

CANDIDATE: ADV PHILLIP HORATIUS SIGQIBO ZILWA SC

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**COURT FOR WHICH CANDIDATE APPLIES: THE EASTERN CAPE
DIVISION, BHISHO**

1. The candidate's appropriate qualifications:

1.1. B.Juris (University of Transkei) (1985)

LL.B. (University of Transkei) (1992)

1.2. The candidate is appropriately qualified.

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

2.1. The candidate was a public prosecutor from 1985 to 1987, a magistrate from 1988 to 1991 and thereafter practised as an advocate from 1993, having completed his pupillage in 1992

2.2. The candidate has been a practising advocate from 1993 to date and was awarded senior counsel (silk) status in May 2014.

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

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

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

4.1. The candidate is a member of NADEL and of the Advocates for Transformation (AFT).

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

5.1. The candidate practised as a prosecutor and magistrate for a period of approximately eight years and accordingly has a good knowledge of criminal law.

5.2. The candidate has been a practising advocate since 1993 where he has dealt with most areas of the law and consequently it can be safely stated that the candidate's knowledge and experience of the law is sound.

5.3. The candidate has acted on a number of occasions as a judge of the High Court in the Eastern Cape and also as a judge in the Labour Court.

5.4. A consideration of the candidate's judgments pertaining to civil and criminal matters also confirms that he has a sound understanding of the relevant legal principles.

6. Whether any judgments have been overturned on appeal:

6.1. The Supreme Court of Appeal set aside the candidate's decision in the matter of *Premier of the Eastern Cape Province and Others vs Sekeleni* (277/2001).

6.2. 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 has the experience as set out in paragraph 4 above.

7.2. The candidate also gained experience as a trainer of pupils at the Bar and as lecturer of law students at the University of Transkei.

7.3. The candidate has acted as a judge of the High Court, Eastern Cape over an extended period but unfortunately due to the lack of detail in his application in this regard the full extent thereof cannot be stated.

7.4. In addition the candidate has acted in the Labour Court on two occasions, the exact extent of which, once again, cannot be stated due to lack of detail in the application.

7.5. A reading of the various judgments annexed to the candidate's application as well as the judgments referred to in the annexure annexed hereto appears to indicate that the candidate has the required professional experience to be appointed to the Bench.

8. The candidate's linguistic and communication skills:

8.1. Having regard to the candidate's judgments it is apparent that the candidate's linguistic and communication skills are good.

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

9.1. A reading of the judgments listed hereunder indicates that the candidate has delivered his judgments timeously, for example:

9.2. **Tobi vs Road Accident Fund** – date heard 9 September 2013; date delivered 20 September 2013;

9.3. **Magi vs S** – date heard 13 March 2013; date delivered 15 March 2013; and

9.4. **Ehrke vs Standard Bank of South Africa & Others** – date heard 14 January 2010; date delivered 22 January 2010.

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 a prosecutor / magistrate / State advocate / member of the Bar have given him a good grounding in dealing with various administrative functions pertaining to the administration of justice.

13.2. The prompt way in which the candidate has delivered his judgments appears to 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 is widely respected by the wider legal fraternity in the Eastern Cape and in particular in the Mthatha and Bhisho regions where he regularly appeared, and there consequently appears to be no reason why he should not be appointed to the Bench.

18. The message that the candidate's appointment will 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.

ANNEXURE

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

Tobi vs Road Accident Fund (868/2010) [2013] ZAECGHC 94 (20 September 2013); South Africa: Eastern Cape High Court, Grahamstown;

Magi vs S (CA & R43/11) [2013] ZALECGHC 22 (15 March 2013); South Africa: Eastern Cape High Court, Grahamstown;

Ehrke vs Standard Bank of South Africa & Others (JR1285/2008) [2010] ZALCJHB 19 (22 January 2010); South Africa: Johannesburg Labour Court, Johannesburg;

Masomo vs S (CA & R275/2011) [2013] ZAECGHC 26 (27 March 2013); South Africa: Eastern Cape High Court, Grahamstown;

Andrews vs Nedbank Ltd (CA39/2010) [2010] ZAECGHC 10; 2012 (2) SA 82 (ECG) (27 October 2010); South Africa: Eastern Cape High Court, Grahamstown;