

CANDIDATE : MS ELIZABETH SAMANTHA LAW

APPLICANT: ELIZABETH SAMANTHA LAW

COURT FOR WHICH APPLICANT APPLIES: THE KWAZULU-NATAL DIVISION OF THE HIGH COURT

1 The candidate's appropriate qualifications

1.1 The candidate holds the following degrees:

1.1.1 Bachelor of Arts (University of Natal, Pietermaritzburg)
(1989);

1.1.2 LLB, University of Natal, Durban (1992).

1.2 The candidate also has a Post Graduate Diploma in Industrial Relations (1993).

1.3 The candidate meets the appropriate tertiary qualifications.

2 Whether the candidate is a fit and proper person

2.1 The candidate was admitted as an Advocate of the High Court of South Africa on 7 November 1994 and has been a practising member of the Society of Advocates of KwaZulu-Natal since 26 July 1995.

2.2 She currently practises as an advocate at the KwaZulu-Natal Bar, Durban and is a member in good standing of the Society of Advocates of KwaZulu-Natal.

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2.3 The candidate was nominated by Advocate A A Gabriel SC, a member of the Society of Advocates, KwaZulu-Natal, who is confident that she is a good candidate for the appointment to the position.

2.4 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 woman.

3.2 Her appointment would contribute to the transformation of the judiciary from a gender perspective.

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

4.1 In her application the candidate indicates that:

4.1.1 for the first 9 years of her practice she had a general practice and undertook a wide variety of civil matters and to a lesser extent criminal and labour matters. In these years about 30% of her practice involved criminal matters and 5% labour;

4.1.2 from 2004 she specialised in family law, but not to the exclusion of civil matters and other areas of law such as matters involving contracts, special contracts, estates, trusts, close corporations, town planning and property. About 70% of her practice was in the field of family law and the balance of 30% in the civil law areas mentioned above;

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- 4.1.3 her family law practice invariably overlapped with other areas of law such as the law pertaining to trusts, close corporations, companies, insolvency, tax, pension funds and interdicts.
- 4.2 The candidate has extensive experience in civil and criminal practise and procedure is proficient and experienced in all aspects of litigation including drafting pleadings, applications, heads of argument, opinions and memoranda and conducting legal research.
- 4.3 The candidate appeared as junior counsel in three matters in respect of which there are judgments reported in the Supreme Court of Appeal and as counsel in one reported judgment in the KwaZulu-Natal Durban Division.
- 4.4 The candidate has taken up acting positions on three occasions during 2017 and has written four judgments, the particulars of which are as follows.

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

- 5.1 The candidate appears to have no Constitutional Law practice but does point out that Constitutional issues have arisen in some of the matters she has been involved in.
- 5.2 That said her judgments or those she was involved in recognise the values enshrined in the Constitution.

6 Whether any judgments have been overturned on appeal

- 6.1 We have been unable to establish whether any of the judgments handed down by her have been taken on appeal. Given her recent

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acting appointments in 2017 it is unlikely that any appeals against her judgments would have been heard. Judgments delivered by the candidate are considered below.

6.2 *Osman Adam N.O & Others v Spoil Yourself Hair and Beauty CC*
Case No. 3467/2016 KZND

6.2.1 The applicant trusts sought to interdict the respondent from conducting the business of a hair salon on a residential neighbouring property and interdicting the use of advertising signage in that regard. Such business, according to the applicants:

6.2.2 offended the restrictive conditions imposed on the title deed of that property; and

6.2.3 contravened the Town Planning Scheme which did not permit the conduct of a business, the property falling in the zoning “Maisonette 900”.

6.2.4 The candidate was required to determine whether:

6.2.4.1 the proceedings should be suspended or postponed pending a final determination of a special consent application lodged by the respondent with the Municipality in relation to the business; and

6.2.4.2 whether the respondent had consent to erect the advertising signage on the property.

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- 6.2.5 On the first issue the candidate found that her discretion is limited to very exceptional circumstances and that by asking her to defer the operation of the interdict the respondent was in effect asking her to condone its contravention of the provisions of the Town Planning Scheme. She found that no exceptional circumstances existed for her to exercise her discretion in favour of the suspension of the interdict proceedings.
- 6.2.6 On the second issue the candidate found that the approval granted by the Municipality related to the future erection of advertising signage and was not retrospective approval in respect of signage which had already been erected by the respondent. In the result the candidate found in favour of the applicant and granted the interdict sought.
- 6.3 *V Mnenjwa v The State* Case No. AR626/16 KZN (PMB)
- 6.3.1 The matter concerned an appeal against a conviction of rape of a complainant who was under the age of 16 at the time of the offence and was raped on more than one occasion by the accused.
- 6.3.2 A magistrate, finding that section 51(1) of Act 105 of 1997 applied, found that there were no substantial and compelling circumstances warranting a departure from the minimum sentencing provisions and then sentenced the appellant to life imprisonment. The appeal was against that sentence.

- 6.3.3 The candidate dismissed the appeal finding that the two aggravating grounds namely, the age of the complainant and that she had been raped multiple times confirmed that a life sentence was the only appropriate sentence. Whilst the advanced age of the appellant was a factor to be considered in sentence, the sentence that was imposed was not shockingly inappropriate such that interference was warranted.
- 6.3.4 Jappie JP concurred with the candidate's judgment.
- 6.4 *B A Mlilo v State* Case No. AR216/16 (KZN) (PMB)
- 6.4.1 The matter concerned an appeal against both the conviction and sentence of the appellant on the charge of contravening section 3 read with various other sections of the Criminal Law (Sexual Offences and Related matters) Amendment Act No. 32 of 2007.
- 6.4.2 The appellant was charged with committing an act of sexual penetration with the complainant who, at the time of the commission of the offence was "mentally retarded" and that Part 1 of Schedule 2 in section 51 of Act 105 of 1997 was therefore applicable.
- 6.4.3 The candidate found that the reference to "mentally retarded" must be taken to be a reference to "a person who is mentally disabled" as defined in section 1 of the Act and found that the State had to prove that the complainant's mental disability was such that she fell into one of the four categories contained in the definition.

- 6.4.4 The complainant did not give evidence and after analysing the evidence led on behalf of the State the candidate found, in regard the State's reliance on the presumption contained in section 57(2) of the Act, that it was incumbent upon the State to prove beyond a reasonable doubt that the complainant's inability to appreciate the nature and foreseeable consequences of a sexual act was attributable to her mental disability as contemplated by the definition.
- 6.4.5 of the person who is mentally disabled in section 1(1) of the Act and that the State failed to discharge the onus resting upon it.
- 6.4.6 On that basis, she found that the conviction must be set aside.
- 6.4.7 The candidate then placed emphasis on the improper stating of the charges against the appellant in the charge sheet pointing out that it should not be drafted in a manner that the accused has to try ascertain by inference or assumption what case to meet and that it is inimical to an accused's rights in terms of section 35(3) of the Constitution.
- 6.4.8 In the result the appeal against the conviction succeeded and the conviction on the charge of rape and sentence of 19 years imposed was set aside and replaced with the finding that the accused was found not guilty and discharged.
- 6.4.9 With that judgment Koen J concurred.

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6.5 *Skin Renewal CC v Brigit Filmer Spa and Skin (Pty) Ltd & Others*
Case No. AR465/2016 (PMB)

6.5.1 This matter concerned an appeal against the court a quo discharging the rule nisi granted in two applications in which the appellant sought orders declaring the respondents to be in contempt of certain court orders.

6.5.2 The court a quo discharged the rule nisi in each application finding that in most, if not all, essences of the alleged contraventions there were disputes of fact on the papers and that in the absence of a request for a referral of the applications to oral evidence, the versions of the respondents was not so far-fetched as to be rejected out of hand.

6.5.3 The candidate found that in several instances the individual acts complained of did not amount to breaches of the orders and that it was impossible for them to amount to a breach collectively. In other instances there were disputes of fact as to whether the respondents had committed the acts complained of and she did not believe that the court a quo erred or misdirected itself in coming to the conclusion which it did.

6.5.4 The candidate accordingly found that the appeal could not succeed.

6.5.5 Jappie J P concurred with her judgment.

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

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- 7.1 The candidate commenced practise at the KwaZulu-Natal Bar in 1995 and has practised as such for 23 years.
- 7.2 She served as Honorary Secretary of the Society of Advocates, KNZ from October 2003 to July 2005 and is the current Honorary Treasurer of the Society of Advocates KZN.
- 7.3 The candidate has served pro bono as a Small Claims Court Commissioner from 2002 to 2013 and has been a mentor to 5 pupils and participated as a trainer in Advocacy Training for pupils at the KZN Bar, Durban.
- 7.4 More recently, in 2017, the candidate took up acting positions on three occasions in March, April, May and October to November 2017.
- 7.5 We find her to have extensive professional experience.

8 The candidate's linguistic and communication skills

- 8.1 The candidate's judgments are in English and she is proficient in the language.
- 8.2 Her judgments are well articulated, and well researched.
- 8.3 She has however only written a limited number of judgments.

9 The candidate's ability to produce judgments promptly

- 9.1 The candidate indicated in her application that she has 4 reserved judgments outstanding. These judgments were reserved on 20

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October 2017, 24 October 2017, 2 November 2017 and 3 November 2017.

9.2 It should be noted that the candidate signed her application on 6 December 2017 at which point none of the reserved judgments were outstanding for more than 1½ months.

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

10.1 Our review of the candidate's unreported judgments give no reason to doubt her fairness and impartiality.

11 **The candidate's independent mindedness**

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

11.2 No dissenting judgments were written by her.

11.3 On each occasion when the candidate wrote a judgment on appeal, the judgment was concurred with.

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

12.1 As an advocate the candidate frequently appears in court; according to her almost weekly.

12.2 The candidate has, as indicated, acted on three occasions during 2017 and was observed conducting court proceedings competently and with good command over those present in her courtroom.

13 **The candidate's administrative ability**

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13.1 The candidate has conducted practice as an advocate for 23 years, has been an active member of the Society of Advocates, KwaZulu-Natal, and is the current treasurer.

13.2 We have no reason to doubt her administrative ability.

14 The candidate's reputation for integrity and ethical behaviour

14.1 We are unaware of any circumstances that give doubt to the candidate's integrity and ethical behaviour. She is in good standing with the Society of Advocates, KwaZulu-Natal and her performing the functions of Secretary and Treasurer for the Society indicate that she has a high regard for ethics and integrity in the profession.

15 The candidate's judicial temperament

15.1 No concerns appear from the judgments we have considered.

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

16.1 The candidate, as indicated, sat as a Commissioner in the Small Claims Court from 2002 to 2013. This service was provided pro bono and for the benefit of the community.

17 The candidate's potential

17.1 The candidate is an experienced advocate with extensive experience in litigation and mediation of disputes.

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17.2 The candidate has served as an Acting Judge on three occasions in 2017, has written four judgments and has sat as a member on a number of appeal benches.

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

18.1 The candidate is an experienced, reputable advocate of long standing.

18.2 She has made a valuable contribution to the legal profession, which is generally male-dominated, and her appointment would give recognition to such contribution as a woman in a male-dominated profession.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

None.

Unreported decisions

Osman Adam N.O & Others v Spoil Yourself Hair and Beauty CC Case No.
3467/2016 KZND

V. Mnenjwa v The State Case No. AR626/16 KZN (PMB)

B A Mlilo v State Case No. AR216/16 (KZN) (PMB)

Skin Renewal CC v Brigit Filmer Spa and Skin (Pty) Ltd & 2 Others Case No.
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Judgments upheld on appeal

None reported.

Judgments overturned on appeal

None reported.

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