

APPLICANT: JUDGE JOHANNES PETRUS DAFFUE

COURT FOR WHICH CANDIDATE APPLIES: FREE STATE

DIVISION OF THE HIGH COURT

1. The candidate's appropriate qualifications:

1.1. B. Proc – 1979 (University of the Free State).

1.2. LLB – 1981 (University of South Africa).

1.3. LLM (subjects: Tax, Company and Insolvency Law) – 1998 (University of South Africa).

1.4. MBA (Dissertation on Mergers and Acquisitions - the BoE, NBS and Boland Bank merger) – 2002 (Buckinghamshire – Chilterns University College).

1.5. The aforementioned are formal and appropriate qualifications.

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

2.1. There is nothing in the application to suggest that the Candidate is not a fit and proper person.

2.2. The Candidate's career is summarised as follows:

2.2.1. He practiced as an attorney, notary and conveyancer from February 1980 to July 1989;

2.2.2. He practiced as an advocate whilst a member of the Free State Society of Advocates from 1989 to 31 December 2011;

- 2.2.3. He was a member of the Bar Council of the Free State Society of Advocates from 2003 to 2011, and during the financial years 2010/2011 and 2011/2012 he was the Chairperson of the Free State Society of Advocates;
- 2.2.4. He was permanently appointed as a Judge of the High Court of South Africa, Free State Division, from 1 January 2012 to date;
- 2.2.5. He was appointed as the President of the Lesotho Court-Martial Appeal Court in 2016;
- 2.2.6. He acted as Deputy Judge President of the High Court of South Africa, Free State Division during the 3rd term of 2018, the 4th term of 2019, the 1st term and part of the 4th term of 2020.
- 2.3. There have to date been no disciplinary proceedings against the Candidate, and no adverse comments can be made as to the Candidate's fitness for appointment as Deputy Judge President of the Free State Division of the High Court.
- 2.4. Accordingly, the Candidate is eminently a fit and proper person for appointment to the position as Deputy Judge President of the Free State Division of the High 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 white man. His appointment would not reflect the racial and gender composition of South Africa.

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

- 4.1. A scrutiny of the Candidate's judgments, reveals that the Candidate has sound knowledge of the law, including constitutional law.
- 4.2. The Candidate's vast experience set out *supra* is also mirrored by a person with years of experience in the law.
- 4.3. The Candidate is not only the co-author of Corbett and Honey: Quantum of Damages, but also delivered various judgments where he dealt with a variety of legal principles, namely:
 - 4.3.1. In *Minister of Higher Education and Training and Others v Mthembu and Others; Council of Central University of the Free State and Others; Council of Central University of the Free State v Minister of Higher Education and Training and Others 2776/2012 & 2786/2012 [2012] ZAFSHC 144 (13 August 2013)* it was held that the jurisdictional requirements of Section 41A of the Higher Education Act, 101 of 1997 had not been met, and as a result, the Minister of Higher Education and Trainings decision, namely to appoint an Administrator, was set aside. An amendment of the said Act followed the judgment;
 - 4.3.2. In *Botha v Botha 4457/2016 [2016] ZASFHC 194 (17 November 2016)* the judgment dealt with friendly sequestrations and the abuse of the system and more specifically the problems experienced pertaining to the reporting contained in section 9(4) of the Insolvency Act, 24 of 1936;
 - 4.3.3. In *S v Sekoere 2013 (2) SACR 426 (FB)* it was held that where a child has been sentenced to imprisonment, not wholly

suspended, section 85 of the Child Justice Act, 75 of 2008 prescribes that the sentence is subject to review by a judge of the High Court in terms of section 304 of the Criminal Procedure Act, 51 of 1977, whether the child was represented by a legal practitioner or not.

- 4.4. Two of the Candidate's judgments were unsuccessfully appealed against and six of his judgments have been successfully appealed against. The last-mentioned judgments are dealt with *infra*.

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

- 5.1. The Candidate is well known in the Free State legal community as a person who puts the values entrenched in the Constitution first. This is evident in the judgments delivered by the Candidate, and more specifically in *Lawrence v Magistrates' Commission and Others 2020 (2) SA 526 (FB)* where it was held by the Candidate that shortlisting proceedings for the vacancies of magistrates in the Free State districts of Bloemfontein, Botchabelo and Petrusburg was unlawful and unconstitutional.

6. Whether any judgments have been overturned on appeal:

- 6.1. The following judgments have been overturned on appeal:
- 6.1.1. *A Loggenberg NO v Maree [2018] ZASCA 24 (24 March 2018);*
- 6.1.2. *EC Department of Police, Roads & Transport Free State v Roberts and Another 2020 (3) SA 478 (FB);*
- 6.1.3. *Director of Public Prosecutions, Northern Cape v Brooks and Others (505/10) [2020] ZASCA 80 (20 July 2020);*

- 6.1.4. *Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Ltd (CCT 217/15; CCT 99/16) [2017] ZACC 35; 2017 (11) BCLR 1408 (CC); 2018 (1) SA 1 (CC);*
- 6.1.5. *Retmil Financial Services (Pty) Ltd v Mangaung Metropolitan Municipality & Another* (Unreported judgment of the full bench);
- 6.1.6. *De Villiers v S* (Unreported judgment from the SCA);
- 6.1.7. *Mogoera v Bosaletse and Others* (unreported judgment of the full bench).

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

- 7.1. The Candidate's professional experience can be summarised as follows:
- 7.1.1. He practised as an attorney, notary and conveyancer from February 1980 to July 1989;
- 7.1.2. He practised as an advocate whilst a member of the Free State Society of Advocates from 1989 to 31 December 2011, and obtained senior status (silk) on 22 April 2009;
- 7.1.3. He practised as an advocate in the Kingdom of Lesotho and specialised in commercial and labour law;
- 7.1.4. He was permanently appointed as a Judge of the High Court of South Africa, Free State Division, from 1 January 2012 to date;

- 7.1.5. He was appointed as the President of the Lesotho Court-Martial Appeal Court in 2016;
- 7.1.6. He acted as Deputy Judge President of the High Court of South Africa, Free State Division during the 3rd term of 2018, the 4th term of 2019, the 1st term and part of the 4th term of 2020;
- 7.1.7. He is a co-author of Corbett and Honey: Quantum of Damages.

8. The candidate's linguistic and communication skills:

- 8.1. It is evident from the language used in his judgments that the Candidate has good linguistic and communication skills.
- 8.2. The Candidate does not mention his proficiency in other languages.

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

- 9.1. The Candidate's judgments have been delivered with admirable promptness. For example:
- 9.1.1. In *Minister of Higher Education and Training and Others v Mthembu and Others; Council of Central University of the Free State and Others; Council of Central University of the Free State v Minister of Higher Education and Training and Others* 2776/2012 & 2786/2012 [2012] ZAFSHC 144 (13 August 2013), the matter was heard on 19 and 20 July 2012 and judgment was delivered on 13 August 2012;

9.1.2. In *JM Keevy v The State (A66/2013) [2013] ZAFSHC 53 (2 April 2013)*, the appeal was heard on 25 March 2013 and judgment was delivered on 2 April 2013;

9.1.3. In *Ex Parte The National Director of Public Prosecutions (1540/2018) [2018] ZAFSHC 100 (12 June 2018)*, the application was heard on 15 May 2018 and judgment was delivered on 12 June 2018.

9.2. The Candidate has no outstanding judgments which indicates an ability to produce judgments promptly.

10. The candidate's fairness and impartiality:

10.1. Based on the Candidate's performance as a Judge, the Candidate appears to be fair and impartial.

10.2. No adverse comments have been received.

11. The candidate's independent mindedness:

11.1. The judgments delivered by the Candidate display an adequate degree of independent mindedness.

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

12.1. The Candidate has served as a permanent Judge since 2012 and acted as a Judge for various terms prior to his appointment in 2012.

12.2. The Candidate has shown the ability to conduct court proceedings and is always well prepared. The Candidate's preparedness results in effective and constructive interaction with legal practitioners appearing before him and the prompt and effective adjudication of matters.

13. The candidate's administrative ability:

- 13.1. The Candidate was a member of the Bar Council of the Free State Society of Advocates from 2003 to 2011, and during the financial years 2010/2011 and 2011/2012 he was the Chairperson of the Free State Society of Advocates.
- 13.2. The Candidate also acted as Deputy Judge President for almost four terms.
- 13.3. Over and above the aforementioned, the Candidate has demonstrated, in the manner in which he manages his court and the prompt delivery of judgments, that he has the necessary administrative and managerial ability required for the position of Deputy Judge President.

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

- 14.1. The Candidate, as a member of the Free State Society of Advocates (including Chairperson of the Bar Council), has always showed the highest standard of integrity and ethical behaviour.
- 14.2. The Candidate's reputation for integrity and ethical behaviour followed him as a Judge. It is well known amongst members of the Free State Bar that the Candidate does not tolerate unethical behaviour and expects legal practitioners to behave with integrity.
- 14.3. No adverse comments have been received.

15. The candidate's judicial temperament:

15.1. The Candidate's ability to conduct court proceedings and to produce sound judgments promptly can be said to show an appropriate judicial temperament.

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's extensive and long professional career is indicative of a person who not only demonstrates a commitment to human rights, but also of a person who has high regard of the values and needs of the community at large.

16.2. The Candidate, throughout his professional career, was and is committed to transformation in the legal profession and strives to achieve equality within the profession.

17. The candidate's potential:

17.1. It is evident from the Candidate's vast experience in various fields of the law and his managerial and administrative skills that he has the necessary ability and potential to be successful in the position as Deputy Judge President of the High Court of South Africa, Free State Division.

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

18.1. The Candidate is a white male, and as a result thereof, the public may view his appointment as Deputy Judge President as contrary to transformation of the judiciary; however, considering the Candidate's contribution and commitment to transformation as a

previous member of the Free State Society of Advocates and as a Judge, his appointment as Deputy Judge President will send out a message to members of the legal profession and the community at large that white males who contribute and who are committed to transformation are not ignored. Over and above the Candidate's contribution and commitment to transformation, the Candidate's thorough knowledge of the law and administrative skills cannot be ignored.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED**Reported decisions:**

Herman and Another v Set-Mak Civils CC 2013 (1) SA 386 (FB)

Knipe and Others v Kameelhoek (Pty) Ltd and Another 2014 (1) SA 52(FB)

Ex Parte Snooke 2014 (5) SA 426 (FB)

MBD Securitisation (Pty) Ltd v Booï 2015 (5) SA 450 (FB)

Du Toit obo Dikeni v Road Accident Fund 2016 (1) SA 367 (FB)

Oosthuizen v Castro and Another 2018 (2) SA 529 (FB)

Lawrence v Magistrates' Commission and Others 2020 (2) SA 526 (FB)

S v Sekoere 2013 (2) SACR 426 FB

S v Frederiksen 2018 (1) SACR 29 FB

S v Brooks 2019 (1) SACR 103 NCK

Unreported decisions:

Minister of Higher Education and Training and Others v Mthembu and Others; Council of Central University of the Free State and Others; Council of Central University of the Free State v Minister of Higher Education and Training and Others 2776/2012 & 2786/2012 [2012] ZAFSHC 144 (13 August 2013)

Botha v Botha 4457/2016 [2016] ZASFHC 194 (17 November 2016)

JM Keevy v The State (A66/2013) [2013] ZAFSHC 53 (2 April 2013)

Ex Parte The National Director of Public Prosecutions (1540/2018) [2018] ZAFSHC 100 (12 June 2018)

Judgments upheld on appeal:

Centriq Insurance Company Lt v Oosthuizen and Another 2019 (3) SA 389 (SCA)

Ramabele v The State; Msimango v The State [2020] ZACC 2 (16 September 2020)

Judgments overturned on appeal:

A Loggenberg NO v Maree [2018] ZASCA 24 (24 March 2018)

MEC Department of Police, Roads & Transport Free State v Roberts and Another 2020 (3) SA 478 (FB)

Director of Public Prosecutions, Northern Cape v Brooks and Others (505/10) [2020] ZASCA 80 (20 July 2020)

Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others v Compensation Solutions (Pty) Ltd (CCT 217/15; CCT 99/16) [2017] ZACC 35; 2017 (11) BCLR 1408 (CC); 2018 (1) SA 1 (CC)

Retmil Financial Services (Pty) Ltd v Mangaung Metropolitan Municipality & Another (Unreported judgment of the full bench)

De Villiers v S (Unreported judgment from the SCA)

Mogoera v Bosaletse and Others (unreported judgment of the full bench)