

CANDIDATE:ADV MOTITAL SUNIL RUGUNANAN

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**COURT FOR WHICH CANDIDATE APPLIES: THE EASTERN CAPE
DIVISION, GRAHAMSTOWN AND PORT ELIZABETH**

1. The candidate's appropriate qualifications:

1.1. B.A. (Rhodes University) (1990)

1.2. LL.B. (Rhodes University) (1993)

1.3. The candidate is appropriately qualified.

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

2.1. The candidate was a candidate attorney from 1993 to 1995 and was admitted as an attorney in 1996 whereafter he practiced as a professional legal assistant at N N Dullabh & Co. in Grahamstown.

2.2. The candidate has been a practising advocate at the Grahamstown Bar from 2001 to date.

2.3. There is nothing in the candidate's application or in the material reviewed and comments received on the candidate to suggest that he is not a fit and proper person.

3. Would the candidate's appointment help to reflect the racial and gender composition of South Africa?

3.1. The candidate is a black man.

3.2. The candidate is a black man, of Indian descent.

3.3. While his appointment will contribute to racial representivity, it will not contribute to the gender transformation of the judiciary.

3.4. There are currently 24 Judges in the Eastern Cape Division, 12 of whom are white.

3.5. The candidate is a South African of Indian descent and his appointment would enhance the racial composition of the Bench, especially in view of the fact that at present the Eastern Cape Division does not have any judges of Indian descent.

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

4.1. The candidate practiced as an attorney for a period of three years and has been a practising advocate since 2001 to the present.

4.2. The candidate has acted on a number of occasions as a judge of the High Court in Grahamstown, Bhisho and Port Elizabeth.

4.3. The candidate indicates that he has experience in both criminal and civil matters.

4.4. The candidate attached judgments pertaining to criminal as well as civil matters and a reading thereof, as well as the judgments listed in the annexure hereto, indicates that he has a sound understanding of the relevant legal principles.

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

5.1. The candidate is a member of the Advocates for Transformation and has been nominated by NADEL.

5.2. A reading of the candidate's application and the judgments referred to above, indicate that he appears to recognise the values enshrined in the Constitution.

5.3. The candidate is well-known in the Eastern Cape Society of Advocates and is known to be committed to the values of the Constitution.

6. Whether any judgments have been overturned on appeal:

6.1. The Supreme Court of Appeal, by agreement between the parties, set aside the candidate's decision in the matter of *Haslam & Another vs Lester*, later substituted by *Stewart N.O.* Case No. 1167/2017.

6.2. It appears from the documentation that the parties to the appeal had reached an agreement on how to deal with this appeal and the Supreme Court of Appeal, without hearing argument, made the settlement agreement an order of Court and it is therefore difficult to comment on the merits of the matter.

6.3. It appears that no other judgments by the candidate have been overturned on appeal.

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

7.1. The candidate was admitted as an attorney in 1996 and practised in that capacity for approximately three years whereafter he became an estates examiner at the Master's Office in Grahamstown.

7.2. The candidate thereafter did his pupillage at the Bar in Grahamstown and started practising from November 2001 to the present.

7.3. A reading of the candidate's application and the various judgments referred to above appears to indicate that the candidate has the required professional experience to be appointed to the Bench.

7.4. The candidate has acted as a judge of the High Court, Eastern Cape for a cumulative period of approximately five terms on various occasions since May 2014.

7.5. The candidate has been acting on a semi-permanent basis from the beginning of March 2019 to the present.

8. The candidate's linguistic and communication skills:

8.1. A reading of the candidate's judgments indicate that he has good linguistic and communication skills.

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

9.1. The candidate at the time when he completed the application form on 18 June 2019 had two outstanding judgments dating back to 10 and 17 May 2019 respectively. It is not known whether the aforementioned judgments have subsequently been delivered.

9.2. A reading of the judgments referred to above indicates that the candidate generally delivered judgments timeously, for example:

Bongani Mququ vs The State: date heard 9 May 2019; date delivered 14 May 2019

Siyabonga Siwaphi vs The State: date heard 15 May 2019; date delivered 23 May 2019

Phumla Ntsali vs Road Accident Fund:date heard 25 March 2019; date delivered 7 May 2019

Jennifer McWilliams vs Gary McWilliams: date heard 12 March 2019; date delivered 9 April 2019

10. The candidate's fairness and impartiality:

10.1. From the judgments reviewed the candidate appears to be impartial and fair.

11. The candidate's independent-mindedness:

11.1. No adverse comments regarding the candidate's independent mindedness have been noted.

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

12.1. No circumstances which could give rise to doubt regarding the candidate's ability to conduct court proceedings were brought to our attention.

13. The candidate's administrative ability:

13.1. The candidate's experience as an attorney initially and the competent manner in which he handled Bar matters over a number of years, confirm his administrative competence.

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

14.1. We are unaware of any circumstances that give doubt to the candidate's integrity and ethical behaviour and, in fact, it can be confirmed that he has always been regarded as a person who acts with the highest integrity and ethics.

15. The candidate's judicial temperament:

15.1. No concerns appear from the judgments we have considered.

15.2. The candidate is reported to have a fair and even-tempered judicial temperament.

15.3. There is no reason to doubt that the candidate has 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 shows a commitment to human rights and is involved in community projects.

17. The candidate's potential:

17.1. The candidate has been involved in various fields of the law over an extended period of time.

17.2. The candidate appears to be a suitable person for appointment to the Bench.

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

18.1. The Applicant is a South African of Indian descent and his appointment will enhance racial representation on the Bench.

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ANNEXURE: LIST OF CASES CONSIDERED IN ADDITION TO CASES ANNEXED TO APPLICATION:

De Wet N.O. vs Barkhuizen & Others (2330/2018) [2019] ZAECPEHC 25 (30 April 2019) (South Africa: Eastern Cape High Court, Port Elizabeth)

Van Breda vs S (CA&R401/2013) [2014] ZAECGHC 42 (4 June 2014) (South Africa: Eastern Cape High Court, Grahamstown)

McCar Motors vs Fourie N.O. & Others (2280/2017) [2017] ZAECPEHC 60 (26 October 2017) (South Africa: Eastern Cape High Court, Port Elizabeth)

S vs Rhini (CC22/2014) [2014] ZAECGHC 40 (23 May 2014) (South Africa: Eastern Cape High Court, Grahamstown; 23 May 2014)

Nazarus vs S (123/2014) [2014] ZAECGHC 39 (19 May 2014) (South Africa: Eastern Cape High Court, Grahamstown)

N vs M (CA127/2018) [2019] ZAECGHC 73 (6 August 2019) (South Africa: Eastern Cape High Court, Grahamstown)

Rotyi vs S (CA&R11/17) [2017] ZAECBHC 19 (18 September 2017) (South Africa: Eastern Cape High Court, Bhishe)

Magoabi vs Minister of Police (CA303/2017) [2019] ZAECGHC 74 (8 August 2019) (South Africa: Eastern Cape High Court, Grahamstown; 8 August 2019)

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Ngweniso vs S (CA&R23/2013) [2016] ZAECGHC 107 (17 October 2016) (South Africa: Eastern Cape High Court, Grahamstown)

Nojoko vs S (CA&R84/2016) [2016] ZAECGHC 106 (17 October 2016) (South Africa: Eastern Cape High Court, Grahamstown)

Troskie vs S (CA&R73/2016) [2016] ZAECGHC 53 (27 July 2016) (South Africa: Eastern Cape High Court, Grahamstown)

BVDM Trading 4 CC vs Kings Terrace Body Corporate (561/2019) [2019] ZAECPEHC 35 (30 May 2019) (South Africa: Eastern Cape High Court, Port Elizabeth)

Van Oordt & Another vs Gilberg (CA08/2019) [2019] ZAECGHC 75 (6 August 2019) (South Africa: Eastern Cape High Court, Grahamstown)

Xhashimba vs S (CA&R256/17) [2019] ZAECGHC 51 (26 March 2019) (South Africa: Eastern Cape High Court, Grahamstown)

Nofemele vs S (CA&R169/18) [2019] ZAECGHC 46 (12 March 2019) (South Africa: Eastern Cape High Court, Grahamstown)

Ngqola vs S (CA&R30/2018) [2019] ZAECGHC 45 (16 April 2019) (South Africa: Eastern Cape High Court, Grahamstown)

Bayport Securitisation RF Ltd vs Sinandile (352/16) [2019] ZAECGHC 44 (22 March 2019) (South Africa: Eastern Cape High Court, Grahamstown)

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Jacobus & Another vs S (CA&R156/2016) [2016] ZAECGHC 65 (22 August 2016)
(South Africa: Eastern Cape High Court, Grahamstown)

Eastern Cape Motors (Pty) Ltd vs Stu Davidson & Sons (Pty) Ltd (CA98/2015)
[2016] ZAECGHC 109 (25 October 2016) (South Africa: Eastern Cape High
Court, Grahamstown)

Sakata vs Bayport Securitisation (Pty) Ltd, Sakata vs Bayport Securitisation (Pty)
Ltd (CA135/2017) [2017] ZAECBHC 18 (16 November 2017) (South Africa:
Eastern Cape High Court, Bhisho)

Member of the Executive Council of the Eastern Cape Department of Education &
Another vs Nobantu Bota t/a Vision Christian Independent School & Others
(1771/2019; 1772/2019; 1773/2019; 1774/2019; 1775/2019; 1666/2019 &
1777/2019) [2019] ZAECGHC 76 (25 June 2019) (South Africa: Eastern Cape
High Court, Grahamstown)

Bayport Securitisation RF Ltd vs Sakata (1320/17) [2019] ZASCA 73 (30 May
2019) (South Africa: Supreme Court of Appeal)