

APPLICANT: ADVOCATE STEVEN KUNY SC

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

1 The candidate's appropriate qualifications

1.1 BA, Wits (1982); and

1.2 LLB, Wits (1985).

1.3 The candidate is appropriately qualified.

2 Whether the candidate is a fit and proper person

2.1 Save as follows, there is nothing in the candidate's application or judgments to suggest that the candidate is not a fit and proper person.

2.2 The candidate has stated in his application that a complaint was made against him to the Johannesburg Society of Advocates (JSA) in December 2020. At the time of submission of this review, the JSA's professional committee has not yet determined whether the complaint justifies the institution of formal disciplinary proceedings.

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 approximately 28 years, three of them as senior counsel.

4.2 The candidate states that his practice as an advocate spans the following diverse areas of law: constitutional, administrative, human rights, commercial, contractual, company, insolvency, medical negligence, delict, employment, family, construction and criminal law.

4.3 The candidate's judgments reveal a sound knowledge of the law, both of legal principles and essential precedents, and extensive knowledge in numerous areas of law.

4.4 The candidate's experience in criminal law as a Public Defender makes him a particularly well-rounded candidate.

4.5 The candidate states, specifically, that constitutional law is inextricably intertwined with the type of law that he practices citing his appearance as counsel in *DE v RH* 2015 (5) SA 83 (CC), which abolished the delict of adultery.

4.6 Therefore, the candidate has sufficient knowledge of the law, including constitutional law.

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

5.1 The candidate has been a member of the executive of Advocates for Transformation (“AFT”) since 2017.

5.2 The candidate has undertaken *pro bono* work as counsel.

5.3 In *Khati and Another v Khati and Others* (11183/2016) the candidate, whilst acting, heard a matter concerning a familial property dispute. In the judgment, the candidate specifically discussed the Blacks (Urban Areas) Consolidation Act, referring to it as “*part of a web of discriminatory legislation that controlled land ownership and the rights of black persons to be and live in prescribed areas. The Act was a pillar of the system of influx control and it contained the repugnant section 10(1) which restricted the right of black persons to remain in so-called white areas*” (paragraph 4).

5.4 The candidate has demonstrated his commitment to the values of the constitution.

6 Whether any judgments have been overturned on appeal

6.1 No judgments have been found.

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

7.1 The candidate served his articles at Bowman Gilfillan from 1988 to 1990 and practised as an attorney for a short period.

- 7.2 In 1992, the candidate was appointed as a Public Defender under the auspices of the Legal Aid Board attached to the Johannesburg Magistrates' Court.
- 7.3 The candidate subsequently undertook pupillage and became a member of the JSA in 1993.
- 7.4 The candidate was also appointed as a Small Claims Court Commissioner in 1996, and as a part-time Commissioner of the CCMA in 1998.
- 7.5 The candidate has acted for a total of 25 weeks in the Gauteng High Court, sitting in both provincial and local divisions. The candidate gained experience during this period in unopposed and opposed motions, criminal and civil appeals, civil trials, criminal reviews, admissions, and striking-off applications.
- 7.6 The candidate has not acted in the criminal trial court. That said, due to his experience in criminal law as an attorney and advocate, he appears to be well-versed in criminal law. This is further demonstrated in his criminal appeal judgments.
- 7.7 The candidate accordingly has extensive experience in court practice.

8 The candidate's linguistic and communication skills

- 8.1 The candidate states that he is fluent in English and Afrikaans and has a basic understanding of South Sotho.
- 8.2 The candidate's judgments demonstrate that he is proficient in the English language.

9 The candidate's ability to produce judgments promptly

9.1 The candidate's judgments reveal that no judgment has been given later than approximately three months after the hearing. Some of the judgments have been within a month of the matter being heard. This shows that the candidate was well prepared in those matters and understood the issues and the law.

9.2 The candidate produces judgments promptly.

10 The candidate's fairness and impartiality

10.1 The candidate's judgments illustrate that whilst each party is given an opportunity to be heard, the candidate is decisive and is able to render a clear and justified judgment.

10.2 There is nothing in the candidate's judgments to suggest otherwise, nor have any adverse comments been received.

11 The candidate's independent mindedness

11.1 The candidate's judgments illustrate that the candidate is independently minded.

11.2 No adverse comments have been received.

12 The candidate's ability to conduct court proceedings

12.1 The candidate's judgments illustrate that the candidate is able to aptly conduct court proceedings.

12.2 No adverse comments have been received.

13 The candidate's administrative ability

13.1 The candidate has held a number of leadership positions whilst practising, including an executive position at AFT, and as a member of the LPC's Disciplinary and Investigating Enquiries Committee.

13.2 Therefore, the candidate can clearly manage his numerous duties sufficiently.

13.3 There is nothing in the candidate's judgments to suggest otherwise, nor have any adverse comments been received.

14 The candidate's reputation for integrity and ethical behaviour

14.1 There is nothing in the candidate's judgments to suggest that he does not have integrity or act ethically, nor have any adverse comments been received.

15 The candidate's judicial temperament

15.1 In the judgment of *Emerald Terrace ShareBlock v Kosmosdal Ext 61 and Another* (6758/2018), the candidate allowed the Counsel briefed to note the judgment on behalf of the respondent to obtain instructions from his briefing attorney before judgment was handed down on an issue of supplementary heads of argument. This incident illustrates that the candidate has a careful 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 was one of the first public defenders in a post-democratic society tasked with developing South Africa's law under its new constitution.

16.2 The candidate was also a paralegal for a short period at the Legal Resources Centre, a renowned public interest centre.

16.3 The candidate's membership of AFT and the matters in which he has acted *pro bono*, demonstrate that he is committed to human rights.

16.4 The candidate also acted in the case of *DE*, referred to above, which abolished the paternalist legal treatment of adultery as a delict, in terms of which women had been viewed as the property of men.

16.5 Moreover, the candidate has sat as a Small Claims Commissioner (which is unpaid and voluntary) and part-time CCMA commissioner, devoting his time to the matters of the general public and improving access to justice.

16.6 The candidate has mentored nine junior counsel, all black save for one pupil who was a white woman. The candidate states that most of the juniors he has led have also been black counsel.

16.7 Therefore, the candidate has demonstrated that he is committed to human rights and the needs of the community.

17 The candidate's potential

17.1 The candidate has demonstrated that he has more than sufficient experience and expertise, both as counsel and as an acting judge, to be recommended for permanent appointment to the bench.

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

18.1 The candidate's appointment would send the message that the Bench is populated with legal practitioners who have, in addition to pursuing distinguished careers at the Bar, also devoted their time to other endeavours in contribution to the project of a just society.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Balkan Energy Ltd and Another v Government of Ghana 2017 (5) SA 428 (GJ)

S v Mathe 2017 (2) SACR 63 (GJ)

S v Mukuyu 2017 (2) SACR 27 (GJ)

S v Mokgalaka 2017 (2) SACR 159 (GJ)

Unreported decisions

RM Middleton v ER Consulting Inc (2014/27808)

Emerald Terrace Shareblock v Kosmosdal Ext 61, Ext 62 Homeowners Association
(6758/2018)

Khati and Others v Khati and Others (11183/2016)

Masande Environmental Health and Safety Consultants CC v City of Johannesburg
(A50412014)

Lund v Magistrate B Roux and Others (40699/18)

Salojee and Another v The Unlawful Occupiers of Erf 10792 and Another
(10410/2019)

Prinsloo and Another v Ferreira and Another (A3060/2020)

Ibyisi v Body Corporate of Unicadia (37975/12) [2018] ZAGPPHC 281 (18 April
2018)

Strydom NO and Others v Bennet NO and Others (53908/2016) [2019] ZAGPPHC
432 (18 September 2019)

S v Sebofi 2016 JDR 2148 (GJ)