

# GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA

*Admitted at The Hague on 21 August 1948  
as a full member of the International Bar Association*

2<sup>nd</sup> Floor Grindrod Tower  
8A Protea Place  
Sandown  
SANDTON

Telephone: 011 784 0175  
Email: [Tracy.Nothingel@gcbsa.co.za](mailto:Tracy.Nothingel@gcbsa.co.za)

All correspondence should be addressed to:  
P O Box 786878, SANDTON, 2146

---

10 January 2022

Secretariat  
Judicial Service Commission  
per email: [Chiloane@concourt.org.za](mailto:Chiloane@concourt.org.za) and [TPhaahlamohlaka@judiciary.org.za](mailto:TPhaahlamohlaka@judiciary.org.za)  
cc: [JSC@judiciary.org.za](mailto:JSC@judiciary.org.za)

Dear Members of the Judicial Service Commission

## **GCB COMMENTS ON THE NOMINATION OF MADLANGA J AS CHIEF JUSTICE**

- 1 Please find below the General Council of the Bar's (**GCB**) comments on the nomination of Madlanga J for appointment as the Chief Justice.
- 2 The GCB's general approach in making submissions to the Judicial Services Commission (**JSC**) is not to endorse or promote any candidate above other candidates. Rather, it endeavours to comment on each candidate on their merits independently of the other candidates under consideration. The GCB would ask that these comments are not seen as endorsing this candidate over the other candidates under consideration. Nor should these submissions be seen as a comparative analysis of the candidates, or an effort to rank them.
- 3 The GCB prepared these comments as follows:
  - 3.1 The candidate was allocated to a team of approximately four counsel who are members of bars affiliated to the GCB. The team was led by a senior counsel.
  - 3.2 The team then assessed the candidate by considering:

- 3.2.1 The candidate's application;
  - 3.2.2 The biography of the candidate distributed by the Presidency when referring the application to the JSC;
  - 3.2.3 Previous reviews conducted by the GCB on the candidate (in so far as such were available);
  - 3.2.4 The candidate's reported judgments and, to the extent practicable, the candidate's unreported judgments;
  - 3.2.5 The candidate's previous interviews before the JSC;
  - 3.2.6 Publications, speeches and other extra-curial writings by the candidates, where such could be located; and
  - 3.2.7 Publicly available media reporting and commentary on the candidate.
- 3.3 The team then worked independently of the other teams allocated to review other candidates to prepare the comments on the candidate.
- 3.4 The draft comments for all the candidates were then circulated amongst the teams with the goal of achieving a level of consistency of tone and style. It should however be emphasised that it was impossible to achieve complete consistency given the nature of the process adopted, which was intended to incorporate a range of views in the limited time available during a period when many practitioners were taking a well-earned annual rest.
- 4 The GCB's comments are structured around the following 9 topics, we elaborate on briefly below:
- 4.1 Whether the candidate meets the constitutional requirement that members of the Constitutional Court be South African citizens.
  - 4.2 The period for which the candidate could serve as Chief Justice if appointed.  
The Constitution, and Judges Remuneration and Conditions of Employment

Act, 47 of 2001 impose limits on the period for which individuals may serve on the Constitutional Court.

4.3 The candidate's reputation for integrity and ethical behaviour. Under this topic, comments are directed at whether the candidate is reputed to be of unblemished integrity and ethically beyond reproach. Any findings or pending complaints of misconduct against the candidate are addressed as well as any evidence of leadership in the area of judicial ethics.

4.4 The candidate's qualities as an outstanding leading jurist who seeks (and is able to achieve) consensus.

4.4.1 It is a central responsibility of the Chief Justice to ensure that the Constitutional Court functions efficiently and delivers judgments with clear *rationes decidendi* timeously even in the most contentious matters. Comments are directed at whether the candidate is a leader who commands respect and that s/he seeks (and is able to achieve) consensus. Comments are also directed at any conclusions that might reasonably be drawn about the candidate's leadership qualities when drafting majority, concurring or dissenting judgments as part of a bench of judges.

4.4.2 Where appropriate given the evidence available, comments are included on the extent to which the candidate's judgments have generated dissents and concurrences, how frequently the candidate dissents or concurs, the tone or tenor of the candidate's judgments when concurring or dissenting, and whether their judgments in ground-breaking matters have been supported on appeal. Comments are included if there is glaring evidence that the candidate almost always agree with the same group of judges, and almost never with a different group.

4.4.3 The comments are also directed at the candidate's academic qualifications and career as a jurist, their academic articles and

public addresses related to the law generally and any notable judgments. The GCB has also sought to take a robust view on whether the candidate's reputation as a jurist is one of excellence.

- 4.5 The candidate's experience in court administration and leadership or similar roles. Comments are directed at the candidate's leadership and administration positions held in the judiciary and other organisations.
- 4.6 Whether the candidate possesses the qualities required to lead the judiciary in effectively defending, protecting and upholding the Constitution. Comments are directed here at any notable judgments, academic articles, public addresses or the like addressing constitutional law, and in particular constitutional supremacy. Where appropriate, comments are made on evidence of the candidate's potential to work constructively and to command and show appropriate respect when representing the judiciary in engagements with different arms of government on a range of issues.
- 4.7 Whether the candidate possesses the qualities required to lead the judiciary in fearlessly asserting its independence and respect for separation of powers. Comments are directed at the candidate's judgments, academic articles, public addresses, or the like that have dealt with the independence of the judiciary and the separation of powers.
- 4.8 Whether the candidate possesses the qualities required to lead the judiciary in pursuing a transformative jurisprudence geared for the advancement of social justice and access to justice. Comments are directed at the candidate's involvement in any voluntary associations, non-governmental, or community organisations committed to promoting the advancement of social justice, substantive equality of historically and currently vulnerable groups (including in terms of race, gender, persons with disabilities and LGBTI people) and access to justice, as well as any notable judgments, academic articles, public addresses, or the like reflecting the candidate's views thereon.

4.9 Whether the candidate possesses the leadership qualities required to instil a judicial culture and work ethic that will meet acceptable judicial performance standards and standards of accountability. Comments are directed at the candidate's ability to produce judgments timeously, the candidate's propensity to write concurring or dissenting judgments, the number of reported and unreported judgments found by GCB, the time period over which those judgments were produced, and in which court, and the candidate's performance in any leadership positions held within the judiciary.

5 The GCB takes responsibility for the attached comments, and they are made by it. They represent the work of the teams assembled to prepare them and while efforts were made to achieve some consistency of approach, differences naturally emerge in tone and emphasis.

Yours faithfully



**Craig Watt-Pringle SC**  
**Chairman: General Council of the Bar of SA**

**CANDIDATE: JUSTICE MBUYISELA RUSSEL MADLANGA**

**1. Whether the candidate meets the Constitutional requirement of citizenship:**

1.1. Section 174(1) of the Constitution provides that any person appointed to the Constitutional Court must be a South African citizen.

1.2. The candidate is a South African citizen.

**2. The implications of the constitutional mandatory age requirements for discharge from active service of Constitutional Court judges:**

2.1. Section 176(1) of the Constitution provides that a Constitutional Court judge holds office for a non-renewable term of 12 years, or until he or she attains the age of seventy, whichever occurs first, unless extended by an Act of Parliament.

2.2. The candidate is 59 years of age.

2.3. The candidate held office as a High Court judge for five years between 1996 and 2001 and has been a Constitutional Court judge for about eight years since 1 August 2013, being at present a total of approximately 13 years of service on the bench.

- 2.4. The provisions of the Judge's Remuneration and Conditions of Employment Act, 47 of 2001 do not bear on the candidate's period of office.
- 2.5. If appointed, the candidate's office will terminate on 1 August 2025, and the candidate may hold office as Chief Justice for approximately 3 and a half years.

**3. The candidate's reputation for integrity and ethical behaviour:**

- 3.1. The candidate is reputed to be of unblemished integrity and ethically beyond reproach. The panel could find no pending complaints of misconduct against the candidate.
- 3.2. The candidate has demonstrated leadership in the area of judicial ethics. In April 2013, the candidate was invited to teach a course on the ethics of litigation within the judicial process as the Judge James J. Clynes, Jr. Visiting Chair by Notre Dame Law School (Indiana, USA).
- 3.3. The candidate's commitment to integrity and ethical behaviour can also be seen from his article published in the *South African Judicial Education Journal* Vol 1, Issue 1, 2018 in which the candidate stated that:

*"At all times judges must scrupulously ensure compliance with the highly demanding ethical norms of their office."*

**4. The candidate's qualities as an outstanding leading jurist who seeks (and is able to achieve) consensus:**

4.1. The candidate holds the following qualifications:

4.1.1. B Juris (University of Transkei);

4.1.2. LLB (Rhodes University);

4.1.3. LLM *cum laude* (University of Notre Dame, Indiana, USA).

4.2. The candidate was a member of the Mthatha Bar from 1991, before being appointed as a judge of the High Court in 1996. He served as an acting judge of the Supreme Court of Appeal for the period 1 December 1998 to 31 May 1999. His stint at the SCA was cut short by his appointment as the Acting Judge President of the Transkei Division from 1999 to 2000. He was appointed to the Competition Appeal Court during 1999. Thereafter, he served as an acting judge of the Constitutional Court from 15 August 2000 to 31 May 2001.

4.3. In 2001, the candidate resigned from the bench, citing financial pressures in view of the fact that he had given up his private practice and joined the bench at a relatively young age. He returned to practice as senior counsel in both Mthatha and Johannesburg.

4.4. The candidate was appointed as a part-time member of the Competition Tribunal on 4 April 2003 for a period of five years and thereafter reappointed for a further five years on 6 February 2008. On 17 April 2009, the candidate was appointed as the Competition

Tribunal's Deputy Chairperson. He resigned from the tribunal with effect from March 2012.

- 4.5. On 1 August 2013, the candidate was appointed permanently to the Constitutional Court, where he continues to serve.
- 4.6. It was reported in the media following the 2013 interviews before the JSC leading to his appointment to the Constitutional Court that the candidate was questioned on his 1998 judgment in the matter of *Bangindawo v Head of the Nyanda Regional Authority*. In the decision, he had held that there was “*no reason whatsoever for the imposition of the western conception of the notions of judicial impartiality and independence in the African customary law setting*”. The media reporting indicates that in response to these queries at the JSC, the candidate accepted that the judgment overruling the *Bangindawo* decision was correct.
- 4.7. In 2004, the candidate was a member of the legal team that appeared on behalf of South Africa before the International Court of Justice at the Hague in the matter concerning the “*separation wall constructed by Israel on occupied Palestinian territory*”.
- 4.8. The candidate also previously served on the Judicial Service Commission from 5 February 2010 until his resignation on 30 November 2012.
- 4.9. In late 2012, the candidate served as the Chief Evidence Leader of the Farlam Commission of Enquiry into the Marikana Massacre.

- 4.10. In April 2016, at the invitation of the University of Notre Dame Law School, the candidate was appointed as the prestigious Clynes Chair as a visiting professor, presenting lectures and delivering a public address on the topic “*Judging According to Personal Attributes: Tension with the Oath of Office*”.
- 4.11. The Council of Walter Sisulu University awarded the candidate an LLD (*honoris causa*) in May 2016.
- 4.12. In 2017, and at the behest of Chief Justice Mogoeng Mogoeng, the candidate was appointed as the inaugural editor-in-chief of the *South African Judicial Education Journal*. He was further appointed to the advisory board of the *De Jure*, *South African Law Journal* and *Yearbook of South African Law* publications during the period of 2017 to 2020.
- 4.13. The candidate has also published the following legal articles:
- 4.13.1. “African Languages for Non-African Practitioners” – *Consultus* (October 1993). This is a short submission in which the candidate noted his concerns with the accuracy of translation of evidence given by witnesses in African languages in the context of a court where the presiding officers and legal counsel do not themselves understand the language spoken. The candidate called for improved training for court interpreters and that it become a requirement that advocates be trained in at least one African language spoken in the geographic area in which they practise.

- 4.13.2. “The Human Rights Duties of Companies and Other Private Actors in South Africa” (2018) 29(3) *Stellenbosch Law Review* 359. The lecture reflects the candidate’s support for applying non-obvious rights in the Bill of Rights horizontally and that he would not shy away (as he did not in his judgment in *Daniels v Scribante*) from finding that private individuals (including corporations) carry a positive duty to fulfil certain rights for others, including socio-economic rights.
- 4.13.3. “Judging According to Personal tributes, Outlook on Life and Life Experience: Any Practical Value?” (2018) 1 *South African Judicial Education Journal* 48. In this article, the candidate, accepting that judges cannot divest themselves of their unique personal attributes and experiences, and argues that a diverse judiciary, encompassing a diversity of experiences, will ensure that just outcomes are reached in litigation. The candidate makes this argument eloquently and with reference to personal experiences, as well as famous cases, where the judge’s unique personal experiences made it impossible them to understand the position of a litigant and bring about a just outcome. The candidate argues that a diverse judiciary will also increase the public’s faith in the judiciary’s ability justly to enforce the rule of law. The candidate’s argument is made with full deference to the importance of an impartial judiciary. In reference to Kriegler J’s words in *Mamabolo*, the candidate writes that: “*Court pronouncements will have ... moral authority if judges act with integrity, honesty, impartiality and unquestionable independence from external influences, be they corruptive or intimidatory. At all*

*times judges must scrupulously ensure compliance with the highly demanding ethical norms of their office.”*

- 4.13.4. “Procurement, Corruption and their Relevance to, and impact on, Human Rights” (2019) 48(2) *Public Contract Law Journal*. This deals at a high level with procurement law in South Africa and sets out the background of the socio-economic impact of apartheid and the need for laws and policies which bring about substantive equality. The candidate expresses criticism that the Preferential Procurement Policy Framework Act and its regulations are not sufficient to meet the obligation imposed by section 217(3) of the Constitution.
- 4.13.5. “A Feminist Perspective to Judgment Writing” (2020) 3 *South African Judicial Education Journal* 41. In this article, the candidate gives a brief synopsis of basic tenets of identity politics relating to sexism, misogyny, and patriarchy, recognising also the intersectional effects women experience in other contexts of discrimination. The candidate clearly commits himself – while recognising that his experiences, as a man, may limit him – to the project of actively promoting feminism in the judicial context. He advocates for judges ‘asking the woman question’ when hearing matters which affect women; for careful use of language to avoid entrenching sexist stereotypes; and for penning dissenting or concurring judgments, where necessary, to address an issue of discrimination against women which is inadequately dealt with in the main judgment. This article was written prior to the candidate’s recent judgment in *Bwanya* (discussed further

below), which indicates that the commitment he expresses in his article is not mere lip service.

- 4.14. The candidate has written several important judgments including:
- 4.14.1. *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC), holding that the record of the JSC's deliberations should be disclosed in a review application.
- 4.14.2. *Gaertner v Minister of Finance* 2014 (1) SA 442 (CC), declaring provisions of the Customs and Excise Act, which allowed for searches to be conducted without a warrant, unconstitutional.
- 4.14.3. *DE v RH* 2015 (5) SA 83 (CC), abolishing claims for damages for adultery in South African law.
- 4.14.4. *Daniels v Scribante and Another* 2017 (4) SA 341 (CC), declaring that a farm manager has an obligation to allow a farmworker to make basic improvements to a dwelling protected by the Extension of Security of Tenure Act 62 of 1997.
- 4.14.5. *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* 2020 (6) SA 257 (CC), declaring as unconstitutional provisions of the Electoral Act which required that adult citizens be elected to the national assembly and provincial legislatures only through their membership of political parties .

- 4.14.6. *Makhoka v S* 2019 (2) SACR 198 (CC), holding that the imposition of an imprisonment term without the possibility of parole is an infringement of the convict's rights under s12(1)(a) of the Constitution.
- 4.14.7. *Corruption Watch NPC and Others v President of the Republic of South Africa and Others; Nxasana v Corruption Watch NPC and Others* 2018 (2) SACR 442 (CC). Sections 12(4) and 12(6) of the National Prosecuting Act 32 of 1998 empowering the President to extend the term of office of the Director of National Public Prosecutions (NDPP) and to suspend the NDPP with or without pay for an indefinite period undermine the independence of the office and are constitutionally invalid.
- 4.14.8. *Bwanya v Master of the High Court, Cape Town* [2021] ZACC 51, holding that omissions in the Intestate Succession Act and the Maintenance of Surviving Spouses Act of “*partners in permanent life partnerships in which they had undertaken reciprocal duties of support*” are unconstitutional and invalid.
- 4.15. Regarding public addresses, in addition to the lectures delivered as part of the Notre Dame Law School 2013 programme, in 2018 the candidate delivered the 15th Annual Human Rights Lecture at Stellenbosch University. He also gave a keynote address at the luncheon hosted by the Dean of George Washington University Law School (Washington, DC, USA) on 19 March 2018.

- 4.16. The candidate has penned no less than forty-six judgments since being appointed to the Constitutional Court.
- 4.17. Of these forty-six judgments, twenty-one have been unanimously concurred in. He has only written four dissenting judgments, and he has had support in his dissent by another other judge in three of those dissenting judgments. Of the remaining twenty-one judgments, four have been dissented from by one judge. Of the remaining seventeen, fourteen have been majority judgments with a significant majority, and three of these have been “main” or “first” judgments, including one where the court was evenly split between two concurring judgments.
- 4.18. The candidate enjoys regular support from the current Constitutional Court Justices. Insofar as the abovementioned forty-six judgments are concerned, the following breakdown shows how those judges’ decisions have related to those of the candidate, where they were part of the bench hearing the matter:
- 4.18.1. Mhlantla J: Of the 34 matters in which Mhlantla J was part of the coram, she concurred in the candidate’s judgment on 25 occasions.
- 4.18.2. Theron J: Of the 25 matters in which Theron J was part of the coram, she concurred in the candidate’s judgment on 22 occasions.

- 4.18.3. Zondo J: Of the 23 matters in which Zondo J was part of the coram, he concurred in the candidate's judgment on 17 occasions.
- 4.18.4. Tshiqi J: Of the 16 matters in which Tshiqi J was part of the coram, she concurred in the candidate's judgment on 14 occasions.
- 4.18.5. Majiedt J: Of the 13 matters in which Majiedt J was part of the coram, he concurred in the candidate's judgment on 12 occasions.
- 4.19. It appears that the candidate is a jurist with a reputation for excellence and a leader who commands respect, and that he seeks (and is able to achieve) consensus.

**5. The candidate's experience in court administration and leadership or similar roles:**

- 5.1. The candidate acted as Judge President of the Transkei Division for just over a year.
- 5.2. He was Chairperson of the Exchange Control and Income Tax Amnesty Unit for 5 years. He was also Chairperson of the Transkei Society of Advocates (now Mthatha Society of Advocates) for about 2 years.

- 5.3. The candidate has historically served as a Prosecutor, Magistrate, Lecturer, Advocate, High Court Judge and Constitutional Court Judge.
- 5.4. His experience in court administration accordingly speaks for itself.
- 5.5. In 2017, and at the behest of the Chief Justice, the candidate was appointed as the inaugural editor-in-chief of the *South African Judicial Education Journal*. He was further appointed to the advisory boards of the *De Jure*, *South African Law Journal* and *Yearbook of South African Law* publications during the period of 2017 to 2020.
- 5.6. He has further served as a Visiting Professor at various universities locally and abroad, and actively participated in various legal organisations which are set out below.
- 6. Whether the candidate possesses the qualities required to lead the judiciary in effectively defending, protecting and upholding the Constitution:**
- 6.1. Several of the judgments which have been prepared by the candidate, since his first acting stint in the Constitutional Court to his most recent judgment, demonstrate that he indeed possesses the qualities required to lead the judiciary in effectively defending, protecting and upholding the Constitution.
- 6.2. The judgment in *Independent Electoral Commission v Langeberg Municipality* 2001 (3) SA 925 (CC) (which was authored by the

candidate jointly with Yacoob J), held that the Constitutional Court has a discretion whether to decide issues on appeal even if they are no longer “live controversies”. It was ultimately held that a dispute between the Electoral Commission and a sphere of government is not an intergovernmental dispute for the purpose of section 41(3) of the Constitution.

6.3. The candidate has recently demonstrated innovative consideration of Constitutional Law, in the ground-breaking judgment penned in *Jane Bwanya v Master of the High Court, Cape Town 241/20 [2021] ZACC 51 (31 December 2021)*:

6.3.1. The court's decision (for which the candidate wrote the majority judgment) extended the protection of intestate succession and maintenance to surviving partners of permanent life partnerships in which the partners have undertaken reciprocal duties of support.

6.3.2. The decision overturned the Constitutional Court’s earlier decision in *Volks NO v Robinson*. In that case, the majority of the Court had held that the exclusion of permanent life partners from the Maintenance of Surviving Spouses Act 27 of 1990 was not unconstitutional.

6.3.3. The candidate’s majority judgment declared unconstitutional the Maintenance of Surviving Spouses Act 27 of 1990 and the Intestate Succession Act 81 of 1987 for failing to extend benefits thereunder to the partners of persons living in a “*permanent life partnership in which the partners undertook*

*reciprocal duties of support*". The court's order read into those statutes definitions that would remedy this unconstitutionality. The relevant orders were suspended to allow Parliament to amend the legislation appropriately. The Court's order was not limited to a mere finding of constitutional invalidity, but actively called into being a new category of family relationship which is to receive express legal protection.

- 6.3.4. Both these aspects indicate a boldness on the part of the candidate which would be conducive to further transformative jurisprudence from the Constitutional Court. The candidate's judgment is clearly motivated by a commitment to extending the protections of existing legislation to vulnerable groups, in this case women who have limited bargaining power in their intimate relationships.
- 6.3.5. Four judges, namely Mogoeng CJ, Jafta J, Mhlantla J and Tshiqi J dissented from the candidate's judgment.
- 6.3.6. One of the bases of Mogoeng CJ's dissent is the fact that the parties had formed the intention to marry before one of them unexpectedly died, and the question of a life partnership was not thus properly at issue. This judgment considered that partners intending to be married should be distinguished from life partners who intend to enter into a lifelong commitment outside of marriage. Mogoeng CJ also preferred, in his dissent, to leave to the legislature the question of whether or not to provide to life partners statutory protection akin to that enjoyed by spouses in a marriage.

- 6.3.7. In Jafta J’s dissent (in which Mhlantla J and Tshiqi J concurred), the point was made that “*Parliament is the appropriate engine for law reform*” and that “*where there is no duty of support before death, there is none to be extended after death of one of the partners. This is the category of partnerships that calls for urgent legal reform from Parliament in view of the reality that about 3.2 million people cohabit out of marriage in this country*”.
- 6.3.8. Jafta J expressed the view that the candidate’s majority judgment encroached on an exclusive function of parliament: “It is a matter that is located firmly in the domain of Parliament and its failure to act does not give this Court the power to intervene without encroaching upon the separation of powers principle.”
- 6.3.9. Both dissenting judgments took the view that the majority’s departure from the Constitutional Court’s decision in *Volks NO v Robinson* was not justified because it failed to meet the standard of showing that decision to have been clearly wrong.
- 6.4. The candidate shows potential to work constructively and to command and show appropriate respect when representing the judiciary in engagements with different arms of government on a range of issues. The candidate has not shown that he is intimidated in enforcing Constitutional principles.

**7. Whether the candidate possesses the qualities required to lead the judiciary in fearlessly asserting its independence and respect for separation of powers:**

- 7.1. There is nothing to suggest that the candidate lacks judicial independence. The candidate was an active member of the African National Congress since 1990 but relinquished his membership when he took to the bench. It is assumed that such membership was relinquished to ensure his independence as a judge, both when he presided in the High Court and when nominated for the apex Court.
- 7.2. In his academic writings, the candidate emphasises the need for judges to adhere to the requirement of judicial independence.
- 7.3. The judgment written by the candidate in *Corruption Watch NPC and Others v President of the Republic of South Africa and Others; Nxasana v Corruption Watch NPC and Others* is also an example of the candidate's commitment to the independence of the judiciary.
- 7.4. The case of *Makhoka v S* illustrates the candidate's respect for the separation of powers. In his judgment, the candidate made it clear that judges should refrain from attempts, overtly or covertly, to usurp the functions of the executive.

**8. Whether the candidate possesses the qualities required to lead the judiciary in pursuing a transformative jurisprudence geared for the advancement of social justice and access to justice:**

- 8.1. The candidate possesses the qualities required to lead the judiciary in these fields.
- 8.2. From an analysis of his judgments, the candidate is obviously committed to promoting the advancement of social justice, substantive equality of historically and currently vulnerable groups (including in terms of race, gender, persons with disabilities and LGBTIQ+ people), and access to justice.
- 8.3. In *S v Steyn* 2001 (1) SA 1146 (CC) the candidate speaks of the necessity of developing our constitutional jurisprudence by means of constitutional challenges. According to the candidate, discouraging challenges might reduce the momentum of this development.
- 8.4. The judgments in *Daniels v Scribante* (improvements to the dwelling of a farmworker) and *Bwanya* (partners in permanent life partnerships) reflect the candidate's positive views on the advancement of social justice and equality.
- 8.5. As is clear from the *Bwanya* judgment, the candidate favours ensuring that the rights of all are protected, even if this is not expressly required by a literal interpretation of legislative provisions at issue.

8.6. It is clear, both from the candidate's judgments in matters affecting woman litigants, as well as his extra-curial writings, that the candidate is acutely aware that women continue to be a vulnerable and uniquely marginalised group in South Africa. The candidate appears committed to ensuring that the Constitutional Court's jurisprudence continues to contribute towards the attainment of equality by women: *"the endpoint we should all strive for is to dismantle the patriarchal, sexist and misogynistic elements underlying our judgments. We can reach that endpoint if – in our judgment writing – we consciously embrace the truism that women are equal to men and that several phenomena affect women in a myriad of ways which are either not discernible or not readily discernible to men."*

8.7. The candidate has shown his commitment to transformation, as demonstrated by his membership of the following organisations:

8.7.1. Advocates for Transformation;

8.7.2. Black Lawyers' Association;

8.7.3. National Association of Democratic Lawyers.

**9. Whether the candidate possesses the leadership qualities required to instil a judicial culture and work ethic that will meet acceptable judicial performance standards and standards of accountability:**

9.1. As stated above, just under half of the candidate's judgments have been unanimously concurred in. The candidate has only penned four

dissenting judgments and therefore does not appear to have a propensity to dissent from the majority.

- 9.2. There is no evidence to suggest that the candidate is tardy in preparing judgments. The Constitutional Court has been criticised for delays in handing down judgments in recent years. It is not clear from publicly available information who is responsible for such delays.
- 9.3. The candidate is reflected as counsel in, and written, numerous reported judgments during his career, which appear to exceed one hundred matters.
- 9.4. As stated above, the candidate displays leadership skills amongst his peers:
  - 9.4.1. The candidate has held the position of editor-in-chief of the *South African Judicial Education Journal* since 2017, a role which, it is assumed, involves ensuring that the editorial team works to publish articles which meet stringent publication standards and that the publication is brought out timeously.
  - 9.4.2. He has also served on the advisory boards or committees of three further publications between 2017 and 2021, namely *De Jure*, *South African Law Journal* and *The Yearbook of South African Law*. These appointments indicate that the candidate is valued as someone who contributes to the maintenance of high standards of academic publication.