

APPLICANT: JUDGE NARANDRAN KOLLAPEN

COURT FOR WHICH APPLICANT APPLIES: CONSTITUTIONAL COURT

1 The candidate's appropriate qualifications

1.1 The candidate holds B.Proc (1978) and LLB (1981) degrees.

1.2 Both degrees were obtained from the University of the Witwatersrand.

1.3 The candidate possesses the requisite qualifications for the position for which he has applied.

2 Whether the candidate is a fit and proper person

2.1 There is nothing in the application or in the candidate's judgments that would suggest that the candidate is not a fit and proper person.

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

3.1 The Constitutional Court bench currently comprises nine Justices of whom three will shortly leave the court, having served their respective non-renewable terms. As a result, the court will, by the end of 2021, comprise six Justices (three black men, and three black women).

3.2 The candidate is a black man, of Indian descent.

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

4.1 The candidate practiced as an attorney for approximately 10 years, whereafter he was appointed as the National Projects Director and later the National Director for Lawyers for Human Rights.

4.2 In December 1996 the candidate was appointed as a Commissioner of the South African Human Rights Commission (SAHRC). The candidate spent approximately 13 years at the SAHRC where he also occupied the position of chairperson for about 7 years, before being elevated to the bench.

4.3 He was elevated to a permanent position on the bench in May 2011 and also acted in the Constitutional Court between July 2017 and December 2017.

4.4 Many of the candidate's judgments illustrate a firm and demonstrable knowledge of Constitutional Law.

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

5.1 The candidate, as is evident from his extensive involvement with the SAHRC and the content of his judgments, has demonstrated a firm commitment to the values of the Constitution and to the rule of law.

5.2 The candidate's contribution to human rights was recognised in the form of an honorary degree from the Durban University of Technology and he also received a Citizen's Excellence Award in the category Human Rights from the Mayor of Tshwane.

6 Whether any judgments have been overturned on appeal

6.1 The candidate has had eight judgments overturned on appeal. The small number of judgments successfully appealed against indicate that the candidate has a good knowledge of the law and applies it accurately.

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

7.1 The candidate has extensive experience as an attorney, commissioner of the South African Human Rights Commission, and a High Court Judge.

8 The candidate's linguistic and communication skills

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

9 The candidate's ability to produce judgments promptly

9.1 87 judgments handed down by the candidate were considered.

9.2 All of these judgments were delivered promptly.

9.3 The candidate lists two judgments still outstanding. This is no longer the case. Judgment in the matter of *Democratic Alliance v The Minister of Home Affairs* was handed down on 6 August 2021. Judgment in the matter of *E Magashule v C Ramaphosa and Others* was handed down on 9 July 2021.

10 The candidate's fairness and impartiality

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

11 The candidate's independent mindedness

11.1 There is nothing to suggest that the candidate is not independently-minded.

12 The candidate's ability to conduct court proceedings

12.1 There is nothing which is suggestive of an inability to conduct court proceedings.

13 The candidate's administrative ability

13.1 No adverse comments have been received in this regard.

14 The candidate's reputation for integrity and ethical behaviour

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

15 The candidate's judicial temperament

15.1 There is nothing to suggest a lack of judicial temperament on the part of the candidate.

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 application reveals that he has held various positions in organisations and institutions committed to the protection and promotion of human rights.

16.2 The candidate's commitment to human rights, and experience with regard to the values and needs of the community cannot be doubted.

17 The candidate's potential

17.1 The candidate has excellent potential as a Constitutional Court Justice.

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

18.1 In light of the candidate's experience and demonstrable commitment to the values of the Constitution the candidate's appointment would send a positive message to the community at large.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Nabuvax (Pty) Ltd and Others v City of Tshwane Metropolitan Municipality and Others (31875/13) [2013] ZAGPPHC 181; [2013] 3 All SA 528 (GNP) (2 July 2013)

Pretorius and Another v Transport Pension Fund and Another (CCT95/17) [2018] ZACC 10; [2018] 7 BLLR 633 (CC); 2018 (7) BCLR 838 (CC); (2018) 39 ILJ 1937 (CC) (25 April 2018)

Quick Drink Co (Pty) Ltd and Another v Medicines Control Council and Others (64056/2014) [2014] ZAGPPHC 904; 2015 (5) SA 358 (GP) (11 November 2014)

Rahube v Rahube and Others 2018 (1) SA 638 (GP)

S S v V V S (CCT247/16) [2018] ZACC 5; 2018 (6) BCLR 671 (CC) (1 March 2018)

African Development Bank v Nseera; In re: Nseera v Nseera (A479/2017) [2018] ZAGPPHC 672; [2018] 3 All SA 646 (GP) (15 June 2018)

Afriforum and Another v Chairperson of the Council of the University of Pretoria and Others (54451/2016) [2016] ZAGPPHC 1030; [2017] 1 All SA 832 (GP) (15 December 2016)

BS v MS 2015 (6) SA 356 (GP)

KT v MR 2017 (1) SA 97 (GP)

Maluka v S (A197/2013) [2014] ZAGPPHC 862; 2015 (2) SACR 273 (GP) (31 October 2014)

Ex parte WH and others 2011 (6) SA 514 (GNP) D

First National Bank, A Division of Firstrand Bank Ltd v Clear Creek Trading 12 (Pty) Ltd 2014 (1) SA 23 (GNP)

Gallagher Group Ltd v IO Tech Manufacturing (Pty) Ltd 2014 (2) SA 157 (GNP)

GF v SH 2011 (3) SA 25 (GNP)

Helen Suzman Foundation v Judicial Service Commission 2018 (4) SA 1 (CC)

Heritage Hill Homeowners' Association v Heritage Hill Devco (Pty) Ltd 2013 (3) SA 447 (GNP)

Investec Bank Ltd v Adriaanse and Others NNO 2014 (1) SA 84 (GNP)

Section 27 And Others v Minister of Education 2013 (2) SA 40 (GNP)

South African National Defence Union v Minister of Defence 2012 (4) SA 382 (GNP)

Tasima (Pty) Ltd v Department of Transport 2013 (4) SA 134 (GNP)

Unreported decisions

Mpotseng Infrastructure v Phetla (24791/2015) [2018] ZAGPPHC 466 (12 April 2018)

Msawu v S (A832/2013) [2014] ZAGPPHC 739 (9 September 2014)

Murrell and Another v Minister of Safety and Security (24152/2008) [2010] ZAGPPHC 580 (2 February 2010)

Mysleep (Pty) Ltd v Esterhuizen (12162/2018) [2018] ZAGPPHC 465 (2 May 2018)

National Union of Metal Workers of South Africa v Wilro Supplies CC and Another (34446/2015) [2015] ZAGPPHC 1146 (24 June 2015)

Ndlovu v Minister of Police and Another (30007/2013) [2015] ZAGPPHC 143 (4 March 2015)

Nombiba v S (A82/2014) [2014] ZAGPPHC 601 (23 July 2014)

Patel N.O. obo K.M. v Road Accident Fund (74647/2010) [2014] ZAGPPHC 188 (3 April 2014)

Premier Foods (Pty) Ltd v Manoim NO and Others (38235/2012) [2013] ZAGPPHC 236 (2 August 2013)

Road Accident Fund v Mashala (A474/2012) [2014] ZAGPPHC 554 (25 July 2014)

Robert Bosch Retirement Benefit Fund v Kooverjie N.O. and Others (59231/2012) [2013] ZAGPPHC 455 (3 December 2013)

S and Another v Road Accident Fund (19993/2013) [2014] ZAGPPHC 1028 (12 December 2014)

S v Bhiya (A820/15) [2015] ZAGPPHC 889 (5 November 2015)

S v Kganyago (A124/2012) [2012] ZAGPPHC 28 (2 March 2012)

S v Mokgotlane (A718/14) [2014] ZAGPPHC 729 (30 September 2014)

S v S (A74/14, A395/15, 06/2014) [2015] ZAGPPHC 520 (11 June 2015)

Absa Bank Limited v Adam; Absa Bank v Adam and Others (42823/2013; 42824/2013) [2016] ZAGPPHC 1000 (24 November 2016)

Adegbuyi v Firstrand Bank Limited and Others (19958/2014) [2016] ZAGPPHC 703 (16 August 2016)

Beach v Road Accident Fund (53528/2009) [2014] ZAGPPHC 128 (20 March 2014)

Beaux Lane (S.A.) Properties Limited v The Minister of Public Works (A647/2015) [2016] ZAGPPHC 679 (28 July 2016)

Bekker v Janse Van Rensburg (61332/2012) [2014] ZAGPPHC 709 (23 September 2014)

Board of Healthcare Funders v Discovery Health Medical Scheme and Others (35769/2010) [2012] ZAGPPHC 65 (15 May 2012)

Bonthuys and Another v Potgieter and Others (16760/2014) [2014] ZAGPPHC 170 (3 April 2014)

Brandaline v Minister of Defence and Military Veterans and Others (25801/2016) [2017] ZAGPPHC 322 (27 June 2017)

Brick on Brick Property Investments 23 (Pty) Ltd v Chevron South Africa (Pty) Ltd (6412/2013) [2013] ZAGPPHC 400 (3 December 2013)

Business Partners Ltd v Silver Stars Trading 245 CC and Another (14408/2008) [2012] ZAGPPHC 76 (15 May 2012)

Cash Crusaders Franchising (Pty) Ltd v Swart and Another (85149/2017) [2018]
ZAGPPHC 756 (27 February 2018)

Cash Paymaster Services (North West) (Pty) Ltd v South African Social Security Agency (6406/2011) [2011] ZAGPPHC 190 (13 September 2011)

Chiura and Another v Absa Bank Limited and Others (20740/2013, 7580/2007, 1730/2013) [2014] ZAGPPHC 973 (12 November 2014)

Citiconnect Business Solutions v City Manager of the City of Tshwane Metropolitan Municipality N.O. and Others (82542/2014) [2015] ZAGPPHC 115 (4 March 2015)

City of Tshwane Metropolitan Municipality v Nndwa (A762/2013) [2014]
ZAGPPHC 737 (12 September 2014)

D v D (55507/2012) [2016] ZAGPPHC 368 (16 May 2016)

Democratic Alliance v Municipal Demarcation Board and Others (70915/2015)
[2015] ZAGPPHC 1090 (6 November 2015)

Derby-Lewis v Minister of Veiligheid en Sekuriteit (20193/2004) [2014] ZAGPPHC
587 (14 August 2014)

Djuma and Others v S (A423/2015) [2017] ZAGPPHC 309 (12 April 2017)

Dludlu v S (A858/2013) [2013] ZAGPPHC 7 (17 January 2013)

Letsoalo v Letsoalo; In Re: Letsoalo v Letsoalo (A116/2014) [2014] ZAGPPHC 738

Ley v Xstrata Coal South Africa (Pty) Limited (38012/2013) [2015] ZAGPPHC 428
(19 May 2015)

Lisbon Estates (Pty) Ltd v Mokoena N.O. (39602/2013) [2015] ZAGPPHC 194 (4 March 2015)

Lombard v Okhionks (46878/2012) [2013] ZAGPPHC 486 (18 December 2013)

Lombard v Okhionks (46878/2012) [2013] ZAGPPHC 384 (18 DECEMBER 2013)

Long Beach Homeowners Association v Great Kei Municipality, Amotole District, Eastern Cape (28064/2014) [2016] ZAGPPHC 610 (26 APRIL 2016)

Loni v Member of the Executive Council, Department of Health, Eastern Cape Bhisho (CCT54/17) [2018] ZACC 2; 2018 (3) SA 335 (CC)

M v L, D v B (A379/16, A380/16) [2016] ZAGPPHC 415 (9 June 2016)

Madise v Maswikeng Transport CC (22250/2018) [2018] ZAGPPHC 435 (18 May 2018)

Martycel Properties CC V Slip Knot Investments 777 (Pty) Ltd; In Re: Slip Knot Investments 777 (Pty) Ltd v Martycel Properties CC (55004/2012) [2016] ZAGPPHC 1214 (6 December 2016)

Matabane v S (A157/2013) [2017] ZAGPPHC 269 (12 APRIL 2017)

Matlala v Minister of Police (6578/2012) [2015] ZAGPPHC 136 (4 March 2015)

Maxime Hotel (Pty) Ltd and Another v Chairperson: National Gambling Board N.O (70868/2012) [2014] ZAGPPHC 121 (20 March 2014)

Mbombela Local Municipality v The Premier, Mpumalanga Province (47407/2015) [2016] ZAGPPHC 674 (28 July 2016)

Eskom Holdings Soc Limited v National Energy Regulator of South Africa
(74870/2019) [2020] ZAGPPHC 2 (10 February 2020)

Solidarity Obo Members v Minister of Small Business Development; Afriforum v Minister of Tourism (21314/20; 21399/2020) [2020] ZAGPPHC 133 (30 April 2020)

Freedom Front Plus v President of the Republic of South Africa (22939/2020) [2020] ZAGPPHC 266; [2020] 3 ALL SA 762 (GP) (6 July 2020)

Helen Suzman Foundation v Speaker of The National Assembly (32858/2020) [2020] ZAGPPHC 574 (5 October 2020)

Judgments upheld on appeal

Rahube v Rahube and Others (CCT319/17) [2018] ZACC 42; 2019 (1) BCLR 125 (CC) (30 October 2018)

Maxime Hotel (Pty) Ltd and Others v The Chairperson: National Board NO and Others [2017] ZAGPPHC 648 (2 June 2018)

Heritage Hills Homeowners Association v Heritage Hill Devco (Pty) Ltd 2016 (2) SA 387 (GP)

Du Preez v Tonel Props (Pty) Ltd 2015 JDR 2079 (SCA)

Local Municipality of Madibeng v Paphiri Business Enterprise CC 2014 JDR 1077 (SCA)

Adriaan W de Meyer Property v Competence Management (Pty) Ltd [2015] ZAGPPHC 1059

Friend v Senekal 2015 (1) SA 395 (GP)

Judgments overturned on appeal

Premier Foods (Pty) Ltd v Manoim NO and Others 2016 (1) SA 445 (SCA)

Brouze and Others v Wenneni Investment (Pty) Ltd and Another 2015 (4) All SA
543 (SCA)

S v Musiker 2013 (1) SACR 517 (SCA)

Business Partners Limited v Silverstar Trading 245 CC 2015 JDR 0728 (SCA),
[2015] ZASCA 62 (17 April 2015)

De Haas v Fromentin and Others 2013 (6) SA 621 (SCA)

First National Bank v Clear Creek Trading 12 (Pty) Ltd and Another [2015] ZASCA
6 (9 March 2015)

*Long Beach Homeowners Association v Department of Agriculture, Forestry, and
Fisheries and Another* 2018 (2) SA 42 (SCA)

Tshwane City v Union Woningen (Pty) Ltd 2016 (2) SA 247 SCA