

*CANDIDATE: ADVOCATE CASSIM ISMAIL MOOSA*

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

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

- 1.1. The candidate was admitted as an advocate of the High Court of South Africa on 5 January 1993;
- 1.2. The candidate holds the degrees of Bachelor of Arts (BA. (Law)) and Bachelor of Laws (LLB), having obtained same from the University of Durban Westville in about 1987 and 1990, respectively;
- 1.3. The candidate also obtained the following diploma's and/or certificates,
  - 1.3.1. Certificate for Prosecutors (Justice College – 1991);
  - 1.3.2. Diploma in Alternative Dispute Resolution (cum laude) (University of Pretoria – Arbitration Foundation of South Africa – 2005);
  - 1.3.3. Certificate in Labour Arbitrations (Arbitration Foundation of South Africa – 2005);
  - 1.3.4. Certificate in Divorce Mediation (Arbitration Foundation of South Africa – 2005);

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1.3.5. Postgraduate Diploma in Labour Law (University of Johannesburg – 2006); and

1.3.6. Certificate in Conveyancing Practice (LEAD – 2008).

1.4. The candidate possesses the requisite qualifications for the position for which he has applied.

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

2.1. The candidate is a member of the National Bar Council of South Africa (“NBCSA”), and has served as a member of the NBCSA National Executive since 2012;

2.2. The candidate was nominated by the NBCSA to serve as a Commissioner on the Magistrate’s Commission and, having been appointed thereto by the Minister of Justice, served as such between January 2013 until January 2018. During his tenure, the candidate was appointed Chairperson of the Ethics Committee;

2.3. The candidate was re-appointed to the Commission for the period January 2018 until January 2023, and remains the Chairperson of the Ethics Committee;

2.4. The candidate was invited to act in the Gauteng Division of the High Court during 2015 and has remained as such, acting in an ad hoc basis in both the Gauteng Provincial and Gauteng Local Divisions from 2015 to date. The candidate provided an extensive list of the dates and periods of his appointment as such;

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- 2.5. No adverse information was received in respect of this candidate and concerning his tenure as an Acting Judge;
- 2.6. The candidate appears to be a registered member of the NBCSA and in good standing with the Association, and has never been accused of or tried for misconduct by that Association;
- 2.7. The candidate also appears to be a registered member in good standing with the Legal Practice Council;
- 2.8. There is no reason not to conclude that the candidate is a fit and proper person for judicial appointment.

**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 of Indian descent.
- 3.2. While his appointment will contribute to racial representivity, it will not contribute to the gender transformation of the judiciary.

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

- 4.1. During studies for his LLB degree, the candidate read the subject of African Government Law and Administration, in which the candidate achieved a cum laude pass;
- 4.2. To the end of the candidate's studies, and by virtue of the candidate's achievements in respect of the subject Criminal Law, the candidate was

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awarded a bursary from the Department of Justice on condition that the candidate take up employment with the Department;

- 4.3. The candidate was appointed to Chatsworth Magistrate's Court as a State Prosecutor in 1988 and in 1991 the candidate was transferred to the Durban Magistrate's Court to serve as Control Prosecutor in the Juvenile and Regional Court;
- 4.4. The candidate was in 1992 appointed at the Office of the Attorney General, Durban as a State Advocate, in which capacity the candidate states he prosecuted complex and difficult matters in the High Court of South Africa. The candidate was the first Indian Male in South Africa to be appointed as State Advocate;
- 4.5. The candidate was admitted as an Advocate of the High Court of South Africa on 5 January 1993;
- 4.6. Ex facie the candidate's *curriculum vitae*, the candidate further states that he represented the State in *S v Sefadi* 1994 (2) SACR 667, during his tenure as State Advocate. *S v Sefadi* concerned the question and rights of access to the contents of the police docket and the right to a fair trial. The candidate mentions this as a landmark case, in which he the erstwhile Chief Justice – the Honourable S Ngboco – appeared as defence counsel. This case ostensibly pertained to issues of Constitutional rights and interpretation thereof, as well as questions of professional ethics;

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- 4.7. The candidate resigned as a State Advocate in 1996. The candidate thereafter practiced for his own account, as counsel, from 1997 onwards;
- 4.8. The candidate has extensive Criminal Law experience and ostensibly is familiar with Criminal Procedure Law, and the proper approach thereto.
- 4.9. Ex facie the candidate's *curriculum vitae*:
- 4.9.1. The candidate further states he has "appeared in a broad range of matters", and that he has been "briefed in criminal, civil, labour, family and commercial matters" as well as motion court and land claims-related matters;
- 4.9.2. The candidate does not explicitly state whether he has been briefed or acted in matters containing issues of Constitutional Law and the reviewer cannot express a view on this;
- 4.9.3. The candidate states he has "appeared regularly in all the Courts, save for the Constitutional Court";
- 4.9.4. The candidate estimates the proportions of litigation in which he has been involved to be 50% Criminal law, the balance made up of Administrative (5%), Constitutional (5%) Labour (10%) and the balance, 30%, made up by Family, Commercial, Liquidations and Sequestrations, Tax and Alternative Dispute Resolution matters.

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- 4.10. The ‘range of matters’ in which the candidate has ostensibly appeared includes criminal matters (eg *S v Sefadi*, supra), Labour law matters (for the City of Johannesburg), complex auditing and forensic investigations (for the City of Johannesburg), disciplinary hearings of Johannesburg Metropolitan Police Department employees, complex commercial matters (such as, on behalf of Nokia Siemens Networks SA vs FNI Telecommunications Infrastructure (Pty) Ltd) and others;
- 4.11. The candidate appears to have relevant quasi-judicial experience, acting as Chairperson or, in other cases, Evidence leader in Disciplinary enquiries for the City of Johannesburg, the Prosecutor – Student Disciplinary Committee of the University of Johannesburg, and as current and incumbent Chairperson of the Ethics Committee of the Magistrate’s Commission;
- 4.12. The candidate also dealt with matters in various fields of law during the periods of his appointment as an acting Judge of the Gauteng Division of the High Court, inter alia, Criminal law matters (whether as Court a quo, or as Court of Appeal), a Review Application, Opposed Motion Proceedings, Contempt of Court, Foreclosure proceedings, Liquidations and Sequestrations, Judgments by default, Rescission of Judgment, Civil Trials, Contract Law, Family Law, Spoliation, Eviction, Interdict proceedings, Substituted Service, amongst others;
- 4.13. Although the candidate does not demonstrate sufficient experience and exposure in Constitutional Law, the candidate has widespread and

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varied practice, encompassing nearly all fields of law, will serve the candidate well in adjudicating most matters.

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

5.1. The candidate has demonstrated a commitment to the values of the Constitution and to the rule of Law, save for what occurred in the Sefadi matter in which the candidate appeared for the State.

5.2. The candidate opposed an application by the counsel for the accused to have (as defence counsel) access to summaries of the statements of State witnesses. The candidate, acting for the State, opposed the application, claiming that the statements were privileged. The blanket privilege claimed by State in police docket was held to be in conflict with the provisions of ss 23 and 25(3) of the Constitution Act 200 of 1993 and the application was granted.

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

6.1. The candidate has indicated that two of his judgments have been taken on appeal.

6.2. The first, *S v Donald Sebolai*, was an appeal against both conviction and sentence. The Supreme Court of Appeal dismissed the appeal.

6.3. The second, *S v Andries Lessing*, was an appeal against conviction and sentence. The Supreme Court of Appeal dismissed the appeal against conviction but granted leave to appeal to the Full Court of the Gauteng Local Division in respect of the sentence.

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6.4. No information was received of further judgments of the candidate that had been taken on appeal.

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

7.1. The candidate has been in the legal profession for more than 30 years.

7.2. The candidate has been exposed to, and been involved in, a wide variety of legal matters and, ex facie the application, has been appeared in Magistrate's Courts, the various Divisions of the High Courts and alternative dispute resolution for a (by way of example, AFSA), as set out in the candidate's *curriculum vitae*.

7.3. The candidate has acted as Judge of the Gauteng Division "*since 2015 for a period of approximately 102 weeks*".

7.4. The candidate has also been involved in quasi-judicial proceedings, in various different fora, having been involved in quasi-judicial proceedings, as the Chairperson or the Evidence leader in Disciplinary enquiries, or as the Prosecutor in student disciplinary hearings and as the current and incumbent Chairperson of the Magistrate's Commission Ethics Committee. Additionally, the candidate was an Instructor on behalf of LEAD at the Johannesburg School of Legal Practice, in respect of Practice Management.

7.5. The candidate has practiced as an advocate for more than 23 years, with professed, extensive experience in trial advocacy.

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

8.1. According to the candidate's *curriculum vitae*, the candidate is able to read and write English and Afrikaans, is able to read and speak Urdu, and is able to speak isiZulu and Gujarati and is able to read Arabic.

8.2. The judgments of the candidate demonstrates that the candidate has excellent linguistic skills. No adverse comments regarding the candidate's communications skills were received.

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

9.1. In most cases (save for two, where information as to the hearing dates were not recorded and/or available), that written judgment had been delivered in the range between the same day up to 21 Court days from last date of hearing until (written) judgment was handed down.

9.2. The candidate confirmed he had no outstanding judgments as at the date of the application, and that the candidate had two part -heard matters which had not yet been completed by the time of the application.

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

10.1. There is no indication the candidate is unfair or lacks impartiality in the judgments which have been delivered.

10.2. No adverse comments have been received.

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

11.1. There is no indication the candidate does not apply his mind independently to the issues arising from matters which the candidate has adjudicated.

11.2. In the judgments of the candidate that have been made available, the candidate does evince deference to the judicial precedent, in his treatment of legal disputes before him.

11.3. No adverse comments have been received.

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

12.1. The candidate has acted as a Judge of the High Court for no less than 102 weeks.

12.2. According to the feedback from members:

12.2.1. The candidate is always courteous and respectful towards counsel appearing before him, regardless of the urgency of the matter or the issues to be determined;

12.2.2. The candidate is always friendly and appreciative of the assistance which counsel offer to the Bench during preparation for, and during argument;

12.2.3. The candidate shows an ability to quickly and efficiently come to grips with and address the questions of law and fact pertaining to an urgent application, during December recess, surrounding

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Intellectual Property. The candidate succinctly and correctly approached the questions of urgency and merits and robustly gave an ex tempore judgment dismissing the application. The sole criticism in this instance is that the candidate in his judgment, did not grant costs of the dismissed application, rather leaving the question of costs for determination in a future proceeding which the applicant had not yet brought. The unsuccessful applicant did not bring further proceedings, and the respondent remains unable to obtain its costs in due course.

12.3. During this tenure, the candidate appears to be proficient and experienced to conduct Court proceedings ably and efficiently.

12.4. Save for the above feedback, no adverse comments have been received.

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

13.1. In his capacity as NEC member of the NCBSA, the candidate has travelled and interacted with the regional structures of the Bar Council and involved in the facilitation of the regional structures of the NCBSA. The candidate states his efforts resulted in the members of the NCBSA were properly organised within their regional structures.

13.2. The candidate offers lectures on Practice Management which, per se, indicate a deep understanding and significant ability to administer and organise, and assist others in also organising their affairs coherently.

13.3. As counsel practicing in the Gauteng Division of the High Court, the candidate would have developed the necessary administrative skills to

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ensure an effective discharge of his administrative abilities as a judge of the High Court.

13.4. No adverse comments have been received.

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

14.1. The candidate's application is supported by letters of good standing given by the National Chairperson of the National Bar Council of South Africa as well as the Director of the Legal Practice Council.

14.2. The candidate's application is also supported by the Head of Judicial Quality Assurance, Chief Magistrate Barnard, who speaks very highly of the candidate.

14.3. The candidate also offers, as reference, Honourable Justices Legodi, Mokgoathleng, Ismail and Sardiwalla, together with Mr Meijer of the Magistrate's Commission and attorney Amina Rahman. It was not considered necessary for the reviewer to approach the references for any comment.

14.4. The candidate appeared to be forthright in his disclosures of interests in the application, and his candour as to the consequences of his appointment (being immediate resignations from posts of the private interests), is an indicator of the candidate's appreciation of his position.

14.5. No adverse comments have been received.

14.6. There is no reason to doubt the candidate's reputation for integrity and ethical behaviour.

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

- 15.1. Reference is made to the feedback recorded in par 12, above.
- 15.2. Particularly, faced with an urgent application wherein intellectual property rights are in dispute, the candidate evinced a clear, impartial and patient temperament, allowing (within reason) argument on the issues for his adjudication, and determining the issues methodically and fully. No further adverse comments have been received.
- 15.3. The candidate's judgments provide an indication that the candidate thoroughly considers all issues arising from legal proceeding before him.
- 15.4. There is no reason to believe the candidate does not have the required judicial temperament.

**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 displayed a commitment to human rights.
- 16.2. The candidate states he identified a need amongst students to learn proper study techniques and academic skills and, accordingly, became involved in the academic support programme and lectured the students to uplift them and provide them with necessary tools to become successful in their studies.

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- 16.3. The candidate states he has acted, with success, on behalf of foreign nationals against the Minister of Home Affairs, in order to assist his clients in obtaining the necessary relief.
- 16.4. The candidate assisted with the development of disciplinary codes, procedures and policies for the University of Johannesburg, and assisted in the speedy finalisation of disciplinary hearings, for the benefit of all involved.
- 16.5. The candidate states he has performed the duties of Master of Ceremonies on behalf of the Islamic Business Development Corporation at several functions, including the reception of King Goodwill Zwelethini, the Mauritian Minister of Industry, the Ambassador of Pakistan, Dr Stals, MP Derek Keys and Zach De Beer.
- 16.6. No adverse comments have been received.
- 16.7. It appears to the reviewer that the candidate has experience in regard to the values and needs of various communities with whom he has interacted in the past, and the candidate has always attempted to facilitate and coordinate these communities to the benefit of the latter.

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

- 17.1. The candidate has already left his mark on the communities which he has served, and the various institutions which he has represented or been associated with.

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- 17.2. As an experienced counsel and having acted as a Judge of the Gauteng Division for more than 102 weeks, the candidate will undoubtedly bring significant benefit to the Bench.
- 17.3. There is no reason not to believe that the candidate will not enjoy further growth as a father, husband and a lawyer if he is elevated to the Bench.
18. **The message that the candidate's appointment would send to the community at large:**
  - 18.1. The candidate is a black man and his appointment will send a positive message to the community at large.
  - 18.2. The candidate's appointment will be in line with the transformation initiatives, pertaining to the appointment of Indian men to the Bench.
  - 18.3. The candidate's appointment as the first Indian male State Advocate will undoubtedly be a clear indicator of the community at large that the progression of legally trained persons, whether State Advocates or acting for their own accounts, is possible and attainable.
  - 18.4. The sacrifices that the candidate has made to date, through accepting numerous appointments to act as Judge where and when and for the term required, together with the candidate's willingness to answer the call of the profession wherever it is made, will be met with appreciation through his elevation to the Bench.

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## **ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

The candidate lists five judgments which have been reported. The candidate indicates that, during the preparation of the application, the candidate became aware that a number of the candidate's judgments (from 2015 and onwards) were not forwarded to the relevant publishers. The candidate has undertaken forthwith to attend to remedying this situation. The candidate has included in his application unreported judgments in this respect, comprising 2 Criminal matters, 3 Criminal Appeal matters, 1 Law Society Matter and 3 Civil matters.

### **Reported decisions:**

*Porrit, Gary Patrick v S (A 202/2018) [2018] ZAGPJHC 698 (10/12/18):*

In the time available to conduct this review, the reviewer has been unable to locate this judgment and to consider same for purposes of this review.

Two other judgments in this time are available, per Wepener and Monama JJ, apparently sitting as Courts of first instance, whereas the reference provided appears to be an appeal matter.

*Afrisam (SA) Properties (Pty) Ltd v Elandspoort Farming (Pty) Ltd and others (48644/2017) [2018] ZAGPPHC 580 (13/6/18):*

This was an opposed motion, brought as a matter of urgency, in which the applicant sought the respondents to be held in contempt of a Court order of Tuchten J, in the Gauteng Provincial Division. The applicant was the holder of a converted Mining Right, as defined in section 1 of the Mineral and Petroleum Resources Development Act, 28 of 2002, in respect of the mine

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dumps, and to which the applicant claimed the sole and exclusive right to mine and recover waste rock in, on and under the mining area in which the dumps are situated for a specified period, which period had not yet expired.

In reference to the voluminous papers filed in the matter, and the complex issue of Mining Rights, the candidate proceeded to hear the matter as one of urgency and to consider the parties' submissions in respect of the original application, the order of Tuchten J and the contempt proceedings.

The first respondent denied that it was in contempt of any order, which it contended had not been made against it. In addition, the respondents raised numerous material disputes of fact, which the candidate assessed in the course of the judgment.

Additionally, the candidate evaluated the wording of the order of Tuchten J, and the ambit and extent thereof, for purposes of contempt proceedings. In doing so, the candidate apparently correctly and justifiably determined that the extent of protection contended for by the applicant was not sustainable by the wording.

The candidate determined, correctly and justifiably that the dispute between the parties regarding the converted mining right of the applicant was for determination in an action, and that there existed no scope to grant the applicant unfettered access to the mining area above that which it was granted protection in terms of its converted mining right.

The candidate determined, further, that the applicant also has the necessary remedy in terms of an administrative action against the respondents.

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In assessing the applicant's submission for a referral to oral evidence in the event of the numerous disputes of fact incapable of resolution on the papers, the candidate had reference to caselaw authority regarding such referrals and the appropriateness of such a ruling.

The candidate displayed a reasoned and sympathetic approach to the applicant's plight and request for a referral to oral evidence, but held fast to the trite principles applicable to the relief sought and dismissed the application.

In doing so, the candidate displayed an appreciation and deference to stare decisis and trite legal positions applicable to the dispute.

Furthermore, and without being bound solely by the submissions of the parties' representatives, the candidate applied his mind independently and displayed an appreciation of the need for robust determination of issues in urgent matters such as the present.

The reviewer could not find any reference to this judgment in later judgments.

*Dimakatso Mirriam Legodi v RAF (10078/2015) [2018] ZAGPJHC (16/2/2018):*

This was a civil trial which had been set down for hearing solely on the merits (quantum standing over for later determination).

In his judgment, the candidate thoroughly assessed and determined the evidence of the plaintiff, which evidence appeared to the candidate to have been inconsistent and some of which had been augmented during the plaintiff's evidence.

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The candidate carefully assessed the evidence and ostensibly applied his mind to the various contrasting versions provided by the plaintiff. In determining the dispute, the candidate was alive to the incidence of the onus and, importantly, the cautionary rule in regard to single witnesses.

In the result, the candidate was unwilling to place any reliance on the plaintiff's versions and dismissed the plaintiff's claim.

The candidate displayed a reasoned and careful approach to the documentary and viva voce evidence. The candidate was patently capable of evaluating the evidence.

The candidate applied his mind independently and displayed an appreciation of the need for determination of the relevant issues in the action.

The reviewer could not find any reference to this judgment in later judgments.

*Phikizani Mhlanga v The Minister of Police* (41410/2012) [2018] ZAGPJHC (16/2/18):

This was a claim for unlawful arrest and detention, in which the plaintiff claimed damages from the defendant, who denied all allegations and put the plaintiff to the proof thereof.

In an apparent correct approach to the dispute, the candidate permitted the defendant to begin as the burden of proof rested on the arresting officer to prove that the arrest was lawful. In doing so, the candidate displayed an understanding and deference to the established principles relating to evidence and civil procedure.

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The candidate carefully analysed and evaluated the evidence of the two witnesses' testimony and discerned the factual question pertaining to the question of a lawful arrest, or not.

In doing so, the candidate showed an appreciation and deference to the caselaw precedence and on careful evaluation of the viva voce as well as documentary evidence placed before the candidate.

In the result, the candidate was unwilling to place any reliance on the plaintiff's version and dismissed the plaintiff's claim.

The candidate displayed a reasoned and careful approach to the documentary and viva voce evidence. The candidate was patently capable of evaluating the evidence.

The candidate applied his mind independently and displayed an appreciation of the need for determination of the relevant issues in the action.

The reviewer could not find any reference to this judgment in later judgments.

*Obose Bonginkosi Patrick v RAF (20976/2014) [2018] ZAGPJHC 491:*

This was an action in which the sole remaining issue for determination was the quantum of the plaintiff's damages, with specific reference to past and future loss of earnings.

Despite the issues between the parties being largely uncontested, the candidate was required to determine upon complex issues of actuarial calculations, contingencies to be applied to claims and the differing versions presented by the expert witnesses for the parties.

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The candidate performed a thorough analysis and evaluation of the expert evidence and reports, together with the applicable caselaw, to determine the quantification of damages which the candidate awarded (save for general damages, which question was postponed sine die).

In reaching his decision, the candidate applied his mind independently of the submissions of parties' representatives, but with due regard and deference to the guidance provided by the expert opinion evidence with which the candidate was favoured in the hearing.

The candidate was patently capable of evaluating the evidence and conducting the trial proceedings effectively.

The reviewer could not find any reference to this judgment in later judgments.

**Unreported decisions:**

As stated, the candidate included in his application unreported judgments comprising 2 Criminal matters, 3 Criminal Appeal matters, 1 Law Society Matter and 3 Civil matters.

One such Civil Matter, *Afrisam (SA) Properties (Pty) Ltd v Elandspoort Farming (Pty) Ltd* and others was in fact reported on SAFLII and has been discussed above.

The unreported judgments included are,

*State v V.D.Sebolai* (SS 182/2014) [Criminal matter]

*State v M.G.Lebogang* (SS 052/2018) [Criminal matter]

*S.Mbatha v State* (A297/2016) [Criminal appeal]

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*K. Joseph v State (A142/2018) [Criminal appeal]*

*I. Christo v State (A18/2018) [Criminal appeal]*

*Law Society of Northern Provinces v S. Malangeni (84433/016)*

*DR Nomathemba Blaai Mokgethi v Speaker of Council: North West 405 and others  
(50919/2017)*

*Admire Dube v Minister of Safety and Security (62343/2011)*

In the time available, the reviewer has been unable to locate other unreported judgments.

**Judgments upheld on appeal:**

In the time available, the reviewer has been unable to determine any judgments upheld on appeal. The candidate has not provided any judgments upheld on appeal.

**Judgments overturned on appeal:**

As stated, in the time available, the reviewer has been unable to determine any judgments overturned on appeal. The candidate has not provided any judgments overturned on appeal.