

APPLICANT: ADVOCATE CASSIM ISMAIL MOOSA

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

1. The candidate's appropriate qualifications

- 1.1. The candidate holds the degrees of Bachelor of Arts (BA. (Law)) and Bachelor of Laws (LLB) having obtained same from the University of Durban Westville in 1987 and 1990, respectively.
- 1.2. The candidate also obtained the following diplomas and/or certificates,
 - 1.2.1. Certificate for Prosecutors (Justice College – 1991);
 - 1.2.2. Diploma in Alternative Dispute Resolution (cum laude) (University of Pretoria – Arbitration Foundation of South Africa – 2005);
 - 1.2.3. Certificate in Labour Arbitrations (Arbitration Foundation of South Africa – 2005);
 - 1.2.4. Certificate in Divorce Mediation (Arbitration Foundation of South Africa – 2005);
 - 1.2.5. Postgraduate Diploma in Labour Law (University of Johannesburg – 2006); and
 - 1.2.6. Certificate in Conveyancing Practice (LEAD – 2008).

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 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. 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 an Indian man.

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

4.1. The candidate was appointed to Chatsworth Magistrate's Court as a State Prosecutor in 1988 and in 1991 the candidate was transferred to the Durban Magistrate's Court to serve as Control Prosecutor in the Juvenile and Regional Court.

4.2. The candidate was in 1992 appointed at the Office of the Attorney General, Durban as a State Advocate, in which capacity the candidate states he prosecuted complex and difficult matters in the High Court of

South Africa. The candidate was the first Indian man in South Africa to be appointed as State Advocate.

4.3. The candidate was admitted as an Advocate of the High Court of South Africa on 5 January 1993.

4.4. Ex facie the candidate's curriculum vitae, the candidate further states that he represented the State in *S v Sefadi* 1994 (2) SACR 667, during his tenure as State Advocate. The candidate mentions this as a landmark case, in which the erstwhile Chief Justice – the Honourable S Ngcobo – appeared as defence counsel. This case ostensibly pertained to issues of Constitutional rights and interpretation thereof, as well as questions of professional ethics.

4.5. The candidate resigned as a State Advocate in 1996. The candidate thereafter practiced for his own account, as counsel, from 1997, onwards.

4.6. The candidate has extensive criminal law experience and ostensibly is familiar with criminal procedure, and the proper approach thereto.

4.7. Ex facie the candidate's curriculum vitae:

4.7.1. The candidate further states he has “appeared in a broad range of matters”, and that he has been “briefed in criminal, civil, labour, family and commercial matters” as well as Motion Court and land claims-related matters;

4.7.2. The candidate states he has “appeared regularly in all the Courts, save for the Constitutional Court”; and

4.7.3. The candidate estimates the proportions of litigation in which he has been involved to be as follows:

4.7.3.1. 50% Criminal law,

4.7.3.2. 5% Administrative law,

4.7.3.3. 5% Constitutional law

4.7.3.4. 10% Labour

4.7.3.5. 30% of the balance of the candidate's experience is made up by Family, Commercial, Liquidations and Sequestrations, Tax and Alternative Dispute Resolution matters.

4.8. The 'range of matters' in which the candidate has ostensibly appeared includes criminal matters (e.g., *S v Sefadi, supra*), labour law matters (for the City of Johannesburg), complex auditing and forensic investigations (for the City of Johannesburg), disciplinary hearings of Johannesburg Metropolitan Police Department employees, complex commercial matters (such as, on behalf of *Nokia Siemens Networks SA v FNI Telecommunications Infrastructure (Pty) Ltd*) and others.

4.9. The candidate appears to have additional relevant quasi-judicial experience, acting as chairperson or, in other cases, evidence leader in disciplinary enquiries for the City of Johannesburg, the Prosecutor – Student Disciplinary Committee of the University of Johannesburg, and as current and incumbent Chairperson of the Ethics Committee of the Magistrate's Commission.

- 4.10. The candidate also dealt with matters in various fields of law during the periods of his appointment as an acting Judge of the Gauteng Division of the High Court, inter alia, Criminal law matters (whether as Court a quo, or as Court of Appeal), a Review Application, Opposed Motion Proceedings, Contempt of Court, Foreclosure proceedings, Liquidations and Sequestrations, Judgments by default, Rescission of Judgment, Civil Trials, Contract Law, Family Law, Spoliation, Eviction, Interdict proceedings, Substituted Service, amongst others.
- 4.11. In his judgments, the candidate displays a reasoned and sympathetic approach to the litigants' plight but holds fast to the applicable legal principles. In doing so, the candidate displays an appreciation and deference to stare decisis and trite legal positions applicable to the disputes before him, whilst also recognising the transformative role of law in society and social issues.
- 4.12. Furthermore, and without being bound solely by the submissions of the parties' representatives, the candidate applies his mind independently, carefully and capably analysing and evaluating the evidence of witnesses (including expert witnesses) and discerning the key factual questions pertaining to the dispute.
- 4.13. In urgent matters, the candidate displays an appreciation of the need for robust determination of issues.
- 4.14. Although the candidate does not demonstrate extensive experience and exposure in constitutional law, the candidate's widespread and varied practice, encompassing nearly all fields of law, will serve the candidate well in adjudicating most matters.

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

- 5.1. The candidate has accepted several briefs wherein he acted *pro amico* on behalf of litigants.
- 5.2. The candidate reports that he was tasked with conducting complex investigations for the internal audit section of the City of Johannesburg, during which he uncovered fraud amounting to R13 000 000. Consequent to his findings, many corrupt officials within the City of Johannesburg were found guilty and dismissed, and the credibility of the institution restored.
- 5.3. The candidate also reports that he represented the Johannesburg Metropolitan Police Department in a disciplinary of five officers, who were charged with bribery and corruption in 1999. Despite physical threats to his person, the candidate lead evidence against the officers, who were ultimately dismissed.
- 5.4. Through his involvement in the drafting of submissions to the Portfolio Steering Committee on Justice in respect of the Legal Practice Bill, the candidate states that he has sought to increase access to justice for “the ordinary man on the street” in the context of criminal trials, by acting as a proponent for the concept of “trust – account advocates”. The proposal was favourably received and included in the Legal Practice Act 28 of 2014.
- 5.5. The candidate
 - 5.5.1. displays a commitment to the Constitution, through his prior professional life, involvement in voluntary associations and other

activities that show the candidate has a history of service to advancing the values of the Constitution; and

5.5.2. has demonstrated a commitment to the values of the Constitution and to the rule of Law.

6. Whether any judgments have been overturned on appeal

6.1. Only two judgments overturning decisions of the candidate have been found.

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

7.1. The candidate has been in the legal profession for more than 30 years. The candidate has practiced as an advocate for more than 23 years, with extensive experience in trial advocacy.

7.2. The candidate has been exposed to, and involved in, a wide variety of legal matters. Ex facie the candidate's application, he has appeared in Magistrate's Courts, various Divisions of the High Courts, the Supreme Court of Appeal, and alternative dispute resolution fora (by way of example, AFSA), as set out in the candidate's curriculum vitae.

7.3. The candidate has acted as Judge of the Gauteng Divisions and the Mpumalanga Division "since 2015 for a period of approximately 173 weeks". The candidate sits in both civil and criminal courts, as reflected in his application as well as the judgments handed down by the candidate.

7.4. The candidate has also been involved in quasi-judicial proceedings, in various different fora, having been involved in *quasi-judicial*

proceedings, as the Chairperson or the Evidence leader in Disciplinary enquiries, or as the Prosecutor in student disciplinary hearings and as the current and incumbent Chairperson of the Magistrate's Commission Ethics Committee. Additionally, the candidate was an instructor on behalf of LEAD at the Johannesburg School of Legal Practice, in respect of practice management.

- 7.5. The reviewing team finds no reason to not conclude that the candidate does have a broad and extensive professional experience that will stand him in good stead as a Judge of the High Court of South Africa.

8. The candidate's linguistic and communication skills

- 8.1. The candidate is able to read and write English and Afrikaans, is able to read and speak Urdu, is able to speak isiZulu and Gujarati, and is able to read Arabic.
- 8.2. The judgments of the candidate demonstrate that the candidate has excellent linguistic skills. No adverse comments regarding the candidate's communications skills were received.

9. The candidate's ability to produce judgments promptly

- 9.1. In most cases (save for two, where information was not fully and readily available), it appears that it takes the candidate in the range of between the same day, up to 21 court days from last date of hearing, for written judgment for be handed down and delivered.

10. The candidate's fairness and impartiality

- 10.1. There appears no indication the candidate is unfair or lacks impartiality in the judgments which have been delivered.
- 10.2. No adverse comments have been received.

11. The candidate's independent mindedness

- 11.1. There appears no indication the candidate does not apply his mind independently to the issues arising from matters which the candidate has adjudicated.
- 11.2. In the judgments of the candidate that have been made available, the candidate does evince deference to the judicial precedent in his treatment of legal disputes before him.
- 11.3. No adverse comments have been received.

12. The candidate's ability to conduct Court proceedings

- 12.1. The candidate has acted as a Judge of (various Divisions of) the High Court, for approximately 173 weeks.
- 12.2. According to the feedback from members:
 - 12.2.1. The candidate is always courteous and respectful towards counsel appearing before him, regardless of the urgency of the matter or the issues to be determined;

- 12.2.2. The candidate expresses similar courtesy, patience and respect towards unrepresented members of the public who appear before the candidate in person for their matters.
- 12.2.3. The candidate is always friendly and appreciative of the assistance which counsel offer to the Bench during preparation for, and during argument;
- 12.2.4. The candidate is fair-minded and respectful of lay person litigants appearing before the candidate;
- 12.2.5. The candidate shows an ability to come quickly and efficiently to grips with and address the questions of law and fact pertaining to an urgent application, during December recess, surrounding Intellectual Property. The candidate succinctly and correctly approached the questions of urgency and merits and robustly gave an ex tempore judgment dismissing the application;
- 12.2.6. The sole criticism in this instance was that the candidate in his judgment, did not grant costs of the dismissed application, rather leaving the question of costs for determination in a future proceeding which the applicant had not yet brought. The unsuccessful applicant did not bring further proceedings, and the respondent remains unable to obtain its costs in due course.
- 12.3. During this tenure, the candidate appears to have been proficient and sufficiently experienced to conduct Court proceedings ably and efficiently.
- 12.4. Save for the above feedback, no adverse comments have been received.

13. The candidate's administrative ability

- 13.1. In his capacity as NEC member of the NBCSA, the candidate has travelled and interacted with the regional structures of the Association and was involved in the facilitation of the regional structures of the Association. The candidate states his efforts resulted in the members of the NBCSA becoming properly organised within their regional structures.
- 13.2. The candidate offers lectures on practice management which, per se, indicate a deep understanding and significant ability to administer and organise, assist others in also organising their affairs coherently, as well as transforming the profession through a process of knowledge and skills transfer.
- 13.3. No adverse comments have been received.

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

- 14.1. The candidate appeared to be forthright in his previous interview and in his disclosures of interests in the application, and his candour as to the consequences of his appointment (being immediate resignations from posts of the private interests), is an indicator of the candidate's appreciation of his position.
- 14.2. No adverse comments have been received.

15. The candidate's judicial temperament

- 15.1. One member commented that in a matter the candidate was faced with an urgent application wherein intellectual property rights are in dispute,

the candidate evinced a clear, impartial and patient temperament, allowing (within reason) argument on the issues for his adjudication, and determining the issues methodically and fully.

15.2. No further comments have been received.

15.3. The candidate's judgments provide an indication that the candidate thoroughly considers all issues arising from legal proceeding before him.

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

16.1. The candidate reports that he identified a need amongst students to learn proper study techniques and academic skills and, accordingly, became involved in the academic support programme and lectured the students to uplift them and provide them with necessary tools to become successful in their studies.

16.2. The candidate states he has acted, with success, on behalf of foreign nationals against the Minister of Home Affairs, in order to assist his clients in obtaining the necessary relief.

16.3. The candidate assisted with the development of disciplinary codes, procedures and policies for the University of Johannesburg, and assisted in the speedy finalisation of disciplinary hearings, for the benefit of all involved.

16.4. No adverse comments have been received.

16.5. It appears to the reviewing team that the candidate has experience in regard to the values and needs of various communities with whom he has interacted in the past, and the candidate has always attempted to facilitate and coordinate these communities to the benefit of the latter.

17. The candidate's potential

17.1. The candidate has already left his mark on the communities which he has served, and the various institutions which he has represented or been associated with.

17.2. As an experienced counsel and having acted as a Judge of the Gauteng Division for more than 173 weeks, the candidate will undoubtedly bring significant benefit to the Bench.

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

18.1. Through his involvement in the drafting of submissions to the Portfolio Steering Committee on Justice in respect of the Legal Practice Bill, the candidate states that he has sought to increase access to justice for "the ordinary man on the street" in the context of criminal trials, by acting as a proponent for the concept of "trust – account advocates". The proposal was favourably received and included in the Legal Practice Act 28 of 2014.

18.2. The reviewing team finds no reason to doubt that the candidate's appointment would send a positive message to the community at large, be well received by the community at large and will be beneficial to the Bench of the High Court of South Africa.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions:

Although the candidate identified five judgments available on Saffli as “reported judgments”, none of the candidate’s judgments have been found reported in traditional non-electronic law reports.

Unreported decisions:

The reviewing team had regard to the following unreported judgments by the candidate and which could be located using an internet search:

Afrisam (SA) Properties (Pty) Ltd v Elandspoort Farming (Pty) Ltd and others
(48644/2017) [2018] ZAGPPHC 580 (13/6/18)

Dimakatso Mirriam Legodi v RAF (10078/2015) [2018] ZAGPJHC (16/2/2018)

Phikizani Mhlanga v The Minister of Police (41410/2012) [2018] ZAGPJHC
(16/2/18)

Obose Bonginkosi Patrick v RAF (20976/2014) [2018] ZAGPJHC 491; 2018 JDR
1011 (GJ)

Madonsela v S (A 111/2020) [2021] ZAGPJHC 66

Trudon v Johannesburg Water SOC Limited (2019/24440)

The reviewing team has also had regard to the following judgments attached to the application comprising 3 Criminal matters, 4 Criminal Appeal matters, 1 Review in

terms of the Criminal Procedure Act, 1 Law Society Matter and 12 Civil matters (including 1 Reasons for Order and 1 Application for Leave to Appeal)¹.

State v D. De Villiers (SS 207/2014) [Criminal matter]

State v M. G. Lebogang (SS 052/2018) [Criminal matter]

State v A. Pretorius and Q. Smart (SS 69/2019) [Criminal matter]

S. Mbatha v State (A297/2016) [Criminal appeal]

K. Joseph v State (A142/2018) [Criminal appeal]

I. Christo v State (A18/2018) [Criminal appeal]

T. M. Mthokozi v State (BA 25/2020) [Bail Appeal]

W. Venagasi and 6 others (R19/2020; R20/2020; R21/2020; R22/2020; R23/2020; R24/2020; R25/2020) [Criminal matter – Automatic Review]

Law Society of Northern Provinces v S. Malangeni (84433/016) [Civil matter – strike off from roll of attorneys]

Dr Nomathemba Blaai Mokgethi v Speaker of Council: North West 405 and others (50919/2017) [Civil matter – Interdict and review proceedings]

Afrisam (SA) Properties (Pty) Ltd v Elandspoort Farming (Pty) Ltd and others (48644/2007) [Contempt of Court proceedings]

¹ In the candidate's previous application, the candidate provided the judgment in *State v V.D. Sebolai* (SS 182/2014), a criminal matter. This judgment was not provided with the current application, even though other judgments previously provided were again provided in this application.

Admire Dube v Minister of Safety and Security (62343/2011) [Civil matter – unlawful arrest and detention]

ERF 152927 Cape Town (Pty) Ltd v Transnet Ltd et al (35967/2010) [Civil matter – exception]

R. S. Price v B. T. Nyezi et al (15267/2016) [Civil matter – reach of settlement agreement]

Chrims Petroleum Investment (Pty) Ltd v Eskom SOC Ltd (20809/2018) [Civil matter – Review]

National Asphalt (Pty) Ltd and PCBS et al (21909/2019) [Civil matter – Rectification of payment guarantee]

M. K. Patrick v RAF (2018/9956) [Civil matter – damages]

S. V. Patrick v Standard Bank of South Africa (2018/11028) [Civil matter – Rescission of default judgment]

G. Benito v T. Dinwoodie et al (28072/2016) [Civil matter – Special motion: Parental Rights and Responsibilities]

Omega Risk Solutions (Pty) Ltd v Ford Motor Company of South Africa (Manufacturing) (Pty) Ltd (25287/2020) [Civil matter – Interim Interdict proceedings]

Loch Vaal Club v J. Greyson (2019/27447) [Civil matter – Application for leave to appeal]

Judgments upheld on appeal:

None identified.

Judgments overturned on appeal:

None identified.