

APPLICANT: MR MATTHEW FRANCIS

**COURT FOR WHICH CANDIDATE APPLIES: WESTERN CAPE
DIVISION OF THE HIGH COURT**

1. The candidate's appropriate qualifications

- 1.1. BA (majoring in Political Science and Psychology) (University of the Western Cape, 1984)
- 1.2. BA (Hons) in Political Science *cum laude* (University of the Western Cape, 1985)
- 1.3. MA (Political Science) (University of Natal, Pietermaritzburg, 1988)
- 1.4. LLB *cum laude* (University of Natal, Pietermaritzburg, 1990)
- 1.5. Post-graduate diploma in Environmental Law (University of Natal, Pietermaritzburg, 1999)
- 1.6. The candidate is appropriately qualified.

2. Whether the candidate is a fit and proper person

- 2.1. The candidate has served in the legal profession as a professional assistant during 1993, as senior lecturer from 1994 to 1996, as director of attorneys' firms from 1996 to the present (and as director of his own firm from 2011 to the present). He has also been a member of various legal organisations, including the Society of Law Students, the Public and Local Government Committee of the KwaZulu-Natal Law Society, Nadel, the Black Conveyancers' Association, and the Legal Practice Council.

2.2. We are not aware of any professional complaint being made against the candidate in any of these capacities.

2.3. 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 male.

3.2. As such, his appointment would enhance the representation of black persons on the bench.

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

4.1. The candidate has experience in various areas of the law, particularly administrative law, procurement law and various aspects of civil law. The range of matters dealt with in his reported (in the SALRs, All SA LRs, SACRs, and Safflii) and unreported judgments is wide.

4.2. The candidate acted on nine occasions in the High Court. He has been exposed to civil and criminal trials, civil and criminal appeals, reviews, petitions, opposed applications, and third division (Motion Court) which included unopposed matters, liquidations, sequestrations, default judgments, opposed summary judgment applications, curator applications, unopposed divorces, rule 43 applications, and interdicts. He has also dealt with chamber book applications, automatic reviews under the Criminal Procedure Act, and applications in terms of the Mental Health Act.

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

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

5.2. Constitutional considerations were central to, for example, *Smit v Minister of Justice and Correctional Services and others* 2019 (2) SACR 516 (WCC); and [2019] 4 All SA 542 (WCC), which dealt with the constitutionality of the provisions of two statutes: section 5(1)(a) of the Extradition Act 67 of 1962 and section 63 of the Drugs and Drugs Trafficking Act 140 of 1992. It was held that the issue of an arrest warrant, without a hearing, by a magistrate in terms of section 5(1)(a) of the Extradition Act was not an unjustifiable infringement of a person's right not to be deprived of his or her freedom arbitrarily or without just cause. It was further held that section 63 of the Drugs and Drugs Trafficking Act fell to be impugned in that it was in violation of the separation of powers and amounted to a usurpation of the legislative powers of parliament with regard to plenary law-making.

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

6.1. To our knowledge, no judgments have been overturned.

6.2. *Smit v Minister of Justice and Correctional Services and others*, Case No. 14655/2015 is still pending before the Constitutional Court.

6.3. *Lindile Brian Nompozolo v The Law Society of the Cape of Good Hope and Another* (Case No. 12771/2015) has been

referred to a Full Bench of the Western Cape Division of the High Court and is still pending.

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

7.1 The candidate's work experience is set out above. He has considerable experience as an attorney and an academic. As chairperson of the Kwazulu-Natal Provincial Bid Appeals Tribunal, he delivered more than 700 decisions and obviated the need for judicial reviews of provincial procurement decisions, assisted the entry of SMMEs into the mainstream of economic endeavour in Kwazulu-Natal, and contributed to service delivery. At a jurisprudential level, he has assisted in guiding and shaping the law and practice of procurement in Kwazulu-Natal. One of the more important decisions made by the Tribunal, under his direction, was that the regulations to the Preferential Procurement Policy Framework Act dealing with the calculation of points for price was out of sync with the Act and, therefore, unlawful. This had a major impact on the manner in which functionality and price were calculated with regard to tenders.

7.2 In 2011, he was appointed by the Kwazulu-Natal Provincial Treasury as Project Champion to establish Municipal Bid Appeals Tribunals in all the local municipalities throughout KwaZulu-Natal. He was in charge of drafting the municipal policies, amending the municipal by-laws, and drafting the necessary council resolutions to give effect to these structures. He also provided training to councillors, senior municipal

officials, and potential bidders on the functioning of these tribunals.

8. The candidate's linguistic and communication skills

8.1. From the documents submitted it is clear that the candidate is proficient in English. He has not indicated any other proficiency.

9. The candidate's ability to produce judgments promptly

9.1. We are not aware of complaints regarding tardiness in the delivery of judgments.

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.

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. Members experienced the candidate as a competent judicial officer, who reads the papers before coming to court.

13. The candidate's administrative ability

13.1. The profession cannot comment on the candidate's administrative abilities.

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

- 14.1. No complaints or queries about his ethical standards or integrity have been received.

15. The candidate's judicial temperament

- 15.1. The candidate is known for an even judicial temperament.

16. The candidate's commitment to human rights, and experience with regard to the values and needs of the community

- 16.1. We have no reason to question these aspects. During the process of establishing the Municipal Bid Appeals Tribunals, he trained approximately 50 legal practitioners in KwaZulu-Natal in the broad field of procurement law and, more particularly, how to chair tribunals and draft decisions.

17. The candidate's potential

- 17.1. The candidate's performance as a judge of the High Court and the Competition Appeal Court demonstrates that he has the potential to be a solid judge of appeal, and to contribute to transformation both inside and outside the legal profession.

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

- 18.1. The candidate is a black male. The public will thus view his appointment as transformation in relation to race.