

**APPLICANT: MR DARIO DOSIO**

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

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

1.1 The candidate holds the following degrees:

1.1.1 Bachelor of Arts, University of Witwatersrand (1988); and

1.1.2 LLB University of Witwatersrand (1993).

1.2 The candidate has a Higher Diploma in Tax Law, University of Witwatersrand (1994)

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

2.1. There is nothing in the candidate's application or judgments to suggest he is not fit and proper person.

**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 been a magistrate for 25 years and has presided over both criminal matters and civil matters.

4.2. The candidate has also sought to advance his knowledge and those of his peers, arranging training for magistrates not in the regional court on aspects of the Divorce Act.

4.3. The candidate has delivered a paper at the Commonwealth Magistrates and Judges Conference in 2006 entitled "The Relationship between Sexual Violence and the transmission of HIV/AIDS: a perspective from a Presiding Officer working in a Specialised Sexual Offences Court in Soweto". This led to the candidate's paper being published in the 14th Triennial Conference Report of the Commonwealth Magistrates and Judges Association.

4.4. This paper led to the candidate co-authoring a paper entitled "Constructing Hope: A Multi-Agency Programme model for Young Sexual Offenders living with HIV/AIDS in South Africa". This article was published in the 2nd issue of the 2007 electronic journal of the International Association for the Treatment of Sexual Offenders.

4.5. In the case of *Roedean School NPC (South Africa) v BS* 2019 JDR 1963 (GJ) the candidate addressed section 29(3) of the Constitution, which had been raised as a defence by the respondents. In this case the applicant sought to interdict the respondents from bringing their minor child to the private school in circumstances where the school fees had

been short paid and then were no longer being paid. The defence raised by the respondents involved the right of everyone to a basic education and how the expulsion or exclusion of the minor child of unpaid school fees would be unfair. The candidate identified the relevant constitutional principles and case law in the judgment.

4.6. The candidate currently has five reported judgments from his time as an acting judge. But a search has highlighted 61 unreported judgments, of which 34 are criminal matters and 27 civil matters.

4.7. Of the reported judgments, the candidate lists the following judgments as being most significant –

4.7.1. *Estate Agency Affairs Board v Guthrie* 2013 JDR 1733 (GSJ)

4.7.1.1. In this case, the candidate was called upon to determine whether Rule 35(5)(c) of the Uniform Rules of Court was applicable to the applicant (the defendant in the main action) who seeks discovery of documents from a cedant, the first respondent, who is not a party to the main action. And thereafter, if Rule 35(5)(c) was applicable, whether the applicant had made a case for the application to warrant an order sought.

4.7.1.2. The candidate found that Rule 35(5)(c) was available to the applicant. The candidate set out his reasoning for this conclusion in his judgment, citing authors and cases. The candidate was required to interpret the uniform rule with reference to the interpretation of statutes. With regard to

the second determination, the candidate found that the applicant was entitled to the relief sought having made out a case of same in his papers.

4.7.1.3. The candidate identified and reasoned the issues of the application in a logical manner, setting out a background which is easy to follow.

4.7.2. *DDP Valuers (Pty) v Makhado Municipality* 2014 JDR 1566 (GP)

4.7.2.1. The applicant had launched an application for the review and setting aside of a tender which had been awarded by the First Respondent to the Second Respondent. In terms of the relief sought, the Applicant sought to have the tender awarded to itself, alternatively that it be ordered that the tender be referred back to the First Respondent for consideration afresh.

4.7.2.2. The candidate reviewed and set aside the tender awarded by the First Respondent to the Second Respondent, finding it unlawful and unfair due to numerous irregularities which included a fraudulent signature on a document. The candidate did not award the relief sought by the applicant granting it the tender, finding that it had not made out a case of this, being exceptional circumstances.

4.7.2.3. In coming to the conclusion, the candidate set out the case law and legislation relied upon for his conclusion and

explained his evaluation of the application under a separate heading.

4.7.2.4. The judgment enforces the need for compliance by the First Respondent with the relevant statutes.

4.7.3. *Motor Industry Staff Association v Stanmar Motors (Pty) Ltd* 2012 JDR 1628 (LC)

4.7.3.1. This case was for a review of an arbitrator's award, the Third Respondent. The candidate has set out the judgment in a clear manner. It is a comprehensive judgment which deals with the question of section 186(2)(c) of the Labour Relations Act 66 of 1995. The candidate found in favour of the applicant ordering the applicant's re-employment.

4.7.3.2. This case sets out the considerations in coming to this order. Which included the misinterpretation of the arbitrator of the contractual obligation of the employer. In coming to the conclusion, the court found that the arbitrator's finding was not a decision a reasonable decision-maker could have reached. This rendered the finding reviewable.

4.7.3.3. The candidate highlighted in his application that this case was important as there were no reported judgments concerning section 186(2)(c) of the Labour Relations Act.

4.7.4. *S v Seroba* 2015 (2) SACR 429 GJ

4.7.4.1. The accused was charged with two counts of murder relating to the shooting of his wife and his sister-in-law that occurred in 2007. The accused raised the defence of pathological incapacity. There had been a substantial delay in the matter and numerous psychological evaluations. The candidate needed to deal with a report of a psychiatrist regarding a diagnosis that was in conflict with the other eight psychiatrists. The candidate dealt with the question of pathological incapacity in a logical manner and set out why this was not a case of pathological incapacity.

4.7.4.2. It is necessary to highlight that there had been a substantial period of eight years before the matter was finally heard. After finding the accused guilty on 13 July 2015, the candidate was able to hand down the sentence on 14 July 2015. The trial started on 20 April 2015 and the evidence was completed on 6 July 2015.

4.7.5. *S v Skhosana* 2016 (2) SACR 456 GP

4.7.5.1. This case is import as it dealt with an appeal, but specifically the admissibility of photographs taken on a cell phone. In this case, the appellant had been observed on CCTV breaking into a house. After the appellant was arrested, the security officer took a photograph of the appellant and his co-accused on his cellphone. The photograph was used in evidence in the court a quo. This

raised the important issue of whether a photograph from a cellphone was admissible. The candidate also dealt with the question of whether section 37 (1)(d) of the Criminal Procedure Act 51 of 1977 was unconstitutional and found that this section was not unconstitutional. The photograph was admissible. The case sets out some useful guidelines on the admissibility and considerations regarding the admissibility of such evidence in the future.

4.7.6. *Mashaya v Transnet Soc Limited* 2019 JDR 1979 (GJ)

4.7.6.1. This case dealt with the question of negligence in relation to a freight train accident. The candidate highlighted in his application that prior to this case, there was no South African case law dealing with pedestrians being injured by heavy freight trains.

4.7.6.2. The case dealt with the question of negligence and the defence of *volenti non fit injuria* was raised by Transnet. The candidate dealt with the aspects of negligence and the defence raised by Transnet. In the judgment, the candidate dismissed this defence setting out the reasons for this. As part of the reasoning, the candidate found several of the submissions made by Transnet improbable and found that Transnet had not taken sufficient precautions to protect pedestrians. The candidate also dealt with how the improbable findings impacted the third element necessary for the defence, which entails the Plaintiff's voluntary

consent to harm and found that it could not be said that the Plaintiff entered the premises with the necessary consent to harm occurring. The candidate did, however, find contributory negligence on the part of the Plaintiff. This was due to the Plaintiff climbing onto coupling links which behaviour itself could have resulted in injury.

4.7.7. *Platinum Mile Investments 513 (Pty) Ltd v Midrand Gold and Diamond Exchange (Pty) Ltd* (2018/32934) [2020] ZAGPJHC 184 (25 May 2020).

4.7.7.1. This case dealt with the eviction of the respondent from premises as well as a claim for liquidated damages for unpaid rental. The respondent alleged a variation of a written lease agreement, which contained a non-variation clause while the applicant contended that no such variation occurred. The issue of the eviction had fallen away as the respondent had, prior to the hearing of the application vacated the premises. The respondent relied on emails exchanged between representatives of the parties to substantiate its version of a variation and that the words “signed”, “signature” and “writing” were not defined in the lease agreement and that the variation had been concluded by electronic means by the numerous emails and that the Electronic Communications and Transactions Act 25 of 2002 was applicable.

4.7.7.2. The candidate set out the reasons for his rejection of the variation, substantiated by case law. The candidate found the emails to be unclear and ambiguous to infer the intention of the parties to vary the lease agreement by way of electronic signatures or that the emails were clear and unambiguous enough to demonstrate the parties' intention to vary the lease agreement itself. The candidate also found that the non-variation clause in the lease agreement did not offend public policy.

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

5.1. The candidate's application details his involvement in community projects. The candidate has taken an active role in community projects. This includes the candidate mentoring university law students under the auspices of the South African Chapter of the International Association of Women Judges – South African Chapter. In the candidate's previous judicial interview, he was asked about his involvement in the SGBV (sexual gender-based violence) programme which is also an initiative of the Gauteng division of the South African Chapter of the International Association of Women Judges. What the SGBV programme seeks to do is to provide a platform where young women feel empowered to speak up against gender-based violence. The candidate, through his involvement in community projects is seeking to educate the community, specifically the children on issues such as drug awareness and the rights of children.

5.2. A further example of the candidate's commitment to and acknowledgement of constitutional values can be found in the candidate's judgment in the full bench appeal of *S v Mogaramedi* 2015 (1) SACR 427 (GP), which dealt with Constitutional principles, including aspects of the Bill of Rights and the balancing of interests.

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

6.1. It is noted that the candidate listed four judgments of his that were taken on appeal. Of the four appeals listed, one was removed and in respect of the other three appeals, no dates have been allocated yet.

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

7.1. The candidate has the following employment history:

7.1.1. Public Prosecutor from 1991 until 1994;

7.1.2. Control Prosecutor from 1994 until 1996;

7.1.3. District Magistrate from 1996 until 2000;

7.1.4. Criminal Regional Magistrate from 2000 until 2012; and

7.1.5. Civil Regional Magistrate from 2012 to date.

7.2. In 2011, the candidate was an assessor for a period of three months in the then South Gauteng High Court, Johannesburg, assisting Justice Kathree-Setiloane with numerous criminal trial matters.

- 7.3. In 2012, the candidate was an Acting Judge in the Labour High Court on a pro bono basis dealing with review matters during the June recess of that year.
- 7.4. The candidate has acted as a Judge in the Gauteng High Court, in both the Local Division (Johannesburg) and the Provincial Division (Pretoria). The candidate has spent a total of 87 weeks acting:
- 7.4.1. one week acting in the Labour High Court;
  - 7.4.2. 37 weeks acting in the Civil Court;
  - 7.4.3. 43 weeks acting in the Criminal Court; and
  - 7.4.4. six weeks where he acted in both the Criminal and Civil Courts during those weeks.
- 7.5. The candidate has been a magistrate in the district court, adjudicating in both civil and criminal matters during the period 1996 until 1999.
- 7.6. The candidate presided over criminal matters as a Regional Magistrate in Soweto during the period 2000 until 2012.
- 7.7. The candidate presided in the civil court in Kempton Park Magistrates Court in 2007 for a period of three months and has been a Civil Regional Magistrate from 2012 to date.

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

- 8.1. The candidate's judgments are clear, read well and show advanced linguistic and communication skills. The candidate's judgments have to date been in English.

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

- 9.1. The candidate managed in *S v Seroba*, to deliver his judgment promptly after the conclusion of the evidence and argument, a matter which had been on the court roll for a substantial period of time.
- 9.2. Of the judgments for 2020 available on SAFLII, in the case of *Platinum Mile Investments 513 (Pty) Ltd v Midrand Gold and Diamond exchange (Pty) Ltd* (2018/32934) [2020] ZAGPJHC 184 (25 May 2020), the judgment was delivered three weeks after it was argued; and with the criminal appeal case of *Bhaso v S* (A10/2020) [2020] ZAGPJHC 193 (21 May 2020), judgment was handed down on the same day.
- 9.3. In 2019, from the cases listed on SAFLII, the majority of the judgments were completed within a three-month period, several were within a month. *Rajay and Another v Zwene Insurance Brokers (Pty) Ltd* (2018/42821) [2019] ZAGPJHC 366 (11 September 2019) was one of the longest, with the application being heard on 31 May 2019 and judgement being handed down on 11 September 2019.

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

- 10.1. No adverse comments have been received in this regard.

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

- 11.1. No information or complaint was received indicating a lack of independent mindedness on the part of the candidate.

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

12.1. The candidate is an experienced presiding officer with 25 years' experience as such. With this experience it can be accepted that the candidate has the requisite ability to conduct court proceedings properly. This again has been highlighted by the numerous counsel that have come forward to support the candidate.

12.2. Moreover, feedback received suggests that the candidate is in control of his court and is able to do so while being courteous, impartial and patient.

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

13.1. The candidate's record of producing judgments promptly appears indicative of his ability to administer his role efficiently. However, beyond this, no further comment can be made.

13.2. No adverse comments have been received.

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

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

14.2. There is nothing else on record to indicate that the candidate's integrity or ethics have ever been compromised.

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

15.1. No adverse information was 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 has for many years been involved in the community and community projects. He has taken an active role in this regard.

16.2. Importantly, the candidate has focused largely on the children and hardships in an impoverished community, mentoring them and attempting to better the children's understanding of certain issues. The candidate is also mentoring law students and creating awareness of sexual gender-based violence in school children and empowering young women to find their voice.

16.3. The candidate has also organised training for colleagues to enable a better understanding of certain issue, thus promoting access to justice and attempting to ensure a standard of professionalism for the ordinary man to have confidence in the judiciary.

**17. The candidate's potential**

17.1. No adverse information was received.

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

18.1. The candidate's appointment would send a message that prosecutors and magistrates may be appointed to serve on superior courts.

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

### **Reported Judgments**

*S v Pataka* 2018 (2) SACR 135 GJ

*S v Skhosana* 2016 (2) SACR 456 GJ

*S v Seroba* 2015 (2) SACR 429 GP

*S v Mogaramedi* 2015 (1) SACR 427 GP

*S v Chinridze* 2015 (1) SACR 365 GP

### **Unreported judgments**

*Alphera Financial Services, a division of BMW Financial Services (South Africa) (Pty) Ltd v Lemmetjies* 2021 JDR 0441 (GP)

*Nkosi v African Pride Irene* 2021 JDR 1729 (GP)

*Fulsome Properties (Pty) Ltd v Selepe* 2021 JDR 0600 (GP)

*Sithebe v The Road Accident Fund* 2021 JDR 0590 (GP)

*Myburgh v The Road Accident Fund* 2021 JDR 0732 (GP)

*ArcelorMittal South Africa Limited v Norman and Gary Abkin Dunswart Properties (Pty) Ltd* 2019 JDR 1616 (GJ)

*Platinum Mile Investments 513 (Pty) Ltd v Midrand Gold and Diamond Exchange (Pty) Ltd* (2018/32934) [2020] ZAGPJHC 184 (25 May 2020)

*Bhaso v S* (A10/2020) [2020] ZAGPJHC 193 (21 May 2020)

*T M obo O M v Road Accident Fund* (20662/2016) [2020] ZAGPJHC 194 (13 May 2020)

*PZ v Road Accident Fund* 2019 JDR 1891 (GJ)

*Mashaya v Transnet Soc Limited* 2019 JDR 1979 (GJ) on SAFLII as *Khanyisile v Transnet Soc Limited* (07424/13) [2019] ZAGPJHC 357 (2 September 2019)

*Rajay and Another v Zwene Insurance Brokers (Pty) Ltd* (2018/42821) [2019] ZAGPJHC 366 (11 September 2019)

*Balvest CC t/a Fourways Garden Shopping Centre v Fourways Gardens (Pty) Ltd t/a Tops Fourways Gardens* (38342/2017) [2019] ZAGPJHC 331 (2 September 2019)

*Balvest CC t/a Fourways Garden Shopping Centre v Rainbow Pepper Trading 76 (Pty) Ltd and Others* (30502/2017) [2019] ZAGPJHC 327 (2 September 2019)

*Roedean School NPC (South Africa) v BS* 2019 JDR 1963 (GJ)

*Marais v Road Accident Fund* under case number 18/19420 handed down on 24 May 2019.

*S v Mbatha* 2018 JDR 0683 (GJ)

*S v Hlatshwayo* 2018 JDR 2158 (GJ)

*Matjee v Road Accident Fund* 2017 JDR 1251 (GJ)

*S v Khumalo and Another* (SS77/2017) [2018] ZAGPJHC 444 (19 March 2018)

*S v Ganca* (SS162/2016) [2018] ZAGPJHC 111 (15 March 2018) - sentence

*S v Ganca* (SS162/2016) [2018] ZAGPJHC 109 (7 February 2018) – verdict

*Matjee v Road Accident Fund* 2017 JDR 1251 (GJ)

*Mbewe v Road Accident Fund* 2016 JDR 1143 (GJ)

*S v Mbasigidi* 2016 JDR 1348 (GJ)

*S v Mofokeng* 2016 JDR 1144 (GJ)

*Makwakwa v S* (A14/2016) [2016] ZAGPJHC 106 (18 May 2016)

*S v Nkosi* (SS240/2014) [2016] ZAGPJHC 77 (3 May 2016)

*S v Molahi* (271/2014) [2016] ZAGPJHC 74 (21 April 2016)

*S v Seluma* 2015 JDR 1578 (GP)

*S v Mngonelwa* 2015 JDR 2159 (GJ)

*S v Isaac* 2015 JDR 2148 (GJ)

*DDP Valuers (Pty) v Makhado Municipality* 2014 JDR 1566 (GP)

*S v Mogaramedi* 2014 JDR 1622 (GP)

*Coetzee v Road Accident Fund* 2014 JDR 1665 (GP)

*S v Lubisi* 2013 JDR 1325 (GNP)

*Gihwala v Meyeridricks* 2013 JDR 1524 (GSJ)

*Ukwanda Leisure Holdings (Pty) Ltd v Absa Bank Limited* 2013 JDR 1636 (GSJ)

*Estate Agency Affairs Board v Guthrie* 2013 JDR 1733 (GSJ)

*Beqfin (Proprietary) Limited v Ntane* 2013 JDR 1787 (GSJ)

*Motor Industry Staff Association v Stanmar Motors (Pty) Ltd* 2012 JDR 1628 (LC)

**Judgments upheld on appeal**

None.

**Judgments overturned on appeal**

*De Almeida v S* (728/2018) [2019] ZASCA 84 (31 May 2019)