

**APPLICANT: JUDGE SOMAGANTHIE NAIDOO****COURT FOR WHICH CANDIDATE APPLIES: FREE STATE  
DIVISION OF THE HIGH COURT****1. The candidate's appropriate qualifications:**

- 1.1. Matric with exemption – 1974.
- 1.2. BA LLB - 1977 and 1979 (University of Durban-Westville).
- 1.3. Certificates in Microsoft Office and Social Context Training – 1999 (University of Cape Town).
- 1.4. Diploma in Business Management – 2001 (Varsity College).

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

- 2.1. The Candidate has been in the legal profession as an Attorney since 1983 until 1992, thereafter appointed as Prosecutor at the Department of Justice from 1992 until 1998, thereafter being appointed as Magistrate from 1998 until 2013 and since 2014 to date being appointed as a Judge of the High Court Free State Division .
- 2.2. No disciplinary proceedings have been held against the Candidate. There is no reason to find that the Candidate is not a fit and proper person.
- 2.3. It is also of importance to note that the Candidate was a founding member, and is also a member of good standing, of the South African Chapter of the International Association of Women Judges (SAC-IAWJ). The Candidate also served as Deputy President of the SAC-IAWJ.

**3. Whether the candidate's appointment would help to reflect the racial and gender composition of South Africa:**

3.1. The Candidate is an Indian female and her appointment would therefore assist in reflecting the gender demographics of the Republic as well as the racial demographic of the Republic.

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

4.1. The Candidate has ample experience in both civil and criminal law.

4.2. The judgments reviewed demonstrate that the Candidate has a broad knowledge of the law inclusive of the Constitutional law of the Republic as referred to in paragraph 5.3 below .

4.3. The Candidate has dealt with many different spheres of the law due to the fact that she was appointed as Magistrate for many years (appointed as Head of the Civil Courts and thereafter appointed as Head of the Criminal Court). The Candidate had numerous appointments as acting Judge, before being appointed as Judge of the High Court, Free State Division. One must also take cognisance of the fact that her experience as Prosecutor for many years adds to her knowledge of criminal law.

4.4. The cases referred to in the Candidate's application touch on both civil and criminal matters. The Constitution plays a vital role in her judgments and is always considered. I refer to the judgments considered, being firstly that of *Sibitloane v Sepato & 1 other*, case no: A191/2014 wherein the Candidate dealt with an Application in terms of Rule 53 of the Uniform Rules of Court which was heard in front of a full bench. The Candidate discussed the issue of adjudicating matters on a piecemeal basis and more specifically the

reluctance of the Courts to interfere in uninterminated proceedings in a lower court and the undesirability thereof and hearing of appeals or reviews on a piecemeal basis.

- 4.5. The second judgement considered being that of *The State v Khoatela*, case no: 32/2017 FS wherein the constitutional rights of citizens, and in particular women, were enunciated. The Candidate addresses these values and rights fully in her judgment, at paragraphs 10 and 11 thereof.
- 4.6. The third judgment considered is that of *Van der Merwe v The MEC for Public Works, Roads and Transport & 1 other*, case no: 4617/2010, FS. The matter dealt with a motor vehicle accident which had occurred, and the Plaintiff was left paralysed and wheelchair bound. The Candidate thoroughly dealt with the evidence led in the trial and the principles of negligence and road maintenance standards. It was found that the Defendant failed to prove the allegations in respect of which he bore the onus. The Plaintiff however was found to have discharged the onus placed on her to prove the manner in which the accident occurred and that the Defendant was negligent. The Candidate also dealt effectively with the issue of costs and made an appropriate cost order.
- 4.7. The aforesaid judgments are a clear reflection of the knowledge the Candidate has over both Civil and Criminal law. Her judgments are well written and the necessary legal prescripts have been applied whilst taking the Constitution of the Republic into account.

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

- 5.1. The Candidate's experience as legal practitioner and as Judicial Officer, as set out in her application, relates to civil work as well as criminal work. The Candidate's judgments have depicted her understanding of the law, she has narrated and evaluated the evidence placed before her in detail and has applied the law coherently and succinctly.
- 5.2. Only two of the Candidate's judgments have been successfully appealed against. Two of the Candidate's judgments have been cited with approval in judicial decisions. (See: *The State v Tota Ezekiel Rethabile Mohlabane & 7 others*, case no: 52/2018; *Nedbank Ltd v Musawenkosi Mbongeni Msibu Bloemfontein* Case no: 1721/2020.)
- 5.3. One of the Candidate's judgments has been reported. (See: *Canton Trading 17 (Pty) Ltd v Hattingh NO* (1293/2018) [2019] ZAFSHC 250.) Although, in the Canton judgment, the matter deals with the Arbitration Act 42 of 1965, the matter also makes reference to the authority vested in the courts by section 165(1) of the Constitution whereby judges wield tremendous power. The Candidate refers to the matter of *Motswai v RAF* 2014(6) SA 360, within this judgement, wherein the said Constitutional principle is discussed. The aforesaid relates to the Candidate's knowledge of the Constitution and her appropriate application of same.

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

- 6.1. *D Mashinini v L Boucher* Case no: 272/17;

- 6.2. *Feedpro Animal Nutrition (Pty) Ltd v RA Nienaber N.O. & 1 other*, case no: 4728/2012. (Appeal dismissed, Order substituted and referred back to Trial Court.)

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

- 7.1. The Candidate was admitted as an Attorney after completing her articles at Goldberg & Tobias during 1982.
- 7.2. The Candidate practiced as an Attorney from 1982 until 1992. Some time was spent practising at two different law firms which are set out in the application, and a further 3 years was spent practising as legal advisor to a small business development corporation. Thereafter the Candidate started her own practice from 1988 until 1992.
- 7.3. The Candidate then proceeded to become a prosecutor at the Department of Justice from 1992 until 1998 whereafter she was appointed as a Magistrate in the District Court in Durban and presided in the Criminal Courts from 1998 until 2002. During 2002 she was appointed as Senior Magistrate of the Civil Courts in Durban and served as Head of the Civil Court for two years. During 2005 she was appointed as Head of the Family Court Division at the Durban Magistrates Court and then proceeded to become Head of the Criminal Court Division at the Durban Magistrates Court division from January 2011 until July of 2011. From August 2011 until October 2013 the Candidate served as the Deputy of the Head Office, Durban, responsible for the judicial administration of the Durban Court as well as for the Durban sub-cluster.
- 7.4. The Candidate acted as a Judge in the Durban Local Division of the High Court over the period 2006 until 2013, and during 2013 she

also acted as a Judge in the North and South Gauteng High Courts. The Candidate was appointed as a Judge of the Free State Division of the High Court in 2014.

7.5. The Candidate acted as Deputy Judge President of the Free State Division of the High Court from 29 January 2018 to 30 March 2018, 15 April 2019 to 28 June 2019 and 5 October 2020 to 6 November 2020.

7.6. The Candidate has also been involved with the following legal organisations:

7.6.1. Member and Treasurer of the Judicial Officers Association of South Africa. Member from 1998 until 2019 and Treasurer from 2001 until 2004.

7.6.2. Member of the SACIAWJ from 2004 to date. She also held many different positions within the SACIAWJ such as Vice President of the Publications and Programmes, and National Secretary and Deputy President from 2010 until 2014.

7.7. The Candidate is also a board member at the Law Faculty at the University of the Free State. The Candidate has been a member of the Tongaat Child Welfare Society since 1988 to date and has been working closely with the society for many years. One can ascertain from the application that the Tongaat Child Welfare Society is a society which she holds very close to her heart.

**8. The candidate's linguistic and communication skills:**

8.1. Based on the language used in her judgments and her communication skills used during Court hearings, the Candidate has exceptional communication skills and has brilliant linguistic skills in English.

8.2. The Candidate does not indicate her proficiency in other languages in her application.

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

9.1. The Candidate's recent judgments have been delivered with admirable promptness. The Candidate furthermore has no reserved judgments to still deliver which is pertinent to point out.

**10. The candidate's fairness and impartiality:**

10.1. Based on the Candidate's performance as Judge, the Candidate has always appeared fair and impartial, and her judgments reflect the same.

10.2. No adverse comments have been received in this regard.

**11. The candidate's independent mindedness:**

11.1. The judgments delivered by the Candidate display an adequate degree of independence and open mindedness.

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

12.1. The Candidate has served as Acting Judge on many occasions before being appointed as Judge of the High Court, Free State Division and has been a Judge for several years now. The Candidate has presided over many different civil and criminal matters and has displayed the ability to conduct court proceedings with efficacy.

12.2. Members from the Free State Bar, who have appeared before the Candidate, confirmed her ability to conduct court proceedings effortlessly. The Candidate has been described as a Judge who is always well prepared for matters and who has read the papers and interacts well with Counsel appearing before her. The members also appreciate her ability to remain practical in matters where this is of the essence, whilst still employing the necessary legal prescripts.

**13. The candidate's administrative ability:**

13.1. The Candidate has over the years, been appointed as a Prosecutor, appointed as Magistrate and thereafter appointed as a Judge, which speaks volumes of her administrative ability. The further fact that she also has no reserved judgments outstanding is a clear indication of these abilities.

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

14.1. The Candidate's nomination by the International Association of Women Judges is in itself an indication that the candidate enjoys a reputation for integrity and ethical behaviour. One must take into account the numerous international conferences attended by the Candidate.

14.2. The aforesaid International conferences include representing JOASA in Morocco in 2002, representing the SAC-IAWJ in Sydney, Australia during 2006, representing JOASA again in Hungary in 2006, representing the SAC-IAWJ in Zambia during 2011 and lastly representing the SAC-IAWJ in Tanzania during 2014. These relevant attendances are a tribute towards the Candidate's high level



of ethical behaviour and integrity, and the legal fraternity applauds her therefore.

- 14.3. The members of the Free State Bar also commend the Candidate for her ethical manner in handling all matters placed before her and so too her integrity.

**15. The candidate's judicial temperament:**

- 15.1. No adverse comments have been received in this regard.
- 15.2. The Candidate's ability to conduct court proceedings effectively and her ability to deliver sound judgments promptly can be said to show that the Candidate has an appropriate 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 has demonstrated a high level of commitment to human rights and the values and needs of the community.
- 16.2. The Candidate, during 2001, served as a Magistrate mentor in order to give assistance and guidance to Magistrates requiring it, demonstrating her commitment to the needs of the community.
- 16.3. The Candidate was secretary and vice chairperson of the Seatides ratepayers and civic association in Kwa-Zulu Natal. She served as executive member of the SRACA from 1985 to 1996 and as such had extensive involvement in community matters.
- 16.4. The Candidate represented residents in a successful appeal against rates, was involved in the establishment of a pre-school in the

Seatides area and successfully represented residents in a hearing of objections against certain developments in the area.

- 16.5. The Candidate has been a member of the Tongaat Child and Family Welfare Society since the late 1980s. Since 1996 she devoted a great deal of time to the society and was deeply involved in upliftment programmes for the underprivileged, particularly in the informal settlements. The Candidate also assisted in many of the society's projects, one of which was the establishment of the youth wing focusing on matters affecting the youth and empowering the youth in the community to deal with such matters as drug and alcohol abuse. Since her appointment to the Free State Bench, she has maintained contact with the society and has rendered any assistance that she was able to.

**17. The candidate's potential:**

- 17.1. Taking into account the years that the Candidate has spent as Magistrate, Acting Judge and as Judge of the Free State High Court, there is no reason not to believe that the Candidate has the potential to be a good Deputy Judge President at the Free State Division of the High Court. There is no doubt that she will contribute well to transformation.

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

- 18.1. The Candidate is an Indian female. The public at large as well as the legal fraternity itself will most certainly welcome her appointment and will see it as a contribution to transformation in the judiciary. Members of the profession and the public will support the

appointment as reflecting transformation based on race and gender. The Candidate has contributed to transformation and has a thorough knowledge of the law.

## **ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

### **Reported decisions:**

*Canton Trading 17 (Pty) Ltd v Hattingh N.O* (2020) 1 ECL 18 (FB)

### **Unreported decisions:**

*Sibitloane Ks v Regional Magistrate R M Sepato & 1 Other*, Case No: A191/2014,  
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*The State v Khoatela SK*, Case No: 32/2017, FS

*BP Kuisis v Free State Gambling, Liquor and Tourism Authority*, Case No:  
356/2017, FS

*Van Der Merwe v Mec for Public Works, Roads and Transport & 1 Other*, Case  
No: 4617/2010, FS

### **Judgments upheld on appeal:**

*S v L Chaba & 21 Others* Case No 113/2015, (Reported as *Chaba & Others v S*  
(2019) 3 All SA 103 (FB))

*EM Venter v TV Matsepe & 3 Others*, Case No: 4901/2015

*Standard Chartered Bank v Grobler* 1076/2014 (2015) ZAFSHC 216

### **Judgments overturned on appeal:**

*D Mashinini v L Bouwer* Case No. 272/17

*Feedpro Animal Nutrition (Pty) Ltd v RA Nienaber N.O & 1 Other*, Case No:  
4728/2012. (Appeal dismissed but order substituted and referred back to trial  
court.)