

APPLICANT: ADV FRANCOIS JOHANNES VAN DER MERWE

COURT FOR WHICH CANDIDATE APPLIES: LABOUR COURT

1 The candidate's appropriate qualifications:

1.1 BA (Law) (RAU) (1982)

1.2 LLB (RAU) (1984)

1.3 LLM (RAU) (1988)

2 Whether the candidate is a fit and proper person:

2.1 Reference letter from Adv. Timothy Boyce (Protea Group, Johannesburg), describes the candidate as "a person of the utmost integrity".

2.2 A letter of good standing has been provided by the Cape Bar Society of Advocates of which the candidate is an associate member.

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

3.1 The candidate appears to be a white male.

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

4.1 The candidate has demonstrated a good knowledge of the law within his field of expertise, labour law.

5 The candidate's commitment to the values of the constitution:

5.1 The candidate appears to be committed to the pursuit of dignity and to socio-economic justice, and to upholding employment rights and obligations.

6 Whether any judgments have been overturned on appeal:

6.1 We could not locate any judgments by the candidate that have been considered on appeal.

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

7.1 The candidate practiced as an independent advocate for 19 years, from 1994 to 2013.

7.2 The candidate practiced as an advocate at the Johannesburg Bar for 4 years, from 2014 to 2018.

7.3 The candidate has practiced as an advocate as an associate member of the Cape Bar from 2018 to date.

8 The candidate's linguistic and communication skills:

8.1 The candidate has very good linguistic and communication skills.

9 The candidate's ability to produce judgments promptly:

9.1 We were able to locate three judgments produced by the candidate. They demonstrate that in general the candidate does not produce judgments promptly:

9.1.1 In the matter of *Oliver v The Commission for Conciliation, Mediation and Arbitration and Others* (JR1578/15) [2016] ZALCJHB (12 August 2016) the candidate ordered a

removal from the court roll. The judgment is four pages in length and was delivered exactly one month after the matter was heard. The judgment is included in the candidate's application.

- 9.1.2 In the matter of *South African Municipal Workers Union and Others v City of Johannesburg Metropolitan Municipality* (JS987/15) [2016] ZALCJHB 568 (26 October 2016) the candidate upheld an exception and granted leave to file an amended statement of claim. The judgment is also four pages long and was delivered more than three months after the matter was heard. The judgment is not included in the candidate's application.

10 The candidate's fairness and impartiality:

- 10.1 The candidate demonstrates fairness and impartiality.

11 The candidate's independent mindedness:

- 11.1 The candidate demonstrates independent mindedness.

12 The candidate's ability to conduct court proceedings:

- 12.1 There is no reason to believe that the candidate is not able to conduct court proceedings.

13 The candidate's administrative ability:

- 13.1 The candidate appears to have included in his application a draft judgment in the matter of *Ramsammy v General Public Service Sectoral Bargaining Council and Others* (JR 3216/11).

13.2 We are unable to locate a final version of the judgment. It is thus unclear that the judgment, although prepared, was ever delivered to the parties.

13.3 The draft judgment is marked “reportable”, yet does not appear to have been delivered.

14 The candidate’s reputation for integrity and ethical behaviour:

14.1 We are not aware that the candidate has any reputation for lack of integrity or unethical behaviour.

15 The candidate’s judicial temperament:

15.1 We have no reason to believe the candidate does not have a suitable 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 not been a member of any community or other organisations in the past ten years.

16.2 The candidate assisted at the SASLAW pro bono office at the Johannesburg Labour Court.

16.3 The candidate states that he has made an almost daily contribution to the restoration of employment dignity and to socio-economic justice, contributing meaningfully to the upholding of employment rights and obligations.

17 The candidate’s potential:

17.1 The candidate has potential to be a competent judicial officer.

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

18.1 The candidate does not have extensive practical experience. The candidate sat as an acting judge in the Labour Court for one week during July 2016. He has not appeared frequently in court since 2018.

18.2 Appointment of the candidate would send a message that one does not require much practical professional experience in order to become a judge.

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

Famous Brands Management Co (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration & Others (2016) 37 ILJ 2857 (LC)

Unreported Decisions:

Oliver v The Commission for Conciliation, Mediation and Arbitration and Others (JR1578/15) [2016] ZALCJHB (12 August 2016)

South African Municipal Workers Union and Others v City of Johannesburg Metropolitan Municipality (JS987/15) [2016] ZALCJHB 568 (26 October 2016)

Judgments upheld on appeal:

N/A

Judgments overturned on appeal:

N/A