

CANDIDATE: MS THILOSHNI RAMDEYAL

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**COURT FOR WHICH THE CANDIDATE APPLIES: FREE STATE
DIVISION; GAUTENG DIVISION; AND THE WESTERN CAPE
DIVISION**

1. The candidate's appropriate qualifications:

1.1. The candidate holds the following degrees:

1.1.1. B.Proc Degree (obtained 1990, University of Durban, Westville);
and

1.1.2. LLM (obtained, 2005, University of KwaZulu Natal).

1.2. The candidate is appropriately qualified.

1.3. The candidate served articles of clerkship, with two firms in Durban, from April 1991 - March 1992, it does not seem that the candidate was admitted as an attorney.

1.4. The candidate joined the Department of Justice, as Prosecutor on 1 April 1992 - May 1995.

1.5. The candidate was appointed as Senior Prosecutor, and served in such position from 1 June 1995 - 31 May 1996.

1.6. The candidate acts as Magistrate, 1 June 1996 - 30 September 1997.

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- 1.7. The candidate was appointed as District Court Magistrate, and served as such, 1 October 1997 - January 2005.
- 1.8. The candidate became Regional Court Magistrate, and served as such from 1 February 2006 until date.
- 1.9. The candidate has acted as Judge in the Free State Division on five separate occasions, being:
 - 1.9.1. 18 April 2017 - 30 June 2017 (Term);
 - 1.9.2. 20 November 2017 - 8 December 2017 (3 Weeks);
 - 1.9.3. 30 July 2018 - 10 August 2018 (2 Weeks);
 - 1.9.4. 8 October 2018 - 12 October 2018 (1 Week);
 - 1.9.5. 29 October 2018 - 2 November 2018 (1 Week).

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

- 2.1. The Association of Regional Magistrates of South Africa has indicated that the candidate is in good standing with such association, there are no proceedings pending against the candidate, nor has she ever been accused of or tried for misconduct by the association.
- 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, of Indian descent.

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 is committed to the values of the Constitution, especially the rights of minors. She has shown astute awareness and commitment to the democratic and fundamental human values as well as for social justice.

4.2. The judgments appended to the candidate's application evidenced the candidate's commitment to the values that underlie a democratic and open society. 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 been involved in the legal field since 1991, and has approximately 28 years' experience mainly in Criminal Law;

5.2. The candidate served as a Prosecutor, and Senior Prosecutor for 6 years (1992 - 1996);

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- 5.3. The candidate acted as Magistrate, and served as Magistrate and Regional Court Magistrate for 23 years;
- 5.4. The candidate has a clear passion and concern for the prevalence of sexual offences on children, as is clearly indicated by her theses “Evidentiary and Procedural Aspects of Childs Sexual Abuse”, it is clear that the rights of minors are very high on the candidate’s priority list.
- 5.5. A brief synopsis of judgments:
- 5.5.1. *The State v Naftali Makhuvela and 13 Others* (High Court, Free State Division, Kroonstad, Case number 59/2016). This was an intricate criminal matter, with numerous accused being charged with numerous charges, in a well thought out and coherent judgment the candidate found some of the accused guilty and imposed proper sentences, with cognisance to all relevant factors.
- 5.5.2. *Andriane Tsangarakis N.O. plus 1 v Kgato Project Management (Pty) Ltd*, High Court, Bloemfontein, 2021/2017, this was an opposed motion regarding specific performance.
- 5.5.2.1. After hearing argument, and considering written heads of argument, the candidate dismissed the application, but granted a cost order.
- 5.5.3. *Mosiuwa Mantjes v The State*, Free State High Court, A58/2017. The candidate sat with Reinders J, as Full Bench on this criminal appeal.

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5.5.3.1. After considering the facts, and hearing argument, the appeal was dismissed, Reinders J concurred.

5.5.4. *The State v Thlako Stanley Lebesa*, Bloemfontein High Court, R85/2017.

5.5.4.1. This was a matter of special review, where the candidate sat with Naidoo J.

5.5.4.2. After considering the process in this matter, especially regarding a sentence of imprisonment for a minor in terms of Section 77(1) of the Child Harassment Act, 75 of 2008, the candidate set aside the sentence by the Presiding Magistrate and replace such with a sentence in line with the Child Justice Act, 75 of 2008, Naidoo J concurred.

5.5.5. *Bisschoff C v Bisschoff H*, Bloemfontein High Court, 2243/2017.

5.5.5.1. This was a Rule 43 application;

5.5.5.2. After considering the papers, and hearing counsel on behalf of both parties, the candidate made the decision regarding the primary care of the minor, made orders regarding contact rights for the parent not being in primary care of the child, requested a Family Advocate report to determine the best interest of the child and made orders regarding financial relief for the child in the interim.

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5.5.6. *The State v MR January* (Bloemfontein High Court, Case number 21/2018).

5.5.6.1. This was a criminal matter constituting of four counts of rape as well as four complaints of kidnapping.

5.5.6.2. The candidate considered all the evidence presented by various witnesses, a conviction followed, with a sentence inclusive of life imprisonment to run concurrently with other sentences.

5.5.6.3. An application for leave to appeal was brought by the convicted accused in this matter, such was dismissed as without cause, and will not pass the test for appeal.

6. Whether any judgments have been overturned on appeal:

6.1. One of the candidate's judgments (*Naftali Makhuvela and 13 Others and the State*, case number 59/2016); an application for leave to appeal was brought to the Supreme Court of Appeal, under reference 1113/2018.

6.2. The application was dismissed.

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

7.1. The candidate has a merit of experience in criminal law, especially relating to matters with minor victims.

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7.2. Unfortunately the candidate does not have extensive experience in any other field of law, except criminal matters.

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

8. The candidate's linguistic and communication skills:

8.1. The candidate has produced well-structured and clearly written judgments.

8.2. In Court as Acting Judge the candidate communicates well and clearly

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

9.1. There is no indication that the candidate has failed to deliver her judgments timeously, promptly and without undue delay.

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.

11.2. No adverse comments have been received.

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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 a Regional Court Magistrate and Senior Magistrate, reports from the Welkom Regional Office is that the candidate has excellent administrative skills.

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's manner in court is cordial and impartial.

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 has shown a strong commitment to serve the community, especially with her involvement against child victims

17. The candidate's potential:

17.1. With the candidate's background, clear commitment and principled approach to the Legal profession, we are of the view that the candidate has significant potential as a Judge.

17.2. Unfortunately the lack of experience in matters other than criminal matters, might be a problem for a sitting Judge as criminal matters is a minimal part of matters to be heard by 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.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

None.

Unreported Decision

The State v Naftali Makhavela and 13 Others (High Court, Free State Division, Kroonstad, Case number 59/2016)

Andriane Tsangarakis N.O. plus 1 v Kgato Project Management (Pty) Ltd (High Court, Free State Division, Bloemfontein, Case number 2021/2017)

Mosiuwa Mantjes v The State (High Court, Free State Division, Bloemfontein, Case number A58/2017)

The State v Thlako Stanley Lebesa (High Court, Free State Division, Bloemfontein, Case number R85/2017)

Bisschoff C v Bisschoff H (High Court, Free State Division, Bloemfontein, Case number 2243/2017)

The State v MR January (High Court, Free State Division, Bloemfontein, Case number 21/2018).

Judgments upheld on appeal:

None.

Judgments overturned on appeal:

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None.