

APPLICANT: ADVOCATE MOHAMED SALIE SC

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

1 The candidate's appropriate qualifications

- 1.1 The candidate possesses the requisite academic qualifications.
- 1.2 In 1977, he matriculated from Elsie's River Senior Secondary School.
- 1.3 During 1978 to 1981, he completed his BA (Law) degree at the University of the Western Cape ('UWC'), being a recognised and accredited University in the Republic of South Africa by the Department of Tertiary Education, capable and able, at the time, to confer this degree upon the candidate.
- 1.4 During 1981 to 1983, he completed his LL.B degree at UWC, capable and able, at the time, to confer this degree upon the candidate.
- 1.5 In the premises, it is confirmed that the candidate is appropriately qualified to be appointed.

2 Whether the candidate is a fit and proper person

- 2.1 There do not appear to have been any complaints of unprofessional conduct against the candidate, to any professional body having jurisdiction over him.
- 2.2 There is no reason to suggest that the candidate is not a fit and proper person eligible for judicial appointment.

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

3.1 The candidate is a Muslim Indian man and South African citizen by birth.

3.2 The candidate's appointment as a judge will contribute to and enhance the diversity of the composition of the judiciary.

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

4.1 During the candidate's tenure as an attorney, his practice covered a broad range of law such as: the law of contract, delict, criminal law, constitutional litigation, personal injury law and he has also conducted civil and criminal trials in the High Court since 1996.

4.2 As an advocate, the candidate has a broad general practice, but focussing on commercial law; construction law and matters relating to the National Home Builders Registration Council; constitutional law; criminal law; family law; labour law; personal injury; public law; and tax law (solely related to criminal prosecutions).

4.3 Given the candidate's extensive experience in trial litigation, he has had many opportunities to engage with constitutional issues.

4.4 Examples of matters that related to constitutional law that the candidate has been involved in as an advocate include but are not limited to:

4.4.1 In *S v Nell* 2009 (2) SACR 37 (CPD), although the candidate was led by Advocate JA van der Westhuizen SC, it was the candidate who argued the constitutional issue relating to the

admissibility of the evidence pursuant to Section 35(5) of the Constitution;

- 4.4.2 In *Van Der Merwe v Road Accident Fund* 2007 (1) SA 176 (C), the constitutionality of section 18(b) of the Matrimonial Property Act 88 of 1988 was challenged in the High Court, in which the candidate appeared on behalf of the defendant without the assistance of senior counsel. After the section was declared unconstitutional and referred to the Constitutional Court for certification, the candidate acted as the junior counsel to advocate T Potgieter SC in *Van der Merwe v Road Accident Fund and Another (Women's Legal Centre Trust as Amicus curiae)* 2006 (4) SA 230 (CC); and
- 4.4.3 In *FP van der Merwe v Minister of Justice and Other* (case number A349/04), the candidate led advocate Koos Smit in representing the State opposing the appellants who challenged the constitutionality of the provisions of section 236 of the Criminal Procedure Act 51 of 1977. The appellants constitutional attack was unsuccessful.
- 4.5 The candidate has sat as an acting judge of the Western Cape Division of the High Court, Cape Town.
- 4.6 He was first appointed in 2005 from 4 March to 18 March to sit on the Cape Bench, where he performed services *pro bono* to assist in reducing the backlog of criminal appeals.
- 4.7 Examples of recent judgments handed down by the candidate include:

- 4.7.1 *Bowler v S* (appeal case number: A1134/2019), which was a criminal appeal dismissed by the candidate, with Gamble J concurring.
- 4.7.2 *Bernado v S* [2021] JOL 50728 (WCC), which was a criminal appeal where the candidate dismissed the appeal, with Bozalek J concurring; and
- 4.7.3 *S v King* 2021 JDR 1672 (WCC), which was a criminal appeal where the candidate dismissed the appeal against the conviction but upheld the appeal against the sentence, with Binns-Ward J concurring.
- 4.8 The candidate formed part of the bench in *Interfax (Pty) Ltd v Old Mutual Insure Limited* 2020 JDR 2478 (WCC), which was an insurance matter relating to COVID-19 and the interpretation of a contract, with Davis J (who wrote the judgment) and Gamble J.

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

- 5.1 As part of the candidate's successful silk application, he submitted examples of his career trajectory and experience which demonstrate his commitment to transformation in the legal sector, access to justice, and to the values of the constitution, by *inter alia*:
- 5.1.1 appearing on behalf of students charged with public violence arising from protests and uprisings against the Apartheid Government during the 1980s;
- 5.1.2 serving as a Small Claims Court Commissioner for more than seven years;

- 5.1.3 serving as a member of the Cape Bar's Transformation Committee, Finance Committee and Disciplinary Officer of the Cape Bar in 2014/2015;
 - 5.1.4 transferring his knowledge and skills through mentoring pupils assigned to him by the Cape Bar; and
 - 5.1.5 involving black juniors in matters on a fee-sharing basis for example in the matter of *Mohammed Parker v The State*, where the candidate led Advocate Solomzi Gcelu on a fee-sharing basis.
- 5.2 In light of the above, we are of the view that the candidate is dedicated and committed to protecting and promoting the values of the Constitution.

6 **Whether any judgments have been overturned on appeal**

- 6.1 Although conducting a thorough search on SAFLII, Juta and LexisNexis, we were unable to find any judgment handed down by the candidate which has been overturned on appeal.

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

- 7.1 During 1986 to 1989, the candidate served articles as a candidate attorney with Ben Van der Ross & Associates.
- 7.2 During February 1986, he was admitted as an attorney of the High Court of South Africa.
- 7.3 From 1986 to 1989, he practised in partnership with Daderker under the name and style of *Daderker & Salie* in Belgravia, Athlone.

- 7.4 From 1990 to 1996, he practised under the name and style of *M Salie & Associates* in Athlone.
- 7.5 In 1997, he was the founding director of the law firm *Mayats Incorporated*.
- 7.6 On 3 September 1999, he applied to be removed as an attorney of the High Court and simultaneously admitted as an advocate.
- 7.7 On 29 November 1999, he became a member of The Cape Bar, which membership has continued uninterrupted.
- 7.8 On 22 October 2015, he received his Letters Patent conferring on him silk status and entitling him to practise as Senior Counsel.
- 7.9 He has been appointed numerous times as acting Judge of the Western Cape Division of the High Court, Cape Town, with his earliest appointment in 2005.

8 The candidate's linguistic and communication skills

- 8.1 The candidate's written judgments demonstrate that he has a skilled command of the English language, with strong linguistic and communication skills.

9 The candidate's ability to produce judgments promptly

- 9.1 We have only been able to find four reported judgments that the candidate has written.

10 The candidate's fairness and impartiality

- 10.1 In a reference letter attached to the candidate's silk application, Advocate JJ Botha SC wrote about the candidate: '*On a*

professional level I would describe his judgment as very sound, and his approach to matters and to colleagues as ethical and professional. In my opinion he is competent, conscientious, and dedicated to his tasks at hand'.

11 The candidate's independent mindedness

11.1 The candidate has demonstrated his independent mindedness in the reported judgments he has handed down as an acting judge.

12 The candidate's ability to conduct court proceedings

12.1 The candidate has proven his ability to conduct court proceedings during his various appointments as an acting judge.

12.2 The candidate is respected amongst the members of the legal profession and able to be authoritative in order to protect the dignity of the judiciary.

13 The candidate's administrative ability

13.1 We are not able to comment on the candidate's administrative abilities in his capacity as an acting judge.

13.2 The candidate has, however, efficiently served as a member of the Cape Bar's Transformation Committee and Finance Committee as well as Disciplinary Officer.

14 The candidate's reputation for integrity and ethical behaviour

14.1 The candidate is well respected amongst the members of the legal profession and known to have the utmost integrity and ethical behaviour.

- 14.2 In a reference letter attached to the candidate's silk application, Advocate JJ Botha SC wrote about the candidate: *'I am very aware of the fact that he enjoys popularity and respect amongst his colleagues, and I have no doubt in his integrity, his trustworthiness and his honesty as a person'*.
- 14.3 In a reference letter attached to the candidate's silk application, Advocate Francois van Zyl SC wrote about the candidate: *'I regard Salie as an advocate with the highest personal and professional integrity. His friendly disposition always makes it a pleasure to deal with him and no doubt attributed to his popularity amongst his colleagues. He clearly has the respect of his colleagues.'*

15 **The candidate's judicial temperament**

- 15.1 The candidate is known to respond appropriately to arguments presented and submissions made to him from counsel. His judicial temperament can also be described as rational, but it has been said that he easily becomes abrupt and annoyed.
- 15.2 He is considered, despite not having the ideal judicial temperament, having a sufficiently appropriate 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 has through his conduct as an attorney, practising advocate, Small Claims Court Commissioner and Acting Judge, demonstrated his commitment to increasing access to justice,

human rights and the advancement of the rights and values of the South African community.

16.2 Not only has the candidate had a distinguished career in law, but he has dedicated much time to his greater community.

16.3 He has served in the capacity of President of the Janjira Habsani Educational and Society ('JHESS') for a decade now (<http://habsani.co.za/about-us/>). He is passionate about education, so his personal aspirations complement the ethos of JHESS with its flagship Bursary Fund to serve the diverse societies of South Africa. The Society has also benefited from his legal expertise and guidance over the years.

16.4 He is a founding member of Darul Islam Islamic High School, and has served on various school governing bodies, including acting as Chair for the Oaklands Senior Secondary and Groot Schuur Primary Schools in 2004 and 2009 respectively.

17 **The candidate's potential**

17.1 The candidate's career trajectory, performance as an Acting Judge and commitment to transformation and the Constitution, all demonstrate that he has the potential to be an exceptional permanent Judge.

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

18.1 The candidate's appointment would instil a sense of confidence in the community at large. He possesses the necessary characteristics, experience and commitment to the Constitution,

Human Rights and transformation. His lifelong dedication to the development of South African law and involvement in education within his community makes him a worthy and deserving candidate for the appointment of such a prestigious office.

18.2 He is to the best of our knowledge a man of integrity and honesty and is well respected by his colleagues and his community alike.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED**Reported decisions**

Bernado v S [2021] JOL 50728 (WCC) (with Bozalek J concurring).

S v King 2021 JDR 1672 (WCC) (with Binns-Ward J concurring).

Interfax (Pty) Ltd v Old Mutual Insure Limited 2020 JDR 2478 (WCC)

(with Davis J who wrote the judgment and Gamble J).

Unreported decisions

Bowler v S (appeal case number: A1134/2019) (with Gamble J concurring).