

**APPLICANT: ADVOCATE DANIEL PETRUS DE VILLIERS SC**

**COURT FOR WHICH CANDIDATE APPLIES: GAUTENG DIVISION OF THE HIGH COURT**

**1. The candidate's appropriate qualifications**

- 1.1. The candidate obtained a B.Com (1984), and LLB (1986), and has completed the Advanced Aspirant Judges Course (2020).
- 1.2. The B.Com and LLB degrees were conferred upon the candidate by the University of Stellenbosch. The Advanced Aspirant Judges Course was held by the South African Judicial Education Institute.
- 1.3. The candidate is appropriately qualified and experienced for appointment as a Judge of the High Court.

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

- 2.1. There is nothing to suggest that the candidate is not a fit and proper person to be a judge of the High Court.

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

- 3.1. There are currently 73 full time judges on the Gauteng bench, comprising (as far as could be ascertained):
  - 3.1.1. 22 black women (17 African, 3 Indian, 2 Coloured);
  - 3.1.2. 25 black men (18 African, 5 Indian, 2 Coloured);
  - 3.1.3. 13 white women; and

3.1.4. 13 white men.

3.2. The candidate is a white man.

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

4.1. The candidate has practised as an advocate for the last 26 years (from 1994), and more specifically as senior counsel since 2018.

4.2. The candidate has a vast amount of experience across the legal field.

4.3. The candidate's judgments reveal a thorough understanding and knowledge of the law.

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

4.5. The candidate's judgments are detailed, balanced and thoroughly researched. The candidate cites considerable case law in support of his decisions, with attention to detail and precise analysis.

4.6. The candidate is especially well-versed in the rules of court, which results in clear and comprehensive judgments. Furthermore, his application of the law is clear and concise.

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

5.1. The candidate has in his judgments as an acting judge demonstrated a firm commitment to the values of the Constitution and to the rule of law.

5.2. The candidate's contribution to the values of the Constitution also appears from his service to the Johannesburg Society of Advocates, including serving on the Bar Council for four years, and his acting appointments as judge of the High Court.

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

6.1. Despite having handed down in excess of 60 written judgments, a search for the candidate's judgments revealed only one judgment in which the appeal succeeded and one in which appeal to the SCA is pending.

6.2. In *Municipal Employees' Pension Fund and Others v Chrisal Investments (Pty) Ltd and Others* [2020] 4 All SA 686 (SCA), Wallis JA stated as follows:

*“In the high court the judge characterised this argument as being based on a tacit term that would exclude the actio communi dividundo. He reached that conclusion notwithstanding the absence of any suggestion in the answering affidavit that reliance was being placed upon any such tacit term. He thought, erroneously, that the availability of the actio was one of the naturalia (inevitable legal consequences) of any agreement giving rise to co-ownership. In the result his entire approach to the case was flawed. In refusing leave to appeal he compounded these errors by burdening the MEPF with an onus to prove as a defence the exclusion of the actio, when the true question was whether it was available at all given the terms of the agreements. He then refused leave to appeal. Had he paid regard to the*

*consequences of holding that the actio was available in the circumstances of this case he should have granted leave to appeal to this court, notwithstanding his view that his judgment was correct. All too frequently this court bemoans the grant of leave to appeal in matters of no great complexity raising no significant legal issue. This was not such a case and the leave to appeal that should have been granted was granted by this court.”*

6.3. In *City of Johannesburg Metropolitan Municipality v Zibi and Another* [2021] 3 All SA 667 (SCA) (9 July 2021) the majority noted that the High Court had relied upon the candidate’s decision in *Smit v City of Johannesburg Metropolitan Municipality* [2017] ZAGPJHC 386. Whilst the Supreme Court of Appeal upheld the appeal, it did not indicate whether it was overruling the candidate’s decision in *Smit* or comment on the judgment. There is a pending application for leave to appeal against the *Zibi* judgment.

## **7. The extent and breadth of the candidate’s professional experience**

7.1. The candidate has worked in the following capacities in the legal field:

7.1.1. Administrative assistant and ad hoc acting prosecutor - Department of Justice 1979 – 1986.

7.1.2. Candidate Attorney - EFK Tucker Inc 1987 – 1991.

7.1.3. Attorney – Livesey – de Villiers and Tonkin, Clacey, Anderson and Moore 1991 - 1994.

7.1.4. Advocate - Johannesburg Society of Advocates 1994 – 2020.

7.1.5. Ad hoc appointments as acting judge - Gauteng Divisions 2016 – 2021.

7.2. The candidate has extensive experience as a practicing advocate over a period of 26 years. He has also regularly and for extended periods acted as a judge in the High Court, in total 51 weeks. He has delivered in excess of 60 judgments while acting as judge.

7.3. The candidate has extensive and broad professional legal experience.

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

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

8.2. The candidate is able to articulate complex legal principles in understandable terms.

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

9.1. Several judgments handed down by the candidate were considered.

9.2. All of these judgements appear to have been delivered promptly, some within a matter of days of hearing.

9.3. The candidate has no outstanding judgments or part-heard matters and appears to manage his workload efficiently.

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

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

- 10.2. Counsel who has appeared before him speak highly of his fairness and impartiality in court.
- 10.3. The candidate is held in high regard as an acting judge.
- 10.4. No adverse comments have been received regarding the candidate's fairness and / or impartiality.

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

- 11.1. The candidate's independence is demonstrated in his judgments.
- 11.2. There is nothing to suggest that the candidate is not independently minded.

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

- 12.1. The candidate has numerous unreported judgments. The candidate appears to have conducted proceedings efficiently and delivered judgments timeously.
- 12.2. There is nothing to suggest an inability to conduct court proceedings.
- 12.3. From the accounts of counsel who have appeared before him it appears that the candidate conducts court proceedings efficiently and with the necessary decorum.

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

- 13.1. The candidate has held several positions of leadership of bodies and committees, within and outside the legal profession, whilst managing a demanding professional life.

13.2. No adverse comments have been received in this regard. The candidate has served on group management structures (Group 444 and Island Group of Advocates) and the Bar Council (2007 - 2010 and 2015/2016) and on several of its committees (professional/ethics) for several terms.

13.3. The candidate is known as an acting judge who prepares diligently for hearings and has a thorough knowledge of the proceedings before him. This evinces his administrative ability managing a heavy case load yet remaining on top of the facts of the matter that appears before him.

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

14.1. The candidate has a good reputation for integrity and ethical behaviour.

14.2. The candidate has a good reputation amongst his fellow colleagues at the Johannesburg Society of Advocates.

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

15.1. The candidate has a good reputation for having an even temperament, and never being rude or impatient with colleagues or counsel who appear before him.

**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 commitment to the values of the Constitution is demonstrated in the manner he discharges his duties as a judicial officer.

**17. The candidate's potential**

17.1. The candidate enjoys the respect and admiration of his colleagues and peers as an advocate at the Johannesburg Society of Advocates.

17.2. It would appear, when studying the candidate's previous judgments, that he displays good potential as a judicial officer.

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

18.1. In light of the candidate's diligence, legal insight, experience, commitment, and perseverance to join the ranks of the judiciary, the candidate's appointment would send a positive message to the community at large for the following reasons:

18.1.1. he is a senior advocate with considerable experience and expertise;

18.1.2. he has acted as a judge for a considerable period, commencing from 2016;

18.1.3. he has a wide understanding of the various fields and aspects of law;

18.1.4. he is well regarded by colleagues and by those who have appeared before him;

18.1.5. he displays a range of qualities and values that lie at the core of judicial service, including fairness, impartiality and a strong work ethic; and



18.1.6. considering the strength of his experience and expertise, the candidate's knowledge of the law and commitment to applying it in a manner which gives effect to Constitutional values, his skills would strongly advocate for his appointment to the judiciary.

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

### **Reported decisions**

None that could be located.

### **Unreported Decisions**

*Ferreiras (Pty) Ltd v Naidoo* 2017 JDR 2088 (GJ)

*Trollip v Davis* 2021 JDR 0330 (GJ)

*Chipwatali v Road Accident Fund* 2017 JDR 0141 (GP)

*African Global Holdings (Pty) Ltd v Lutchman NO. (Commissioner for the South African Revenue Services and Fidelity Security Services (Pty) Ltd Intervening Parties)* 2021 JDR 0068 (GJ)

*BP Southern Africa (Pty) Ltd v Mega Burst Oils and Fuels (Pty) Ltd* 2020 JDR 0433 (GJ)

*Monza v Road Accident Fund* 2020 JDR 0436 (GJ)

*National Union of Metalworkers of South Africa v Lanxess Chrome Mining (Pty) Ltd* 2020 JDR 1017 (GJ)

*Macsteel Genprop (Pty) Ltd v Groot* 2017 JDR 2089 (GJ)

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

*Mahem Verhurings CC v Firstrand Bank Ltd* 2017 JDR 0232 (GP)

*Tequila Cuervo SA de CV v Fabrication and Light Engineering CC* [2017]

*Muhanelwa v Gcingca* [2019] ZACC 21

**Judgments overturned on appeal**

*Municipal Employees' Pension Fund and Others v Chrisal Investments (Pty) Ltd and Others* [2020] 4 All SA 686 (SCA)