

CANDIDATE : MS SHARON CHESIWE

APPLICANT: MS SHARON CHESIWE

COURT FOR WHICH APPLICANT APPLIES: HIGH COURT, FREE STATE DIVISION, BLOEMFONTEIN

1 The candidate's appropriate qualifications

- 1.1 The candidate holds the following academic qualifications:
 - 1.1.1 LLB (VISTA University) (2002);
 - 1.1.2 Diploma in Labour Relations Management 1&2 (Oxbridge Academy) (2007);
 - 1.1.3 Advanced Certificate in Labour Relations Management (Oxbridge Academy); and
 - 1.1.4 LLM (Private Law) (UFS) (2013).
- 1.2 The candidate is appropriately qualified.
- 1.3 The candidate was admitted as an attorney in 2005.
- 1.4 The candidate acted as Magistrate for 5 months, December 2005 – May 2006.
- 1.5 The candidate has acted as Judge in the Free State Division (2012, 2016 (4 terms) - 2017 (4 weeks) and 2018 (first term)) and Gauteng North & South (March & May 2017, 8 weeks).

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2 Whether the candidate is a fit and proper person

2.1 The Law Society of the Free State has indicated that the Candidate is in good standing with the law society, has never been suspended from the roll of attorneys, and there are no proceedings pending or contemplated to strike or suspend the candidate from the roll of attorneys, or to suspend the candidate from practice.

2.2 There is no information to hand to suggest that the candidate 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 woman.

3.2 The appointment of the candidate to the bench would help to ensure a racial and gender diversity which reflects the demographic profile of the Republic, as well as the Free State Province.

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

4.1 The candidate has approximately two years post-article experience as an attorney (2006 - 2008) during which time she was exposed to a broad field of litigation including:

4.1.1 Criminal Law (30%);

4.1.2 Administrative Law (10%);

4.1.3 Labour Law (10%);

4.1.4 Constitutional Law (10%); and

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- 4.1.5 General Litigation, inclusive of Family Law, Contractual and Delictual matters (40%).
- 4.2 The candidate served as Family Advocate in the Department of Justice and Constitutional Development, for approximately eight years (2008 - 2016).
- 4.3 A clear passion for Family Law and especially the rights of minors is displayed by the candidate.
- 4.4 The candidate has acted extensively and adjudicated a considerable number of matters, including appeals, relating to various aspects of law. It is not possible to summarise all the judgments, but a brief synopsis of selected cases follows:
- 4.4.1 *Richard Khuduga N.O. (Khuduga Family Trust) and others v Free State Development Corporation and others*
- This matter concerned an application to suspend a sale transaction and registration of property, pending the finalisation of a review application. The candidate dismissed the application and provided written reasons for her decision, inclusive of the fact that the Applicants did not fulfil all requirements for an interim interdict to be granted.
- 4.4.2 *The Law Society of the Free State v Mkosi Confidence Radebe*
- In this application, the candidate presided with Rampai, J and delivered the judgment. The issue was to decide if the Respondent was a fit and proper person to continue to practise as an Attorney, and if found that the Respondent was not fit

and proper, the appropriate sanction to be imposed on the Respondent. After applying and considering various factors surrounding the Respondents conduct, as well as extensive case law, it was ordered that the Respondent be suspended from practising for his own account for a period of 12 months. Rampai, J concurred with the candidate's judgment.

4.4.3 *Warren Farms CC v Andre Mikro Ferreira N.O. and Another*

This matter ran to trial and pivoted on whether an estate agent was indeed the cause of sale of a farm and therefore entitled to estate agent's commission. After hearing evidence, the candidate found in favour of the Plaintiff in a well-reasoned, well-researched judgment, basing her decision on the evidence, the impression that witnesses made, as well as the relevant legal position.

4.4.4 *The State vs J.J. Marx*

This decision concerned a special review in chambers in which the candidate presided with Van Zyl, J, regarding non-compliance by the Director of Public Prosecution with the Child Justice Act, and the length of time taken to finalise a matter. Taking into consideration the rights of the minor child under the Constitution as well as the relevant sections of Child Justice Act and various reported cases, the candidate dismissed the special review. Van Zyl, J concurred with the decision.

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4.4.5 It is noteworthy that in her first acting stint (Free State, 2012), the candidate had a judgment reported, *S v BM* 2012 (2) SACR 507 FB.

4.4.6 *The State v Ernest Chauke and Others*

This matter was a criminal matter in which the five accused were facing charges of twelve counts of copper theft as well as two charges relating to contravention of section 9(2)(a) of the Prevention of Organised Crime Act and section 49(1) of the Immigration Act. The matter involved complex evidence which was competently summed up and rationally analysed by the candidate in arriving at her finding.

4.4.7 *Thomas Gule v Passenger Rail Agency of South Africa*

This judgment concerned a matter dealt with by the candidate in the Gauteng Local Division of the High Court in 2017. The case involved the quantum determination of a claim for damages for bodily injuries after the plaintiff had fallen from a moving train. The candidate summed up the evidence and reports of various expert medical witnesses and dealt competently with the principles regarding the quantification of general damages.

4.4.8 *Kleinboom Msanyana Jiyane v Road Accident Fund*

This was another matter involving quantum heard by the candidate in the Gauteng Local Division during 2017. Expert medical evidence including the content of various joint

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minutes of experts was considered by the candidate in ultimately awarding amounts for general damages, loss of income and costs.

4.5 In light of the above, we are of the view that the candidate has a good knowledge of the law in general and a good knowledge of Constitutional Law in particular.

4.6 Note, however, that the Full Bench of the Free State Division did hold, per Musi DJP, regarding an appeal against the conviction of the crime of rape and sentence of 8 years, in the matter of *The State v Mandla Victor Makakudi* wherein the candidate formed the Court a quo (the judgment on appeal is reported on Safflii under *Mandla Victor Makakudi v The State* [Case A185/2016]) that the trial court made credibility findings in favor of the complainant without a proper assessment of her testimony and without giving proper reasons for such findings; the trial court did not consider the nature of the inconsistencies, discrepancies and contradictions in the complainant's testimony; the trial court did not consider the impact of the inconsistencies, discrepancies and contradictions on the credibility of the complainant and there was also no proper assessment done of the credibility and reliability of the complainant's testimony in light of the totality of the evidence.

4.7 We do, however, believe that the candidate has a lot of potential as borne out by the judgments referred to above.

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

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- 5.1 The candidate is committed to the values of the Constitution. She has shown an astute awareness and commitment to democratic and fundamental human rights values as well as for social justice.
- 5.2 The judgments appended to the candidate's application evidence the candidate's commitment to the values that underlie a democratic and open society. In the reviewers' opinion, the candidate is undoubtedly willing and able to give expression to the values of the Constitution, and to actively partake in the protection and development of core values that underlie the Constitutional disposition.
- 5.3 The candidate has shown a commitment towards advancing the cause of children and woman in our society.

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

- 6.1 The candidate delivered a judgment in the matter of *The State v Mandla Victor Makakudi* which was taken on appeal and which has been referred to above. The appeal was upheld (the judgment overturned) and the conviction and sentence set aside.
- 6.2 The candidate had another matter taken on appeal, which was due to be heard 26 June 2017, by the Full Bench, Free State High Court. The outcome of such appeal could not be traced. It is not clear to us whether this was the same appeal as the matter referred to in paragraph 6.1.
- 6.3 In her questionnaire, the candidate indicated that none of her judgments from the last term of 2017 were taken on appeal.

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

7.1 As is evident from the candidate's *curriculum vitae*, she has been exposed to various fields of the legal profession, both criminal and civil, at the start of her legal career as attorney, although for a short time period, and in her capacity as Acting Magistrate and legal advisor. She had specialised exposure to Family Law during her employment at the Office of the Family Advocate. She also states in her *curriculum vitae* that her interest is predominantly in Family Law and the content of her *curriculum vitae* confirms this.

8 The candidate's linguistic and communication skills

8.1 The candidate has produced well-structured and clearly written judgments.

8.2 In Court as Acting Judge the candidate communicates well and clearly.

9 The candidate's ability to produce judgments promptly

9.1 On completing the application, on 25 November 2017, the candidate indicated that no judgments were outstanding and that she was involved in two part-heard criminal matters due to continue in January 2018.

9.2 There is no indication that the candidate has failed to deliver her judgments timeously.

10 The candidate's fairness and impartiality

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10.1 It appears that the candidate is fair and impartial and applies the law without fear and favour.

10.2 No adverse comments have been received.

11 The candidate's independent mindedness

11.1 The Candidate appears to be independent minded.

11.2 No adverse comments have been received.

12 The candidate's ability to conduct court proceedings

12.1 No adverse comments have been received.

13 The candidate's administrative ability

13.1 The candidate has a background as attorney and Family Advocate. It is reasonable to assume that she has a good administrative ability.

13.2 No adverse comments have been received.

14 The candidate's reputation for integrity and ethical behaviour

14.1 No adverse comments have been received.

15 The candidate's judicial temperament

15.1 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 shown a strong commitment to serve the community, particularly through her involvement to assist less fortunate children.

17 **The candidate's potential**

17.1 With the candidate's background, clear commitment and principled approach to the legal profession, we are of the view that the candidate has significant potential as a Judge.

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

1.1 The candidate was born in Kimberley and as such represents a demographic that was historically not privileged nor well-educated and certainly not well represented within the judiciary.

18.1 Her appointment would demonstrate the changes that have occurred within our society and will convey the message that, with effort and commitment, achievements such as an appointment to the bench are now within reach of all South Africans, regardless of gender and race.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

None

Unreported decisions

S v BM 2012 (2) SACR 507 (FB)

Richard Khuduga N.O. and 2 others v Free State Development Corporation and 5 others, Free State Division, Bloemfontein, Case number 3093/2016

The Law Society of the Free State v Mkosi Confidence Radebe, Free State Division, Bloemfontein, Case number 5293/2015

Warren Farms CC v Andre Mikro Ferreira N.O. and 1 other, Free State Division, Bloemfontein, Case number 352/2015

The State v Jan Jacques Marx, Free State Division, Bloemfontein, Case number R213/2016

The State v Ernest Chauke & 4 Others, Free State Division, held at Kroonstad, Case number 22/2016

Thomas Gule v Passenger Rail Agency of South Africa, Gauteng Division, Pretoria, Case number 5860/14

Kleinboom Msanyana Jiyane v Road Accident Fund, Gauteng Division, Pretoria, Case number 88870/2014

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