

CANDIDATE: ADVOCATE NORMAN DAVIS SC

**COURT FOR WHICH CANDIDATE APPLIES: HIGH COURT GAUTENG
– NORTH AND SOUTH DIVISIONS**

1. The candidate's appropriate qualifications

1.1. The candidate holds the following degrees:

1.1.1 B. Com (University of Pretoria) (1984);

1.1.2 LLB (University of Pretoria) (1986); and

1.1.3 LLM (University of South Africa) (1991).

1.2. The candidate is currently a senior member of the Pretoria Society of Advocates.

1.3. The candidate is appropriately qualified.

2. Whether the candidate is a fit and proper person

2.1. The candidate has been an advocate of the High Court since 1990. He was appointed as senior counsel in 2006. He is currently the Deputy Chairperson of the Pretoria Bar Council, and has served as a member of the Bar Council since 2010.

2.2. The candidate has also served as an acting judge of the Gauteng Division, Pretoria, numerous times since 2006 and has, through his judgments, made important contributions to the development of different areas of the law.

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2.3. The candidate is nominated by Mr Thami Ncongwane, SC. The nomination speaks highly of the candidate's legal abilities and character.

2.4. No adverse comments have been received.

2.5. The candidate is 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 white man.

3.2. His appointment would not therefore contribute to the transformation of the judiciary from a purely demographic perspective. He has, however, contributed both as counsel and as an acting judge to constitutional jurisprudence, which we believe should be taken into account in considering the issue of transformation. These contributions are addressed elsewhere in this review.

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

4.1. The candidate indicates in his application that his practice consists primarily of administrative law (30%), constitutional law (20%), commercial and insolvency law (40%) and other areas of civil law including personal injury law (10%).

4.2. Our search of the mainstream law reports reveals that the candidate has been involved in a small number of reported cases, both as senior counsel and as an acting judge. Since taking Silk in 2006, the candidate has appeared in only five reported decisions:

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- 4.2.1. *Mutual & Federal Insurance Co Ltd v Da Costa* 2008 (3) SA 439 (SCA): this case involved the appellant's obligation to cover the respondent's costs of repairing an insured vehicle, in circumstances where the vehicle was incorrectly described in the insurance policy. The Court also considered the validity of the appellant's exclusion of liability for damage arising from political unrest. The Court dismissed the appeal and held the insurer liable for the damage. The candidate acted for the respondent in this matter.
- 4.2.2. *Morgan Air Cargo (Pty) Ltd v Sim Road Investments CC and another* [2009] 4 All SA 249 (GNP): this case dealt with an alleged fraudulent misrepresentation inducing a contract for the sale of immovable property. The Court granted restitution to the plaintiff. The candidate represented the plaintiff in this matter. The case went on appeal to the Supreme Court of Appeal and the appeal was dismissed with costs.
- 4.2.3. *President of the Republic of South Africa and others v Reinecke* 2014 (3) SA 205 (SCA): this case involved the nature of remedies available to magistrates in employment-related disputes, namely whether these remedies arise from contract law or administrative law. The candidate argued on behalf of the respondent that he was entitled to remedies in terms of the law of contract, and that the Court should make a finding of constructive dismissal against the appellant. The Court rejected this argument, finding that the respondent was entitled only to public-law remedies.
- 4.2.4. *Minister of Land Affairs and Agriculture and others v D & F Wevell*

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Trust and others 2008 (2) SA 184 (SCA): this case dealt with the leading of oral evidence in motion proceedings. The respondent, represented by the candidate, sought to lead oral evidence on its defence because it could not produce affidavits with sufficient evidence. The Court ordered that oral evidence should be permitted.

4.2.5. *Vorster and another v Department of Economic Development, Environment and Tourism, Limpopo Province, and others* 2006 (5) SA 291 (T): this case concerned the validity of conditions attaching to a hunting permit. The applicants challenged the conditions as ultra vires and, accordingly, of no force and effect. The Court upheld the challenge. The candidate appeared for the respondent in this matter.

4.3. The candidate appeared as junior counsel in cases that have contributed to the development of our constitutional jurisprudence, including the following:

4.3.1. *Du Plessis and others v De Klerk and another* 1996 (3) SA 850 (CC): this case involved the question of horizontal application of the Bill of Rights between private parties, and has been an important case in the development of our constitutional jurisprudence.

4.3.2. *Fraser v Children's Court, Pretoria North and others* 1997 (2) SA 261 (CC): this was part of a series of cases dealing with the adoption of children born out of wedlock, and more generally the rights of fathers of children born out of wedlock.

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- 4.4. These cases were, however, reported more than fifteen years ago. We must, therefore, note the decline in the candidate's appearance in reported decisions, including in cases of a constitutional nature.
- 4.5. It is also noteworthy that, despite the candidate's appointment as an acting judge on numerous occasions, we were unable to find any reported decisions. The decisions he relies on in his application are all unreported.
- 4.6. The candidate's judgment in *Nyathi v Member of the Executive Council for the Department of Health, Gauteng and another* (Case no 26014/2005, 30 March 2007) has, however, had a significant impact on the rights of litigants against the State. In this judgment the candidate declared section 3 of the State Liability Act 20 of 1957 inconsistent with the Constitution and invalid. The Constitutional Court confirmed the declaration of constitutional invalidity in *Nyathi v MEC for Department of Health, Gauteng and another* 2008 (5) SA 94 (CC) with only one judge, Nkabinde J, dissenting.

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

- 5.1. Although the candidate does not appear to have an extensive constitutional law practice, he has been involved in important constitutional cases as discussed above.
- 5.2. Most notably, his judgment in the Nyathi case was an important decision concerning access to justice for litigants against the state, allowing them to enforce compliance with court orders against the State. The decision, which was confirmed by the Constitutional Court, has prompted

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important legislative amendments that allow those who litigate against the State to obtain meaningful relief, thereby promoting their right of access to justice.

6. Whether any judgments have been overturned on appeal

- 6.1. Although the candidate indicates in his application that “SCA appeals were dismissed, one ‘full bench’ appeal was upheld”, he does not provide details of any judgments overturned on appeal.
- 6.2. We have searched the legal databases for information on the candidate’s judgment overturned on appeal, but have not been able to find further details.

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

- 7.1. The candidate was admitted as an attorney in 1987, and practised as an attorney until his admission as an advocate in 1990. He has been a member of the Pretoria Society of Advocates for the past 25 years. He was awarded senior counsel status in 2006.
- 7.2. Our research indicates that the candidate has appeared in only five reported cases since taking Silk. He has also served as an acting judge on numerous occasions since 2006, although we have not been able to find any reported judgments.
- 7.3. The candidate has been a member of the Bar Council of the Pretoria Society of Advocates on numerous occasions since 2010. He has been involved in advocacy training since 2005 and has also served as Secretary of the Professional and Ethics Committee and a member of the

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Transformation Committee. He is currently the Deputy Chair of the Pretoria Bar Council.

8. The candidate's linguistic and communication skills

- 8.1. The candidate's judgments are in English and he is clearly proficient in the language. His judgments are generally concise and well written.
- 8.2. His proficiency in other languages is unknown.

9. The candidate's ability to produce judgments promptly

- 9.1. On a review of the candidate's unreported judgments included in his application, there appears to be no reason to doubt his ability to deliver judgments promptly.
- 9.2. The candidate indicates in his application that there are no reserved judgments outstanding.

10. The candidate's fairness and impartiality

- 10.1. Our review of the candidate's unreported judgments gives no reason to doubt his fairness and impartiality.
- 10.2. No adverse comments have been received.

11. The candidate's independent mindedness

- 11.1. No adverse comments regarding the candidate's independent mindedness have been received.
- 11.2. A review of his unreported judgments reflects that he did not write any dissenting judgments in these cases during his time as an acting judge.

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12. The candidate's ability to conduct court proceedings

12.1. The candidate has served as an acting judge on numerous occasions. We see no reason to doubt his ability to conduct court proceedings.

13. The candidate's administrative ability

13.1. The candidate has run his own practice for 25 years, which evidences his administrative abilities. He has also been a member of the Bar Council of the Pretoria Society of Advocates and currently sits as its Deputy Chairperson.

13.2. No adverse comments have been received.

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

14.1. There is nothing on record that gives reason to doubt the candidate's integrity and ethical behaviour. His nomination from Mr Ncongongwane SC speaks highly of his ethics and integrity. Informal interactions with his colleagues have confirmed this.

14.2. No adverse comments have been received.

15. The candidate's judicial temperament

15.1. No concerns appear from the judgments we have considered.

15.2. No adverse comments have been received.

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 detailed his community involvement in his

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application. He has acted as a Disciplinary Officer for National Shows for the Arab Horse Society, advised community organisations on sponsorship contracts, assisted in Swaziland's Royal Rally charity of His Majesty's Mother's charity and been an active member of the school governing bodies at his children's schools.

16.2. He has also contributed to the training of pupil advocates, including as a trainer in trial advocacy.

17. The candidate's potential

17.1. The candidate has been a member of the Pretoria Society of Advocates for 25 years and will have built up considerable experience in a range of areas over this time. However, as indicated above, it is important to note the small number of reported cases in which he has appeared and the fact that his decisions as an acting judge have all been unreported.

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

18.1. The candidate is a competent senior advocate of the Pretoria Bar. His appointment would be recognition of the value that an experienced advocate brings to the bench.

18.2. This must be offset against the paucity of both reported judgments in which he appears since taking silk almost a decade ago and reported judgments in his capacity as acting judge.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

None

Unreported decisions

Bader v SA Council for Social Service Professions and another (Case no 56790/2013, 20 February 2015)

Ditsong Museums of South Africa v Fundi Projects (Pty) Ltd and others (Case no 76939/2013, 5 November 2014)

Law Society of the Northern Provinces v Khoza (Case no 53448/2014, undated)

Maahla v The State (Case no A331/2014, 10 February 2015)

Mineral Resource Development (Pty) Ltd, In re Macro MRD JV (Pty) Ltd v Macroton CC t/a Macro Recycling and another (Case no 14575/2014, 20 February 2015)

Mors and another v ABSA Bank Ltd and others (Case no 26705/2013, undated)

Nyathi v Member of the Executive Council for the Department of Health, Gauteng and another (Case no 26014/2005, 30 March 2007)

Ramahlo NO and others v Doubell NO and others (Case no 74784/2013, 5 November 2014)

Van Deemter and another v The Master of the High Court Pretoria and others (Case no 74302/2013, 29 August 2014)

Van Jaarsveldt NO v Van Jaarseldt NO and others (Case no 6190/14, 19 February 2015)

Judgments upheld on appeal

None reported.

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Judgments overturned on appeal

None reported.