

**APPLICANT: MR BUYISELO IRVEN SOMACALA**

**COURT FOR WHICH APPLICANT APPLIES: EASTERN CAPE  
DIVISION OF THE HIGH COURT, MTHATHA AND HIGH COURT  
GRAHAMSTOWN**

**1. The candidate's appropriate qualifications**

- 1.1 B.Juris from the Walter Sisulu University (formerly University of Transkei(1988);
- 1.2 LLB from Walter Sisulu University (1992);
- 1.3 The candidate is appropriately qualified.

**2. Whether the candidate is a fit and proper person**

- 2.1 The candidate presently holds a permanent appointment as a Magistrate and Head of Office in Ntabankulu Magistrates Court having been appointed to this position during November 2015.
- 2.2 The candidate has previously been employed in numerous positions in the legal field having held positions as a public prosecutor, candidate attorney, attorney, high court prosecutor, attorney employed by the Legal Aid Board and the high court unit manager at the Legal Aid Board.
- 2.3 He currently holds the position of Regional Court Magistrate and Head of Office.
- 2.4 There is no reason to find that 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 The candidate is a black male.

3.2 Accordingly, the candidate's appointment would assist to reflect the racial composition although not the gender composition of South Africa.

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

4.1 A scrutiny of the cases cited by the candidate in which he presided reveals that the candidate's knowledge and experience of the law is limited. Furthermore, it appears that the candidate has mainly criminal law experience and his experience in civil matters is limited. A reading of the judgments referred to also indicates one judgment which he penned himself, the remaining two both having been appeal matters.

4.2 He has been taken on appeal in the matter of *Mgatwelwa v Minister of Police and Another* (1174/2016) [2020] ZAECMHC 39 (11 August 2020) which appeal was heard by the Full Bench of the Eastern Cape Division of Mthatha and referred back to the court a quo to be dealt with appropriately.

4.3 But for the judgment in the above matter the candidate has only attached judgments of criminal matters and no civil trial judgments.

4.4 In most of the matters that he has referenced as important in his application, he was acting as a Prosecutor in the High Court.

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

5.1 The candidate appears to recognise the values enshrined in the Constitution.

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

6.1 But for his judgment referred to in paragraph 4.2 above, we cannot comment on whether any of his judgments as a magistrate has been overturned on appeal.

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

7.1 The candidate was first employed by the Department of Justice as a Public Prosecutor for a period of two years. Thereafter he was employed as a candidate attorney at Tshiki & Sons Attorneys for a period of two years whereafter he joined the firm of S T Mjoli Inc. Attorneys for the period from 1996 to February 2002.

7.2 He was thereafter employed as a High Court Prosecutor by the DPP's office in Mthatha for a period of six months whereafter he took up a position as Head of Office of the Legal Aid Board for a period from October 2002 to December 2008.

7.3 Thereafter he joined Liyanyana Attorneys as an attorney from 2009 to 2012 whereafter he re-joined the Legal Aid Board as a High Court Unit Manager from 2013 to October 2015. In November 2015 to present date he is employed at the Department of Justice in the position as a Magistrate.

7.4 As appears from his chronological particulars of employment as per his curriculum vitae and application it appears that he was unemployed for a period from some time in 2012 to sometime in 2013 when he re-joined the Legal Aid Board as a High Court Manager. The candidate has not seen fit to explain what periods, if any, he was so unemployed and the reasons therefor. Nowhere in his application does he cite the reason for leaving any of the previous positions held by him prior to his current position as a Magistrate.

7.5 The candidate's professional experience, therefore, appears largely to have been as an attorney and prosecutor.

7.6 It appears, therefore, that although the candidate has had some exposure to both civil as well as criminal matters, his exposure to civil matters has been extremely limited.

## 8. **The candidate's linguistic and communication skills**

8.1 Having regard to the candidate's application, motivation and judgments attached to his application, the candidate's linguistic and communication skills are somewhat sloppy although fair.

8.2 What does, however, become immediately apparent from both his application and judgments is that the candidate is not a stickler for attention to detail which is a necessary quality for an incumbent of the High Court Bench. It is noteworthy that he even spelt his surname incorrectly in his application and states that he is a member of a secret society without identifying the society to which he belongs.

**9. The candidate's ability to produce judgments promptly**

9.1 It appears that the candidate experiences no difficulty in timeously delivering his judgments.

9.2 Notwithstanding the above it is necessary to point out that the candidate has only done an acting stint of one term and, accordingly, one would not expect there to be any outstanding judgments. It does appear from his reported judgments that the matters he adjudicated upon were not complicated and/or did not involve complex legal points.

**10. The candidate's fairness and impartiality**

10.1 The candidate's fairness and impartiality appear to be beyond reproach.

**11. The candidate's independent mindedness**

11.1 No adverse comments regarding the candidate's independent mindedness have been noted.

**12. The candidate's ability to conduct court proceedings**

12.1 Although no adverse comments have been raised regarding the candidate's ability to conduct court proceedings the candidate presided in the matter of *Mgatwelwa v Minister of Police and Another* (1174/2016) [2020] ZAECMHC 39 (11 August 2020) which was subsequently taken on appeal to the Full Bench of the Eastern Cape Division, Mthatha where it became apparent that the candidate had made some fundamental errors in dealing with the matter at hand. One such was his failure to order a

separation, despite the fact that the only issues to be argued at that time were the special pleas raised by the defendant. Furthermore, despite the parties having agreed on a stated case, the candidate failed to ensure that the stated case was placed before the Court and that his judgment was given in line therewith.

- 12.2 Although the legal representatives of the respective parties were also to blame for the problems encountered at the trial, an experienced jurist with aspirations of elevation to the Bench should have picked up the inherent problems and ensured that they were adequately dealt with by the respective legal representatives during the course of the hearing of the matter.

### 13. **The candidate's administrative ability**

- 13.1 The candidate's administrative ability appears to be beyond fair when one has regard to the fact that he has no outstanding judgments and furthermore, the current position held by him being Head of the Magistrates Office.

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

- 14.1 No questions have been raised on the candidate's ethical behaviour and integrity.

### 15. **The candidate's judicial temperament**

- 15.1 No concerns regarding the candidate's judicial temperament have been raised.

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

16.1 The candidate shows a commitment to human rights and has been involved in a number of community projects which are reflected on his curriculum vitae and application.

**17. The candidate's potential**

17.1 As mentioned, the candidate has experience mainly in criminal law.

17.2 Notwithstanding the above the candidate has only had an acting appointment to date for one term and, therefore, he has had limited exposure and gained limited experience on the High Court Bench, particularly in civil law.

17.3 Although the candidate may have potential the candidate requires more relevant experience prior to being considered for a 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 evidence race but not gender transformation in the Eastern Cape.

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

*Mgatwelwa v Minister of Police and Another* (1174/2016) [2020] ZAECMHC 39 (11 August 2020)

*Ntumbukana v S* (CA&R17/2019) [2020] ZAECMHC40 (10 September 2020)

*Qumba v S* (CA&R34/2020) [2020] ZAECMHC41 2021 (1) SACR 227 (ECM) (25 August 2020)

*Kayula N.O. & Others v Quality Plumbers & Hardware Contractors (Pty) Ltd. & Another* (942/2019) [2020] ZAECMHC42 (18 August 2020)

**Unreported decisions**

High Court Eastern Cape Division, Grahamstown under case number CA&R90/2019 in the matter between *Samuel Mzukisi Banzana v The State*.

**Judgments upheld on appeal**

None of which the reviewers are aware save that in the matter of *Mgatwelwa v Minister of Police and Another* (1174/2016) [2020] ZAECMHC 39 (11 August 2020) at the hearing of the matter the parties reached agreement that an Order would issue that the appeal was dismissed and the matter transferred back to the trial Court to deal with it appropriately.

**Judgments overturned on appeal**

None of which the reviewers are aware.