

APPLICANT: JUDGE NARANDRAN JODY KOLLAPEN

COURT FOR WHICH APPLICANT APPLIES: CONSTITUTIONAL COURT

1. The candidate's appropriate qualifications:

1.1 The candidate holds BProc (1978) and LLB (1981) degrees.

1.2 Both degrees were obtained from the University of the Witwatersrand.

1.3 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 There is nothing in the application or in the candidate's judgments that would suggest that the candidate is not a fit and proper person.

2.2 The candidate was appointed as a judge to the High Court of South Africa, Gauteng Division, on 11 May 2011 and has also acted in the Constitutional Court.

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 There are currently only eight permanent members of the Constitutional Court (five men and three women, of which only one is white, being a white man).

3.3 The appointment of the candidate would therefore not materially affect the racial or gender composition of the bench.

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

4.1 The candidate practised as an attorney for approximately 10 years, where after he was appointed as the National Projects Director and later the National Director for Lawyers for Human Rights.

4.2 In December 1996 the candidate was appointed as a Commissioner of the South African Human Rights Commission (SAHRC). The candidate spent most of his time (approximately 13 years) at the SAHRC where he also occupied the position of chairperson for about 7 years, before being elevated to the bench.

4.3 He was elevated to a permanent position on the bench in May 2011 and also acted in the Constitutional Court between July 2017 and December 2017.

4.4 With specific regard to Constitutional Law, the reviewers refer to the following judgments, which illustrate a demonstrable knowledge of Constitutional Law:

4.4.1 *Quick Drink Co (Pty) Ltd and Another v Medicines Control Council and Others* 2015 (5) SA 358 (GP):

This case dealt with the manner in which the law is enforced. The candidate correctly reflected in the judgment that Courts will not readily interfere in the choices made by the law enforcement agencies but that the law has to be enforced within the spirit of

equality (Section 9(2) of the Constitution). The point is made that where a decision to enforce the law is taken, the law must be enforced equally and selective enforcement without rational ground for differential treatment may constitute unfair discrimination.

4.4.2 *Rahube v Rahube and Others* 2018 (1) SA 638 (GP):

In this matter the validity of Section 2(1)(a) of the Upgrading of Land Tenure Rights Act was challenged in as far as it allowed for the automatic conversion of certain land tenure rights into ownership. The candidate held that the provision was unconstitutional and invalid to the extent that it failed to afford opportunity, prior to conversion, to occupants and affected parties lacking tenure rights to make submissions to an appropriately established forum and that the scheme especially deprived women of such an opportunity.

The order of constitutional invalidity was confirmed by the Constitutional Court, subject to certain variations.

4.4.3 *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 CC

The matter involved the deliberations of the Judicial Service Commission, which ordinarily would be part of a Rule 53 record, subject to confidentiality. In a dissenting judgment the candidate held that concerns about litigation in the dark did not arise in the present case since a substantial record was made available to the

Helen Suzman Foundation. Excluding the deliberations from the record would neither injure the Applicant's right to properly prosecute its review application nor impermissibly breach the principles of openness and transparency. Disclosure, however, carried the real risk of causing substantial harm to dignity, privacy and reputational interests of many and therefore the appeal had to be dismissed.

4.4.4

Food and Allied Workers' Union obo J Gaoshubelwe v Pieman's Pantry (Pty) Ltd 2018 (5) BCLR 527 (CC)

The matter involved an unfair dismissal dispute and whether a claim for unfair dismissal constitutes a debt as contemplated in Section 16(1) of the Prescription Act. What needed to be established was whether the claim that had been asserted was a "debt" in terms of Section 16(1) of the Prescription Act and if so established, the next issue to determine was whether any inconsistency between the Labour Relations Act and the Prescription Act existed. The mere fact that the Prescription Act and the Labour Relations Act dealt with time periods or imposed conditions, did not demonstrate inconsistency. It merely triggered the risk of inconsistency. The time period in Section 191 of the Labour Relations Act dealt with when a litigant was expected to take the necessary steps to resolve a dispute. These could not be regarded as inconsistent with the time periods in the Prescription Act which makes provision for the cut-off point when those steps could no longer be taken at all. The time periods in the two statutes sought to achieve different objectives.

4.5 The candidate was also part of the bench of the Constitutional Court in a number of matters where he did not write the judgments.

4.6 The candidate has a firm understanding of constitutional jurisprudence and the proper approach thereto.

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

5.1 The candidate, as is evident from his extensive involvement with the SAHRC and the content of his judgments, has demonstrated a firm commitment to the values of the Constitution and to the rule of law.

5.2 The candidate's contribution to human rights appears to have been recognised in the form of an honorary degree from the Durban University of Technology and he also received a Citizen's Excellence Award in the category 'Human Rights' from the Mayor of Tshwane.

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

6.1 *Premier Foods (Pty) Ltd v Manoim NO and Others* 2016 (1) SA 445 (SCA)

6.2 *Brouze and Others v Wenneni Investment (Pty) Ltd and Another* 2015 (4) All SA 543 (SCA)

6.3 *S v Musiker* 2013 (1) SACR 517 (SCA)

6.4 *Business Partners Limited v Silverstar Trading* 245 CC 2015 JDR 0728 (SCA), [2015] ZASCA 62 (17 April 2015)

6.5 *De Haas v Fromentin and Others* 2013 (6) SA 621 (SCA)

6.6 *First National Bank v Clear Creek Trading 12 (Pty) Ltd and Another*
[2015] ZASCA 6 (9 March 2015)

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

7.1 The candidate has extensive experience as an attorney, commissioner of the South African Human Rights Commission, and a High Court Judge.

8. The candidate's linguistic and communication skills

8.1 From the candidate's judgments, it is clear that he has excellent written linguistic skills in English.

9. The candidate's ability to produce judgments promptly

9.1 84 judgments handed down by the candidate were considered.

9.2 All of these judgments were delivered promptly.

9.3 The candidate in paragraph 16.5 lists one judgment still outstanding. The judgment was reserved on 15 November 2019.

10. The candidate's fairness and impartiality

10.1 The candidate's fairness and impartiality are evident from the judgments that he has written.

11. The candidate's independent mindedness

11.1 There is nothing to suggest that the candidate is not independently minded.

12. The candidate's ability to conduct court proceedings

12.1 There is nothing to suggest an inability to conduct court proceedings.

13. The candidate's administrative ability

13.1 No adverse comments have been received in this regard.

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

14.1 One can infer from the candidate's experience on the Human Rights Commission and as a Judge, that the candidate has a reputation for integrity and ethical behaviour.

14.2 The reviewers are unaware of any aspect which may impugn the candidate's reputation.

15. The candidate's judicial temperament

15.1 The reviewers are unaware of any matter which is suggestive of a lack of judicial temperament on the part of the candidate.

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 application reveals that he has held various positions in organisations and institutions committed to the protection and promotion of human rights.

16.2 The reviewers are of the opinion that the candidate's commitment to human rights, and experience with regard to the values and needs of the community cannot be doubted.

17. The candidate's potential

17.1 The candidate has excellent potential as a Constitutional Court Justice.

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

18.1 In light of the candidate's experience and demonstrable commitment to the values of the Constitution, the candidate's appointment would send a positive message to the community at large.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Nabuvax (Pty) Ltd and Others v City of Tshwane Metropolitan Municipality and Others (31875/13) [2013] ZAGPPHC 181; [2013] 3 All SA 528 (GNP) (2 July 2013)

Pretorius and Another v Transport Pension Fund and Another (CCT95/17) [2018] ZACC 10; [2018] 7 BLLR 633 (CC); 2018 (7) BCLR 838 (CC); (2018) 39 ILJ 1937 (CC) (25 April 2018).

Quick Drink Co (Pty) Ltd and Another v Medicines Control Council and Others (64056/2014) [2014] ZAGPPHC 904; 2015 (5) SA 358 (GP) (11 November 2014).

Rahube v Rahube and Others 2018 (1) SA 638 (GP)

Rustenburg Platinum Mine v S.AEWA (080 Bester) and Others 2018 (5) SA 78 (CC)

S S v V V S (CCT247/16) [2018] ZACC 5; 2018 (6) BCLR 671 (CC) (1 March 2018)

S v Ngomane (A407/10) [2010] ZAGPPHC 283; 2012 (2) SACR 474 (GNP) (3 September 2010)

S v Okah (CCT 315/16; CCT 193/17) [2018] ZACC 3; 2018 (4) BCLR 456 (CC); 2018 (1) SACR 492 (CC) (23 February 2018)

African Development Bank v Nseera; In re: Nseera v Nseera (A479/2017) [2018] ZAGPPHC 672; [2018] 3 All SA 646 (GP) (15 June 2018)

Afriforum and Another v Chairperson of the Council of the University of Pretoria and Others (54451/2016) [2016] ZAGPPHC 1030; [2017] 1 All SA 832 (GP) (15 December 2016)

Booyesen v Minister of Safety and Security 2018 (6) SA 1 (CC)

BS v MS and Another 2015 (6) SA 356 (GP)

Conradie v S (CCT224/17) [2018] ZACC 12; 2018 (7) BCLR 757 (CC) (25 April 2018)

KT V MR 2017 (1) SA 97 (GP)

Law Society of the Northern Provinces v Nkoe (58884/2012) [2013] ZAGPPHC 297 (17 OCTOBER 2013)

Maluka v S (A197/2013) [2014] ZAGPPHC 862; 2015 (2) SACR 273 (GP) (31 October 2014)

Marshall and Others v Commission for the South Africa Revenue Service (CCT208/17) [2018] ZACC 11; 2018 (7) BCLR 830 (CC) (25 APRIL 2018)

Economic Freedom Fighters and Others v Speaker of the National Assembly and Another 2018 (2) SA 571 (cc)

Ex Parte WH and Others 2011 (6) SA 514 (GNP) D

First National Bank, a division of Firstrand Bank Ltd v Clear Creek Trading 12 (Pty) Ltd and Another 2014 (1) SA 23 (GNP)

Gallagher Group Ltd and Another v IO Tech Manufacturing (Pty) Ltd and others 2014 (2) SA 157 (GNP)

GF v SH and Others 2011 (3) SA 25 (GNP)

Helen Suzman Foundation v Judicial Service Commission 2018 (4) SA 1 (CC)

Heritage Hill Home Owners' Association v Heritage Hill Devco (Pty) Ltd 2013 (3)
SA 447 (GNP)

Investec Bank Ltd v Adriaanse and Others NNO 2014 (1) SA 84 (GNP)

Saidi and Others v Minister of Home Affairs and Others 2018 (4) SA 333 (CC)

Section 27 and Others v Minister of Education and Another 2013 (2) SA 40 (GNP)

*SOS Support Public Broadcasting Coalition and Others v South African
Broadcasting Corporation (SOC) Ltd and Others* 2019 (1) SA 370 (CC)

South African National Defence Union v Minister of Defence and Others 2012 (4)
SA 382 (GNP)

Tasima (Pty) Ltd v Department of transport and Others 2013 (4) SA 134 (GNP)

Unreported decisions

Mpotseng Infrastructure v Phetla (24791/2015) [2018] ZAGPPHC 466 (12 April
2018)

Msawu v S (A832/2013) [2014] ZAGPPHC 739 (9 September 2014)

Murrell and Another v Minister of Safety and Security (24152/2008) [2010]
ZAGPPHC 580 (2 February 2010)

Mysleep (Pty) Ltd v Esterhuizen (12162/2018) [2018] ZAGPPHC 465 (2 May 2018)

National Union of Metal Workers of South Africa v Wilro Supplies CC and Another (34446/2015) [2015] ZAGPPHC 1146 (24 June 2015)

Ndlovu v Minister of Police and Another (30007/2013) [2015] ZAGPPHC 143 (4 March 2015)

Nombiba v S (A82/2014) [2014] ZAGPPHC 601 (23 July 2014)

Patel N.O. obo K.M. v Road Accident Fund (74647/2010) [2014] ZAGPPHC 188 (3 April 2014)

Premier Foods (Pty) Ltd v Manoim NO and Others (38235/2012) [2013] ZAGPPHC 236 (2 August 2013)

Road Accident Fund v Mashala (A474/2012) [2014] ZAGPPHC 554 (25 July 2014)

Robert Bosch Retirement Benefit Fund v Kooverjie N.O. and Others (59231/2012) [2013] ZAGPPHC 455 (3 December 2013)

S and Another v Road Accident Fund (19993/2013) [2014] ZAGPPHC 1028 (12 December 2014)

S v Bhiya (A820/15) [2015] ZAGPPHC 889 (5 November 2015)

S v Kganyago (A124/2012) [2012] ZAGPPHC 28 (2 March 2012)

S v Mokgotlane (A718/14) [2014] ZAGPPHC 729 (30 September 2014)

S v S (A74/14, A395/15, 06/2014) [2015] ZAGPPHC 520 (11 June 2015)

Absa Bank Limited v Adam; Absa Bank v Adam and Others (42823/2013; 42824/2013) [2016] ZAGPPHC 1000 (24 November 2016)

Adegbuyi v Firstrand Bank Limited and Others (19958/2014) [2016] ZAGPPHC 703
(16 August 2016)

Beach v Road Accident Fund (53528/2009) [2014] ZAGPPHC 128 (20 March 2014)

Beaux Lane (S.A.) Properties Limited v The Minister of Public Works (A647/2015)
[2016] ZAGPPHC 679 (28 July 2016)

Bekker v Janse Van Rensburg (61332/2012) [2014] ZAGPPHC 709 (23 September
2014)

Board of Healthcare Funders v Discovery Health Medical Scheme and Others
(35769/2010) [2012] ZAGPPHC 65 (15 May 2012)

Bonthuys and Another v Potgieter and Others (16760/2014) [2014] ZAGPPHC 170
(3 April 2014)

Brandaline v Minister of Defence and Military Veterans and Others (25801/2016)
[2017] ZAGPPHC 322 (27 June 2017)

Brick on Brick Property Investments 23 (Pty) Ltd v Chevron South Africa (Pty) Ltd
(6412/2013) [2013] ZAGPPHC 400 (3 December 2013)

Business Partners Ltd v Silver Stars Trading 245 CC and Another (14408/2008)
[2012] ZAGPPHC 76 (15 May 2012)

Cash Crusaders Franchising (Pty) Ltd v Swart and Another (85149/2017) [2018]
ZAGPPHC 756 (27 February 2018)

*Cash Paymaster Services (North West) (Pty) Ltd v South African Social Security
Agency* (6406/2011) [2011] ZAGPPHC 190 (13 September 2011)

Chiura and Another v Absa Bank Limited and Others (20740/2013, 7580/2007, 1730/2013) [2014] ZAGPPHC 973 (12 November 2014)

Citiconnect Business Solutions v City Manager of the City of Tshwane Metropolitan Municipality N.O. and Others (82542/2014) [2015] ZAGPPHC 115 (4 March 2015)

City of Tshwane Metropolitan Municipality v Nndwa (A762/2013) [2014] ZAGPPHC 737 (12 September 2014)

D v D (55507/2012) [2016] ZAGPPHC 368 (16 May 2016)

Democratic Alliance v Municipal Demarcation Board and Others (70915/2015) [2015] ZAGPPHC 1090 (6 November 2015)

Derby-Lewis v Minister of Veiligheid en Sekuriteit (20193/2004) [2014] ZAGPPHC 587 (14 August 2014)

Djuma and Others v S (A423/2015) [2017] ZAGPPHC 309 (12 April 2017)

Dludlu v S (A858/2013) [2013] ZAGPPHC 7 (17 January 2013)

Law Society of the Northern Provinces v Van Der Merwe (40666/2006) [2012] ZAGPPHC 119 (19 JUNE 2012)

Letsoalo and Another v Letsoalo and Another; in re: Letsoalo v Letsoalo and Others (A116/2014) [2014] ZAGPPHC 738

Levenstein and Others v Estate of the Late Sidney Lewis Frankel and Others (CCT170/17) [2018] ZACC 16;

Ley v Xstrata Coal South Africa (Pty) Limited and Others (38012/2013) [2015] ZAGPPHC 428 (19 MAY 2015)

Liesching and Others v S and Another (CCT304/16) [2018] ZACC 25

Lisbon Estates (Pty) Ltd and Others v Mokoena N.O. and Others (39602/2013) [2015] ZAGPPHC 194 (4 MARCH 2015)

Lombard and Another v Okhionks (46878/2012) [2013] ZAGPPHC 486 (18 DECEMBER 2013)

Lombard and Another v Okhionks (46878/2012) [2013] ZAGPPHC 384 (18 DECEMBER 2013)

Long Beach Homeowners Association v Great Kei Municipality, Amotole District, Eastern Cape and Others (28064/2014) [2016] ZAGPPHC 610 (26 APRIL 2016)

Loni v Member of the Executive Council, Department of Health, Eastern Cape Bhisho (CCT54/17) [2018] ZACC 2; 2018 (3) SA 335 (CC)

M V L, D V B (A379/16, A380/16) [2016] ZAGPPHC 415 (9 JUNE 2016)

Madise v Maswikeng Transport CC and Others (22250/2018) [2018] ZAGPPHC 435 (18 MAY 2018)

Martycel Properties CC v Slip Knot Investments 777 (Pty) Ltd; in re: Slip Knot Investments 777 (Pty) Ltd v Martycel Properties CC (55004/2012) [2016] ZAGPPHC 1214 (6 DECEMBER 2016)

Matabane v S (A157/2013) [2017] ZAGPPHC 269 (12 APRIL 2017)

Matlala v Minister of Police (6578/2012) [2015] ZAGPPHC 136 (4 MARCH 2015)

Maxime Hotel (Pty) Ltd and Another v Chairperson: National Gambling Board N.O and Others (70868/2012) [2014] ZAGPPHC 121 (20 MARCH 2014)

Mbombela Local Municipality v The Premier, Mpumalanga Province and Others (47407/2015) [2016] ZAGPPHC 674 (28 JULY 2016)

Eskom Holdings SOC Limited And National Energy Regulator of South Africa and Others (74870/2019) [2020] ZAGPPHC 2 (10 FEBRUARY 2020)

Judgments upheld on appeal

Rahube v Rahube and Others (CCT319/17) [2018] ZACC 42; 2019 (1) BCLR 125 (CC) (30 October 2018)

Maxime Hotel (Pty) Ltd and Others v The Chairperson: National Board NO and Others [2017] ZAGPPHC 648 (2 June 2018)

Heritage Hills Home Owners Association v Heritage Hill Devco (Pty) Ltd 2016 (2) SA 387 (GP)

Du Preez v Tonel Props (Pty) Ltd 2015 JDR 2079 (SCA)

Local Municipality of Madibeng v Paphiri Business Enterprise CC 2014 JDR 1077 (SCA)

Adriaan W de Meyer Property v Competence Management (Pty) Ltd [2015] ZAGPPHC 1059

Friend v Senekal 2015 (1) SA 395 (GP)

Judgments overturned on appeal

Premier Foods (Pty) Ltd v Manojim NO and Others 2016 (1) SA 445 (SCA)

Brouze and Others v Wenneni Investment (Pty) Ltd and Another 2015 (4) All SA
543 (SCA)

S v Musiker 2013 (1) SACR 517 (SCA)

Business Partners Limited v Silverstar Trading 245 CC 2015 JDR 0728 (SCA),
[2015] ZASCA 62 (17 April 2015)

De Haas v Fromentin and Others 2013 (6) SA 621 (SCA)

First National Bank v Clear Creek Trading 12 (Pty) Ltd and Another [2015] ZASCA
6 (9 March 2015)