

APPLICANT: MR NHLANHLA SNOWY MASANGO

**COURT FOR WHICH APPLICANT APPLIES: MPUMALANGA DIVISION
OF THE HIGH COURT, MBOMBELA & MIDDELBURG**

1. The candidate's appropriate qualifications

1.1 The candidate is duly qualified, having obtained the following degrees:

1.1.1. Bachelor of Law (University of Zululand),1990.

1.1.2. LLB (University of Zululand),1992.

2. The candidate is experienced in the law, having worked as

2.1. Public prosecutor. It is unclear as to when the candidate commenced his duties as a public prosecutor. The candidate's employment history is set out in his CV. It appears, however, that the portions of his CV pertaining to his appointment as a prosecutor are not attached.

2.2. District Magistrate: Nsikazi Magistrates Court, Mpumalanga (01/07/1996 - 31/08/2020).

2.3. Regional Magistrate: Mkhondo, Mpumalanga (01/09/2020- Present).

2.4. Acting Judge, appointed at the Gauteng Division of the High Court during the following periods:

2.4.1. 19/08/2013 – 20/09/2013

2.4.2. 29/01/2018 – 09/02/2018

2.4.3. 26/02/2018 – 30/03/2018

2.4.4. 08/10/2018 – 14/12/2018

3. Whether the candidate is a fit and proper person

3.1. It appears that the applicant is a fit and proper person. This is evidenced by the following:

3.1.1. The certificate of good standing issued by the Magistrates Commission of the Republic of South Africa (“the Magistrates Commission”).

3.2. The confirmation that there are not:

3.2.1. Complaints or disciplinary proceedings pending against the candidate in his professional capacity;

3.2.2. Criminal or civil litigation pending against the candidate.

3.3. The confirmation by the candidate that:

3.3.1. There are no circumstances, financial or otherwise, known to him which may cause him embarrassment in undertaking the office of a Judge.

3.3.2. The candidate has not been convicted of any offence involving dishonesty, violence or any other disreputable dishonourable conduct.

3.3.3. There is no criminal or civil litigation pending against the candidate.

3.3.4. No legal professional body has ever found him guilty of any unprofessional or disgraceful conduct.

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

4.1. The candidate is an African man and his appointment will make a positive contribution towards the transformation of the judiciary in reflecting the racial and gender composition of South Africa.

4.2. Considering the current racial and gender compositions in the Divisions of the High Court to which the candidate applies for appointment, compared to the gender and racial compositions in South Africa, the Commission's attention is directed to the following considerations:

4.2.1. In respect of the Gauteng Division (Pretoria and Johannesburg), the candidate **will** make a positive contribution towards transformation of the judiciary in reflecting the racial and gender composition of South Africa.

4.2.2. In the Mpumalanga Division, it appears that the appointment of the candidate **will not** make a positive contribution towards transformation of the judiciary in reflecting the gender composition of South Africa. This is apparently so, because currently there are already more men than women judges in the Mpumalanga Division. The candidate's appointment will accordingly not address gender inequality.

4.3. The aforesaid facts nevertheless do not render the candidate ineligible for appointment.

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

5.1. The candidate is experienced in the law, having been appointed and having worked in the following capacities:

5.1.1. Public Prosecutor (*Period of service not provided*).

5.1.2. District Magistrate [Twenty-four (24) years].

5.1.3. Regional Magistrate [One (1) year].

5.1.4. Acting Judge of the Gauteng Division of the High Court on 4 occasions, respectively in the years 2013 and 2018.

5.1.5. As Magistrate both at the District and Regional Courts he presided over matters dealing with civil and criminal law.

5.1.6. As appointed acting Judge the candidate also presided over matters dealing with both civil law and criminal law.

5.2. On the available information, the candidate has significant experience in the adjudication of litigation by virtue of his appointment as a Magistrate for the past 25 years.

5.3. The candidate indicates that 80% of his work entails criminal litigation, 20% administrative law and 40% constitutional law. It is difficult to accurately understand the figures provided.

5.4. The candidate states that he has presided over matters relating to personal injury, intellectual property and matrimonial law. They do not include constitutional law.

5.5. The candidate states that about “40% of my work for every litigation involve the constitutional rights of the parties.” No further particulars are provided in respect of the candidate’s constitutional law experience. Save for this statement (appearing at paragraph 6.2.3, page 9 of the bundle of the submission) no facts are furnished from which it can be gleaned that the candidate is experienced in constitutional law.

5.6. It is difficult to accurately glean from the application precisely what the extent of the candidate’s “knowledge of the law” is - given the limited scope of the information provided. The only available reference to determine the candidate’s knowledge of the law is the sample of judgements delivered by the candidate. Regard being had to the sample of judgments included in the candidate’s submission to the Commission, the following observations are made:

5.6.1. The candidate appears to have an acceptable command of the English language.

5.6.2. The candidate evidently is much better versed and experienced in criminal law than in civil law.

5.6.3. Fairly considered, the candidate’s judgments concerning civil law do not display a sufficiently broad understanding of the civil law or a satisfactory level of analytical and logical reasoning. In this regard there appears to be an unsatisfactory degree of logical structure and command of the law in the judgments. The Whitehead-judgment serves as an example in this regard. The first paragraph contains several statements comprising of law and facts without any apparent link between them. Also, it is nearly

impossible to determine what the material facts of the matter were until much later in the judgment. In addition, the candidate's use of legal terminology in the civil law appears to be wanting. In the Whitehead-judgment the following incorrect phraseology was used: "...a Mortgage bond was registered against the property with (ABSA) the fourth respondent"; "The mortgage bond fell into arrears"; "The property was executed...". The SCA ultimately decided the Whitehead-matter on principles entirely different to those which were referred to and considered by the candidate.

5.7. Having made these observations, an analysis of the judgments evinces that the outcome of the judgments are in conformity with the reasons set out therein. Whilst the candidate's approach to dealing with issues of law and fact may require further refinement and guidance, ultimately, the candidate should be able to apply substantive and procedural law to the material facts of disputes.

6. The candidate's commitment to the values of the Constitution

6.1. No particulars are provided from which it can be deduced that the candidate is committed to the values of the Constitution.

7. Whether any of his / her judgments have been overturned or upheld on appeal

7.1. The candidate refers to one judgment that was upheld on appeal.

7.2. The matter upheld on appeal is not identified in the candidate's application, but it appears that the case referred to is *Whitehead v*

Trustees, Insolvent Estate of Dennis Charles Riekert 2020 JDR 2098 (SCA).

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

- 8.1. The candidate has significant experience in the adjudication of legal disputes by virtue of his appointment as a Magistrate for the last 25 years.
- 8.2. The candidate appears to have particular experience in criminal litigation, given that he states this involves 80% of the matters over which he presides.
- 8.3. It is unclear, on the information provided to us, what the extent and breadth of the candidate's experience in the sphere of civil law is.
- 8.4. It is unclear, on the information provided to us, what constitutional law experience, if any, the candidate has.

9. The candidate's linguistic and communication skills

- 9.1. It is evident from the manner in which the candidate drafted his judgments that the candidate is proficient in the English language and possesses adequate written communication skills.

10. The candidate's ability to produce judgments promptly

- 10.1. We are unable to comment meaningfully on the candidate's ability to produce judgments promptly. The hearing dates of the various judgments relied upon are not provided.
- 10.2. There are no indications of any outstanding judgments.

10.3. The candidate discloses that there is only one matter that was partly heard. No further particulars are provided.

11. The candidate's fairness and impartiality

11.1. On the information provided, there are no reservations or concerns regarding the candidate's impartiality and fairness.

12. The candidate's independent mindedness

12.1. On the information provided, there are no reservations or concerns regarding the candidate's independent mindedness.

13. The candidate's administrative ability

13.1. There are no particulars provided by the candidate in relation to his administrative abilities. It is not possible to comment meaningfully on this aspect.

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

14.1. On the information provided, there is no reason to doubt the candidate's integrity. No facts are furnished or could be established that directs to an opposite conclusion.

14.2. Noteworthy is that the Magistrates Commission has issued a letter of good standing in respect of the candidate.

15. The candidate's judicial temperament

15.1. There is no information provided upon which we can assess the candidate's judicial temperament.

15.2. It is to be mentioned that no indication could be found of any complaints or negative comments in relation to this issue.

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

16.1. The candidate has not provided any particularity on these aspects.

17. The candidate's potential

17.1. The candidate demonstrates potential to contribute to the judiciary, having regard to his experience relating to the adjudication of litigation.

17.2. The candidate appears to have significant experience in criminal law.

17.3. It is to be considered as a relevant factor that the candidate is 61 years of age and has been serving as a presiding officer for 25 years.

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

18.1. If the candidate is appointed, it will convey to the community at large that the judiciary:

18.1.1. Is prioritising transformation; and

18.1.2. Consists of judges that are experienced in the adjudication of disputes.

18.2. There is nothing in the candidate's submission which demonstrates that as an aspirant judge, he is involved and understands the needs of the community.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Renette Whitehead v Trustees of the insolvent estate of Dennis Charles Riekert: Case number 2070/17(High Court)

Sibanyoni Boerdery (PTY) LTD v Minister of the Department of Rural Development and land Reform.

S v Thulane Hezekia Mthetwa PSH177/19

Boyakie Silvesta Khoza v Minister of Police: case 3320/16

Unreported decisions

No other unreported decisions could be found.

Judgments upheld on appeal

Renette Whitehead v Trustees of the insolvent estate of Dennis Charles Riekert
[2020] ZASCA 124.

Judgments overturned on appeal

No judgments overturned on appeal could be located.