

CANDIDATE: DANIEL MAFELEU THULARE

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**COURT FOR WHICH CANDIDATE APPLIES: WESTERN CAPE
HIGH COURT**

1. The candidate's appropriate qualifications:

- 1.1. B Iuris (UNISA, 1996).
- 1.2. Bachelor of Laws (LLB) (UNISA, 1998).
- 1.3. Master of Laws (LLM) (UNISA, 2002).
- 1.4. The candidate is appropriately qualified.

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

- 2.1. The candidate is presently the Chief Magistrate of Cape Town and has served five terms as Acting Judge at the Western Cape High Court, from the last term of 2017 until the end of 2018. The candidate also served as acting judge in the Gauteng North High Court during 2013.
- 2.2. We are not aware of any professional complaint being made against the candidate in any of these capacities.
- 2.3. The candidate is known to members of the profession as a person of integrity.

2.4. There is accordingly no reason to find that the candidate is not fit and proper.

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.

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 commitment to the values of the Constitution:

4.1. There is no reason to doubt the candidate's commitment to the values of the Constitution.

4.2. Constitutional considerations were mentioned in, or were central to, two of his judgments. These are:

4.2.1. Inzinga Ranch CC vs Mashiyi 2018 JDR 1456 (WCC) (a judgment wherein the question of racial discrimination in the work place was discussed).

4.2.2. Nondutu vs The Minister of Home Affairs, Case Number 11440/17 18-04-2018 (WCC) DM Serial number 0550/2018 (a judgment wherein it was considered whether the prohibition against a foreign spouse of a South African citizen or permanent resident, holding a visitor's visa against applying for change of status while in South Africa, infringes the constitutional right to dignity).

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

- 5.1. The candidate has experienced a number of areas of the law, particularly immigration and criminal law.
- 5.2. The candidate has ten reported High Court judgments and a number of unreported judgments.
- 5.3. The range of matters dealt with in his reported judgments is fairly confined, focusing mostly criminal law.
- 5.4. As noted, the candidate has a limited number of reported judgments. None of his reported judgments was overturned on appeal. One of his unreported judgments was reversed on appeal. This judgment is referred to in paragraph 6.1 below.
- 5.5. The candidate considered principles of constitutional law in certain of his judgments relating to immigration, equality and criminal matters. One of these judgments as referred to in paragraph 6.2 below, has recently been criticised and not followed in this court.
- 5.6. The candidate delivered ten reported High Court judgments. All of these judgments related to criminal matters.
- 5.7. It appears that the candidate's knowledge of the law and his experience on the bench either in the Magistrate's Court or as acting judge are mostly confined to criminal, equality and immigration law.

6. Whether any judgments have been overturned on appeal:

6.1. To our knowledge one of the candidate's (unreported) judgments was overturned on appeal. The judgment in which the candidate's judgment was overturned is: *S vs Cooper* 2019 JDR 0645 (SCA).

6.2. It has further come to our knowledge that the Western Cape High Court recently in the decision of *Hano Mong vs The Director of Public Prosecutions and the Minister of Police*, Case Number 17593/2018 (dated 23 August 2019) found that the decision of the candidate (with which Dolamo, J concurred) in - 2018 JDR 2142 (WCC) was manifestly wrong (para [82] and [83]) and should not be followed because it is in conflict with a long line of decisions.

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

7.1. The candidate worked as an interpreter with the Department of Justice from 1991 to 1997. From 1996 to 1999 the candidate was a prosecutor with the Department of Justice. During 1999 the candidate was a candidate attorney with Du Preez & Nkozi Inc. From 1999 to 2005 the candidate was a magistrate. From 2005 to 2016 the candidate was a senior magistrate. From 2016 to date the candidate was the Chief Magistrate of Cape Town.

7.2. The candidate's extensive experience as a prosecutor, magistrate and acting judge exposed him to many years of law. He had a particular focus on criminal and immigration law.

7.3. The candidate has a relatively limited list of reported judgments.

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7.4. The candidate held the position as member (from 2000-2003), provincial chairperson (from 2004-2006), member (from 2005-2017) and president (from 2017 to date) of The Judicial Officers Association of South Africa (JOASA). The candidate has been a member from 1993 to date of the National Union of Public Service and Allied Workers (NUPSAW).

8. The candidates linguistic and communication skills:

8.1. The candidate's written judgments portray a good profession of, and communication skills in English.

8.2. The candidate's National Senior Certificate shows that he is able to understand and communicate in Afrikaans.

8.3. The candidate's National Senior Certificate also shows that his first language is Tswana. It is not known whether he has any proficiency in any other African language.

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

9.1. The candidate's application portrays outstanding judgments of short periods only.

10. The candidate's fairness and impartiality:

10.1. We are not aware of any complaints that have been made pertaining to the candidate's fairness and impartiality, and have no reason to question these aspects.

11. The candidate's independent-mindedness:

11.1. We are not aware of any complaints that have been made pertaining to the candidate's independent-mindedness.

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

12.1. We are not aware of any complaints that have been made pertaining the candidate's ability to conduct court proceedings.

13. The candidate's administrative ability:

13.1. The profession cannot comment on the candidate's administrative abilities in his capacity as a magistrate or acting judge.

13.2. However, it appears from the written support for his application filed by the candidate's magistrate colleagues, that he was well organised and acted as a leader in his profession.

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

14.1. No complaints or queries about the candidate's ethical standards or integrity have been received.

15. The candidate's judicial temperament:

15.1. Members who have appeared before the candidate note that he has an even temperament and that he is not inclined to irascibility.

15.2. He is considered to have a sound 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's judgments, regarding issues of racial discrimination and immigration, though unreported, demonstrate his commitment to human rights and to the enhancement of the values and needs of the community.

17. The candidate's potential:

17.1. The candidate's career as a magistrate and also his stints as an acting judge in two divisions of the High Court demonstrate his commitment to continue to contribute to transformation both inside and outside the legal profession.

17.2. The candidate's potential insofar as the quality and diversity of his judgments are concerned, ought to be weighed up objectively with those of other candidates.

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. He is supported by the Black Lawyers Association who has reiterated that the candidate encouraged black lawyers to serve both as commissioners of the Small Claims Court and to act as Magistrates in vacant positions.

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- 18.3. The candidate's appointment would send a message to the legal and wider community that black male candidates of undoubted integrity and who also have the support of female members of the profession, can add great value to the development of our constitutional democracy.