

APPLICANT: DR JAMES DUMISANI LEKHULENI

**COURT FOR WHICH CANDIDATE APPLIES: WESTERN CAPE
DIVISION OF THE HIGH COURT OF SOUTH AFRICA**

1. The candidate's appropriate qualifications

- 1.1. BProc (Limpopo) 1991;
- 1.2. LLM (Pretoria) 2004;
- 1.3. LLB (Limpopo) 2008;
- 1.4. LLD (Western Cape) 2012;
- 1.5. LLM (Pretoria, family law) 2016.

2. Whether the candidate is a fit and proper person

- 2.1. The candidate's record appears to render him fit and proper as he is appropriately qualified and is in good standing with the relevant law bodies, including the Magistrates Commission and the Association of Regional Magistrates of South Africa.

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

- 3.1. The candidate is a black African man. His appointment would help reflect the racial composition of South Africa

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

- 4.1. The candidate's application and judgments show that he is deeply committed to upholding the values of the Constitution.
- 4.2. In *S v KD 2021 (1) SACR 675 (WCC)*, the candidate emphasised the importance of the constitutional rights of children not to be detained except as a measure of last resort.
- 4.3. In *School Governing Body Paarlzicht Primary School v MEC for Education Western Cape and Others* [2021] 2 All SA 241 (WCC), in dismissing a review application, the candidate ordered each party to pay its own costs in accordance with the *Biowatch* rule.
- 4.4. In *African Transformation Movement v Speaker of the National Assembly and Others* [2021] 2 All SA 757 (WCC), the candidate had to consider and decide a range of complicated constitutional issues, including whether the issue before the Court was within the exclusive jurisdiction of the Constitutional Court, and whether the Speaker of the National Assembly's decision to hold an open ballot motion of no confidence in the President was lawful.
- 4.5. In *Nedbank Limited v Braganza Pretorius Belleggings (Pty) Ltd and Others* (8343/2020) [2020] ZAWCHC 170 (1 December 2020), the candidate interpreted Rule 32(3)(b), so as to permit a defendant to supplement their answering affidavit in summary judgment proceedings with oral evidence, with reference to the interpretative injunction to interpret legislation in accordance with the "*constitutional imperatives envisaged in section 34 of the Constitution*" (para 11).

4.6. In various criminal matters, the candidate emphasised the importance of fair trial rights of the accused.

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

5.1. From his written judgments, it is clear that the candidate has a good knowledge of constitutional law, ranging from the Bill of Rights to the powers of the Speaker of Parliament.

5.2. The candidate refers to two reported judgments dealing with the judicial review of administrative action.

5.3. While the candidate appears to have more limited experience in commercial law, in the *Steyn* matter the candidate was required to consider and apply principles of insurance law.

5.4. The candidate has also written judgments dealing with private law issues, including the law of succession (see *Segal and Another v Master of the High Court Cape Town and Others* (145/19) [2020] ZAWCHC 144 (22 October 2020)).

5.5. During the candidate's lengthy career in the legal profession, he has continued his formal education, acquiring multiple post-graduate qualifications in a wide range of different legal areas. The candidate holds a doctorate in labour law.

5.6. The candidate has extensive experience in criminal law, both as a practitioner and a presiding officer – the candidate was appointed a permanent Regional Magistrate in 2013.

6. Whether any judgments have been overturned on appeal

6.1. None of the candidates' judgments has been overturned on appeal.

6.2. The candidate notes that appeals against his judgments in *Steyn* and *African Transformative Movement* are pending.

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

7.1. As noted above, the candidate has been a permanent Regional Magistrate since 2013.

7.2. He has recently been an Acting Judge of the High Court.

7.3. Before joining the Magistracy, the candidate ran his own practice as an attorney. He previously held positions as a legal advisor and was a prosecutor for three years.

7.4. The candidate was also appointed as a reserve Military Judge and has presided as the Chairperson of disciplinary hearings of other Magistrates.

8. The candidate's linguistic and communication skills

8.1. The candidate has a good command of English.

9. The candidate's ability to produce judgments promptly

9.1. The candidate does not report having any outstanding judgments.

9.2. Members reported that the candidate handed down judgments promptly.

10. The candidate's fairness and impartiality

10.1. Members experience the candidate as even-handed.

11. The candidate's independent mindedness

11.1. There is nothing on record to cause concern about the candidate's independent mindedness.

12. The candidate's ability to conduct court proceedings

12.1. Members reported that the candidate was properly prepared for opposed motion hearings and engaged with legal points.

12.2. No adverse comments have been received about the candidate's conduct of other proceedings.

13. The candidate's administrative ability

13.1. There is nothing on record to suggest that the candidate lacks sufficient administrative capabilities.

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

14.1. The candidate is of good repute.

15. The candidate's judicial temperament

15.1. The candidate is even handed and has a good temperament.

16. The candidate's commitment to human rights, and experience with regard to the values and needs of the community

16.1. As set out above, the candidate is evidently committed to upholding human rights. Almost all his judgments engage with the implications of his interpretation and application of the law on human rights.

16.2. The candidate has given up his time to preside in mock trials for students, and to train aspirant Regional Magistrates.

17. The candidate's potential

17.1. The candidate has the potential to develop into a good judge.

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

18.1. That South Africa is committed to advancing the representation of black judges.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

S v KD 2021 (1) SACR 675 (WCC)

Steyn v Registrar of Medical Aid Schemes 2021 (3) SA 551 (WCC)

School Governing Body Paarlzicht Primary School v MEC for Education Western Cape and Others [2021] 2 All SA 241 (WCC)

African Transformation Movement v Speaker of the National Assembly and Others [2021] 2 All SA 757 (WCC)

Unreported decisions

Nedbank Limited v Braganza Pretorius Belleggings (Pty) Ltd and Others (8343/2020) [2020] ZAWCHC 170 (1 December 2020)

Segal and Another Master of the High Court Cape Town and Others (145/19) [2020] ZACHC (22 October 2020)

Davids and Another v Hassam (A193/20) [2020] ZAWCHC (16 November 2020)

S v Rossouw (C1053/2019) [2021] ZAWCHC 54 (24 March 2021)

S v Pedro (A236/2020) [2021] ZACHC 64 (15 April 2021)

S v Masabeni and Another (266/20) [2021] ZAWCHC 84 (5 May 2021)

S v Vanta and Another (A71/21, A43/21) [2021] ZAWCHC 96 (14 May 2021)

Judgments upheld on appeal:

None.

Judgments overturned on appeal:

None.