

**APPLICANT: JUDGE RT SUTHERLAND****COURT FOR WHICH CANDIDATE APPLIES: DEPUTY JUDGE  
PRESIDENT OF THE GAUTENG DIVISION****1 The candidate's appropriate qualifications:**

1.1 The candidate holds the following qualifications:

1.1.1 BA (1972), LLB (1975) University of the Witwatersrand;

1.1.2 Higher Diploma in Tax Law (1982) University of the  
Witwatersrand;

1.1.3 Certificate in Industrial Relations (1988) University of the  
Witwatersrand;

1.1.4 MA (Applied Ethics) (2015).

1.1.5 The candidate is appropriately qualified.

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

2.1 The candidate is a fit and proper person, and nothing in his earlier  
experience as an advocate of the Bar, in his judgments and in the  
public area suggests to the contrary.

2.2 There is no information that detracts from his abilities as a judge, or  
which may negatively impact on his ability to perform in the position  
applied for.

**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.
- 3.2 There is presently one black female deputy judge president, one white male deputy judge president, and the remaining DJP positions are occupied by black men.
- 3.3 The candidate's appointment would accordingly not advance the gender composition of South Africa but would be consistent with the racial composition of South Africa.

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

- 4.1 The candidate's knowledge of the law, including labour law and constitutional law, is extensive, and arises from his long professional history addressed below.
- 4.2 The candidate has delivered several judgments reflecting his detailed knowledge of *inter alia* constitutional law.
- 4.3 For example, the candidate's recent detailed and comprehensive decision in *Amabhungane Centre For Investigative Journalism NPC v Minister of Justice* 2020 (1) SA 90 (GP) shows the candidate addressing the rights to privacy, freedom of expression, access to courts, and the exclusion of unlawfully obtained evidence in the context of surveillance legislation with careful analysis. The candidate's judgment was materially vindicated in the confirmation proceedings before the Constitutional Court in *AmaBhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others*; (CCT 278/19; CCT 279/19) [2021] ZACC 3 (4 February 2021).
- 4.4 The candidate's judgments have also been relied upon and applied by the Supreme Court of Appeal and the Constitutional Court in

several cases. See, for example, *National Union of Metal Workers of South Africa v Lufil Packaging (Isithebe)* 41 (ILJ) 1846 (CC); *Mount Edgecombe Country Club Estate Management Association II (RF) NPC v Singh* 2019 (4) SA 471 (SCA); *Benhaus Mining (Proprietary) Limited v Commissioner for the South African Revenue Service* 2020 (3) SA 325 (SCA); *Bee v Road Accident Fund* 2018 (4) SA 366 (SCA); and *Brookstein v Brookstein* 2016 (5) SA 210 (SCA).

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

- 5.1 The candidate has a clear commitment to the values of the Constitution, which is apparent from his reported judgments as well as his long history of curial and extra-curial services and volunteer work since his appointment to the Bench.
- 5.2 The candidate served as a Small Claims Commissioner, a voluntary and unremunerated position, at the Hillbrow Court for 25 years.
- 5.3 As a member of the Bar, the candidate promoted transformation through initiatives both within his group (the Bridge Group) and the Bar more generally.
- 5.4 The candidate has continued to render assistance to the profession at large through the various workshops that he has hosted, and his ongoing lecture series on legal ethics to the Johannesburg Society of Advocates, the Pan African Bar Association, and the Johannesburg Attorneys Association. He has done this after hours. The candidate has also assisted with advocacy training for decades. The candidate remains readily accessible to the organised profession as far as these workshops are concerned.

5.5 The candidate's judicial pronouncements reflect the spirit of the Constitution, and the office that he occupies.

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

6.1 Six judgments have been overturned on appeal:

6.1.1 *Ulde v Minister of Home Affairs* 2009 (4) SA 522 ( SCA);

6.1.2 *Kotze v Axal Properties 2 CC* [2013] ZASCA 110;

6.1.3 *SARS v CCMA* (2017) 38 ILJ 97 (CC);

6.1.4 *Centre for Child Law v Hoerskool Fochville* 2016 (2) SA 121 (SCA);

6.1.5 *Ngomane v City of Johannesburg* 2020 (1) SA 52 (SCA);

6.1.6 *NUMSA v Dunlop Mixing and Technical Services (Pty) Ltd* 2019 (5) SA 354 (CC).

6.2 None of the judgments comment adversely on the candidate, and generally endorse the conspectus of the candidate's initial reasoning.

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

7.1 The candidate has extensive professional experience.

7.2 The candidate was a clerk of the court 1968 to 1972.

7.3 The candidate was a district court prosecutor 1972 to 1974.

7.4 The candidate was a special industrial court prosecutor 1975.

7.5 The candidate was a regional court prosecutor 1975 to 1976.

7.6 The candidate was a state advocate 1976 to 1977.

- 7.7 The candidate worked at the Legal Aid Clinic at Riverlea, and the Wits Legal Aid Clinic.
- 7.8 The candidate was a member of the Johannesburg Society of Advocates from 1977 to 2011.
- 7.9 The candidate was granted silk in 1995.
- 7.10 The candidate developed an extensive practice as an advocate specialising in labour law and public law. He has an extensive knowledge of these fields of law.
- 7.11 The candidate acted in the High Court on several occasions from 1997 to 2011, the Labour Court from 1998 to 2002 and in the LAC from January to June 2013.
- 7.12 The candidate was permanently appointed to the South Gauteng High Court in 2012.
- 7.13 The candidate was permanently appointed to the Labour Appeal Court in 2014.
- 7.14 The candidate acted in the Supreme Court of Appeal in 2020.
- 7.15 The candidate has acted as the Deputy Judge President in the Gauteng Division in 2019, 2020 and 2021.
- 7.16 In the above positions, the candidate has also been involved in a significant number of task teams and committees that reflect upon his administrative and leadership skills, which are detailed below.

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

- 8.1 The candidate was awarded the honour of silk by the President.

8.2 The candidate's written judgments are written with clarity and precision.

8.3 The candidate communicates effectively, as is apparent from his numerous leadership roles both as a member of the Johannesburg Society of Advocates, and since his appointment as a judge.

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

9.1 The candidate has no outstanding judgments, and produces judgments promptly after hearing argument in matters.

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

10.1 Members of the Johannesburg Society of Advocates have appeared before the candidate as an arbitrator before his appointment to the Bench, and since his appointment as a judge. They report that his fairness and impartiality is beyond question.

10.2 In the matter of *Le Car Auto Traders v Degswa 1038 CC and Others* (2011/47650) [2012] ZAGPJHC 286 (14 June 2012), the candidate was asked to recuse himself. The application for recusal was dismissed on the grounds that judgment had already been granted in the matter and that, on the facts, no impropriety had occurred. The candidate concluded that there could be no reasonable apprehension of bias. The judgment is even-handed and impartial despite the suggestion by the party that the candidate was biased.

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

11.1 A review of the candidate's judgments shows him to be independently minded.

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

12.1 Members of the Johannesburg Society of Advocates report that the candidate conducts his court efficiently, fairly and to good effect. No adverse comments have been received about the candidate's ability to conduct court proceedings.

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

13.1 The candidate has held many positions requiring managerial and administrative skills.

13.2 Most recently, the candidate has acted as the Deputy Judge President of the Gauteng Division, being the position for which he now applies. Members of the Johannesburg Society of Advocates report that he has conducted himself in that acting position with industry and efficiency. The candidate is seen as approachable, fair and firm. Members commenting support the candidate for permanent appointment to this position.

13.3 Before acting as the Deputy Judge President of the Gauteng Division, the candidate held several leadership, administrative and managerial positions including:

13.4 Leading the Bridge Group of advocates from 1999 to 2007.

13.5 Sitting on the Bar Council, including as the Chairperson of the Bar Council.

13.6 Serving on the Executive Committee of the General Council of the Bar.

13.7 Serving on the Rules Board for the Labour Courts from 1999 to 2001.

- 13.8 Chairing a task team in 2013 to redraft the South African Bars' Ethical Code, which was later incorporated into the chapters of the code of practice promulgated by the Legal Practice Council.
- 13.9 Preparing, at the request of Deputy Judge President Mojaelo a draft directive on judicial case management, which system was piloted and then proclaimed as the amended Rule 37A in 2019.
- 13.10 Acting as a member of the National Task Team that investigated and drafted the current Rule 37A.
- 13.11 Serving on several committees of the Gauteng Division including the Civil Trials and Case Management committee, the Motion Court committee, the Commercial Court committee, the Library committee, and the Johannesburg High Court precinct committee.
- 13.12 Revising the consolidated Practice Manual for the Gauteng Division in 2019, which were submitted in 2019.
- 13.13 Developing a practice directive for the implementation of Rule 37A for the Gauteng courts.
- 13.14 Developing a protocol to address remote virtual hearings and ancillary procedures to address Covid.
- 13.15 Recent innovations in the Gauteng Division, many of which were spearheaded or supported by the candidate, have resulted in the waiting time for trial dates to be reduced from 18 months to 4 months.

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

- 14.1 The candidate's reputation for integrity and ethical behaviour is beyond reproach.

14.2 The candidate lectures legal ethics to the Johannesburg Society of Advocates, the Pan African Bar of Southern Africa, and the Johannesburg Attorneys Association.

14.3 The candidate has a Master's degree in applied ethics.

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

15.1 Members of the Johannesburg Society of Advocates report that the candidate conducts his hearings efficiently and fairly. He treats practitioners and litigants with consideration and humility. He is seen as approachable in his administrative roles.

**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 over decades his commitment to human rights, transformation and the rule of law.

**17 The candidate's potential:**

17.1 The candidate would make a significant contribution to the Gauteng Division if appointed as its Deputy Judge President.

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

18.1 Given the candidate's record of efficient and effective administration, the candidate's appointment would be seen as the judiciary committing itself to providing expeditious access to justice.

**ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

The candidate has a lengthy list of reported judgments from his time as counsel. These are not addressed in this annexure.

**Reported decisions:**

*Choice Decisions v MEC Department of Development, Planning and Local Government, Gauteng, and Another* (No 1) 2003 (6) SA 280 (W)

*Coetzee v Taxing Master, South Gauteng High Court and Another* 2013 (1) SA 74 (GSJ)

*NSC Carriers and Forwarding Cc and Others v Hyprop Investments Ltd and Others* 2013 (1) SA 340 (GSJ)

*Sil & Others v Road Accident Fund* 2013 (3) SA 402 (GSJ)

*ABSA Bank Limited New City Group (Pty) Ltd and Another matter* [2013] 3 All SA 146 (GSJ)

*Incubeta Holdings (Pty) Ltd v Ellis* 2014 (3) SA 189 (GJ)

*JA v DA* 2014 (6) SA 233 (GJ)

*Right to know Campaign v Minister of Police* (2015) 1 All SA 367 (GJ)

*Standard Bank Of South Africa Ltd v Renico Construction (Pty) Ltd* 2015 (2) SA 89 (GJ)

*JT v Road Accident Fund* 2015 (1) SA 609 (GJ)

*SA Revenue Service v Commission for Conciliation, Mediation & Arbitration & others* (2015) 36 ILJ 2021 (LAC)

*Fluxmans Incorporated v Lithos Corporation of SA* 2015 (2) SA 295 (GJ)

*Panayiotou v Shoprite Checkers (Pty) Ltd And Others* 2016 (3) SA 110 (GJ)

*SAA v BDFM Publishers* 2016 (2) SA 562 (GJ)

*Buildcure Cc v Brews And Others NNO* 2017 (6) SA 562 (GJ)

*Mogale City Municipality And Others v Fidelity Security Services* 2017 (4) SA 516 (GJ)

*Readam SA (Pty) Ltd v BSB International Link Cc And Others* 2017 (5) SA 184 (GJ)

*Ntombela v RAF* 2018 (4) SA 486 (GJ)

*Charewa v Road Accident Fund* 2018 (6) SA 551 (GJ)

*SAHRC v Khumalo* 2019 (1) SA 289 (GJ)

*Ex part Goosen* 2019 (3) SA 489 (GJ)

*BF v RF* 2019 (4) SA 145 (GJ)

*Wild & Marr (Pty) Ltd v Intratek Properties (Pty) Ltd* 2019 (5) SA 310 (GJ)

*Tjeka Training Matters (Pty) Ltd v KPPM Construction (Pty) Ltd And Others* 2019 (6) SA 185 (GJ)

*Janse Van Vuuren v Roets And Others And A Similar Matter* 2019 (6) SA 506 (GJ)

*Amabhungane Centre for Investigative Journalism NPC v Minister of Justice* 2020 (1) SA 90 (GP)

*NUMSA v CCMA* (2020) 41 1629 (LAC)

*Gordhan v Malema* 2020 (1) SA 587 (GJ)

*Khan v Shaik* 2020 (6) SA 375 (SCA)

**Unreported Decisions:**

*B v B* (2010/50006) [2012] ZAGPJHC 108 (28 May 2012)

*Thomas v BD Sarens (Pty) Ltd* [2012] ZAGPJHC 161

*Whitehead and Another v Trustees of the Insolvent Estate of Dennis Charles Riekert and Others* (567/2019) [2020] ZASCA 124 (7 October 2020)

*Masibuyisane Services (Pty) Ltd v Eqstra Corporation (Pty) Ltd* (1245/2019) [2020] ZASCA 159 (1 December 2020)

*United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* (1032/2019) [2021] ZASCA 4 (13 January 2021)

*Munyai v S* (A109/2016) [2017] ZAGPJHC 121; [2017] 3 All SA 23 (GJ); 2017 (2) SACR 168 (GJ) (22 March 2017)

*Simelane v S* (A268/2017) [2018] ZAGPJHC 457 (22 February 2018)

*Malatjie v S* (A334/2016) [2017] ZAGPJHC 104 (22 March 2017)

*Evans v S* (2011/A46) [2012] ZAGPJHC 142 (11 August 2012)

*Altrisk v Barker* (2014/23841) [2018] ZAGPJHC 458 (15 June 2018)

*Pieterse v S* (A332/2016) [2017] ZAGPJHC 103 (22 March 2017)

(The above are just some of the unreported judgments by the candidate, delivered in the different courts he has sat in. Due to space constraints not all will be referred to.

**Judgments upheld on appeal:**

*Picbel Groep Voorsorgfonds (in liquidation) v Somerville & Related Matters*  
2013 (5) SA 496 (SCA)

*Hyprop Investments v NSC Carriers (935/12)* [2013] ZASCA 169 (27 November  
2013)

*Edcon v Steenkamp* 2019 48 ILJ 1731 CC

*Mahaeane and Another v Anglogold Ashanti Limited (85/2016)* [2017] ZASCA  
90; [2017] 3 All SA 458 (SCA); 2017 (6) SA 382 (SCA) (7 June 2017)

**Judgments overturned on appeal:**

*Kotze v Axal Properties 2 CC* [2013] ZASCA 110 (16/09/2013)

*Ulde v Minister of Home Affairs and Another* 2009 (4) SA 522 (SCA)

*SARS v CCMA* (2017) 38 ILJ 97 (CC)

*Centre for Child Law v Hoerskool Fochville* 2016 (2) SA 121 (SCA)

*Ngomane v City of Johannesburg* 2020 (1) SA 52 (SCA)

*NUMSA v Dunlop Mixing and Technical Services (Pty) Ltd* 2019 (5) SA 354 (CC)