the candidate's refusal to grant leave to appeal.)