

*CANDIDATE : ADV EVETTE FIONA DIPPENAAR SC*

**APPLICANT: EVETTE FIONA DIPPENAAR SC**

**COURT FOR WHICH APPLICANT APPLIES: GAUTENG DIVISION OF THE HIGH COURT**

**1. The candidate's appropriate qualifications**

1.1 The candidate has the following academic qualifications:

1.1.1 B Comm (Law) 1986

1.1.2 LLB 1988

1.1.3 MML (Banking) 1992.

1.2 The candidate is appropriately qualified.

1.3 The candidate has been a practising advocate for over 26 years. Of this, the candidate has been practising as a Senior Counsel for a period of over 8 years

**2. Whether the candidate is a fit and proper person**

2.1 The candidate is a member in good standing of the Johannesburg Society of Advocates and there are presently no disciplinary or other proceedings pending or anticipated against her.

2.2 Although the candidate has disclosed the existence of a disciplinary finding against her, the nature of the charges were relatively minor, and the incident occurred in her first year and a half of practice, many years ago. The nature

of the complaint and the finding against her does not impact upon her fitness to act as an advocate or as a judicial officer. The candidate points out in her application that she received a formal reprimand from the Chairperson of the Society of Advocates of South Africa (WLD), as it was then known.

2.3 The candidate has been involved in other professional complaints which did not impugn her character and did not involve allegations of dishonesty. These complaints were all dismissed.

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 The Gauteng Division of the High Court comprises approximately 79 judges of which only 28 are woman (35%).

3.3 The appointment of the candidate would therefore advance the cause of gender representivity. Of the 28 female judges, 11 (39%) are white women.

3.4 In addition, the reviewers are of the view that the candidate's demonstrative commitment to transformation would help to reflect the racial composition of South Africa. In this regard, we note that:

3.4.1 The candidate has sought to promote the principles of transformation by, in her words, "*focusing on involving female and/or black juniors*

*where possible and where offered the opportunity to do so, since I am often briefed alone and without the assistance of junior counsel.”*

3.4.2 As Senior Counsel, the candidate has on various occasions agreed to either a fee rate sacrifice or abandoned fees in favour of previously disadvantaged junior counsel.

#### **4. The candidate’s knowledge of the law, including constitutional law**

4.1 The judgments which we have reviewed reflect a firm knowledge on the part of the candidate of the law, including Constitutional Law.

4.2 In this regard, we note that:

4.2.1 In the candidate’s judgment in the matter of *Treasure Karoo Action Group and Another v Department of Mineral Resources and Others* (95261/15) [2018] ZAGPPHC 334 (16 May 2018), the candidate dealt extensively with the constitutional principles of legality and rationality, with appropriate reference to numerous judgments of the Constitutional Court. The matter also invoked a consideration of the proper interpretation of various Acts of Parliament and Ministerial Regulations promulgated thereunder. The matter was seemingly a complex one and the parties in the matter were represented by eminent senior counsel;

4.2.2 In the candidate’s judgment in the matter of *Black Tad Investments CC v Mogale City Local Municipality* case no 36299/13 (18 April 20 17) the candidate had to deal with the Municipality’s Statutory obligations to procure emergency accommodation for persons against whom a

threat of evictions was imminent. The candidate referred to a number of decisions of the Constitutional Court. Her judgment was upheld on appeal to the Supreme Court of Appeal.

4.2.3 In the candidate's judgment in the matter of *Wierzycka and Another v Manyi* (30437/2017) [2017] ZAGPJHC 323 (20 November 2017), the candidate had to deal with aspects relating to equality and freedom of speech.

4.2.4 In the candidate's judgment in the matter of *The Recycling and Economic Development Initiative of South Africa NPC and Another v The BCCSA and Others* (21662/2016) (18 November 2017), the candidate had to deal with aspects of a legality challenge to subordinate legislation, alternatively, an administrative review. Although the matter became unopposed, the candidate nonetheless requested counsel for the applicant to deliver heads on the Court's competence to grant relief. The candidate was alive to issues emanating from a declaration of invalidity and did well to properly and appropriately set out the obligations created on a public body according to the principle of legality in granting relief to the applicants.

4.2.5 In three unrelated matters (*J v F* (21694/2010) (9 December 2011), *Investec Bank Limited v Naidoo* (09/1041) (24 November 2010), and *Khiba v RAF* (2012/24278) (14 August 2013)), being two actions and an application in matrimonial law and contract law, the candidate demonstrated an appropriately acute sense of the rules of evidence that were of relevance to the respective matters. In particular, the candidate's ability to have a proper understanding of the evidential

rules (and the substantive knowledge) applicable to the matters at hand is to be commended in circumstances where the papers in the respective matters were voluminous or the matters ran for several years, as is the candidate's ability to produce easily readable and analytically compelling judgments. Such an appreciation was also demonstrated by the candidate in an application for leave to appeal which sought to raise new evidence on appeal in the absence of exceptional circumstances, which the applicant correctly dismissed (*De Wet and Others v Koen and Others* (20138/2011)29 June 2012).

4.2.6 The candidate is also to be commended on demonstrating a judicious temperament by exercising appropriate restraint in circumstances where it is evident that the litigation before her was particularly acrimonious between the parties and their legal representatives. In addition to the J v F matter cited above, in which the candidate declined to grant costs orders *de bonis propria*, the candidate did so similarly in the matter of *Herbst v Ossemane* (2009/2024) 28 September 2010. In both matters, an acrimonious divorce involving a potential fraud being committed in the sale of an asset in anticipation of the dissolution of a joint estate and the fight between two natural parents of a minor child, respectively, the candidate was unmoved by the manner in which the litigants and their legal representatives conducted themselves before her. In particular, the candidate's approach in *Herbst*, which involved the candidate taking the extraordinary step of not granting final relief as sought but instead, *mero motu*, exercising the discretion afforded to her to appoint a curator ad litem to protect the best interests of the child not only demonstrates a keen awareness of and alertness to the

constitutionally entrenched doctrine of the best interests of the child, but also demonstrates the candidate's common sense approach to difficult and personally vexing matters.

- 4.2.7 In *QH v ZO* 2015 JDR 1874 (GJ) the candidate dealt with acrimonious litigation between parents of a four year old child where the father launched an application for full parental responsibilities and care of the child. The acrimony between the parties extended to their legal representatives which resulted in non-compliance with the practice directives regarding indexing and pagination of the papers. The candidate once more showed good judicial temperament by refusing to strike the matter off the roll for non-compliance with the practice directives, for she considered it in the best interests of the child that the matter be dealt with without further delay. Like in *Herbst* the candidate *mero motu* invoked section 29(5) of the Children's Act by appointing a curator ad litem on behalf of the child in light of the acrimonious relationship between the parents.

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

- 5.1 Where appropriate, the candidate has firmly and correctly sought to refer to relevant provisions in the Constitution and her commitment to the values of the Constitution is reflected in her judgments.

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

- 6.1 We were unable to find any judgments of the candidate which have been overturned on appeal.

6.2 The candidate has cited four judgments which have been “*taken on appeal*”:

6.2.1 Black Tad Investments CC v Mogale City Local Municipality case no 36299/13 (18 April 20 17). Appeal judgment: *Mogale City Local Municipality v Black Tad Investments CC* (889/20 17) [20 18] ZASCA 74 (31 May 20 18). The Appeal was dismissed;

6.2.2 *Medical Nutritional Institute (Pty) Ltd v Advertising Standards Authority* (15/30 142) [2015] ZAGPJHC 317 (18 September 2015). Petition to SCA dismissed;

6.2.3 Leave to appeal was granted in *J Ngcobo v F Ngcobo* case no 21694/10 on 19 September 2012. It is unclear whether the appeal is pending.

6.2.4 An appeal to the SCA is pending in *Treasure Karoo Action Group and Another v Department of Mineral Resources and Others* (95261/15) [2018] ZAGPPHC 334 (16 May 2018). Leave to appeal was granted on 21 June 2018 and the appeal is pending;

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

7.1 The candidate has a wealth of almost 30 years of professional experience:

7.1.1 The candidate served her articles of clerkship during the period January 1989 to December 1990;

7.1.2 The candidate was admitted as an attorney in March/April 1991;

7.1.3 The candidate was employed as a professional assistant at a law firm during the period April 1991 to February 1992;

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- 7.1.4 The candidate underwent pupillage at the Johannesburg Bar during the period February 1992 to July 1992;
- 7.1.5 The candidate was admitted as an advocate on 28 April 1992;
- 7.1.6 The candidate was admitted as a member of the Johannesburg Society of Advocates on 2 July 1992;
- 7.1.7 The candidate was conferred the status of Senior Counsel on 26 November 2009;
- 7.1.8 The candidate has considerable experience as a judicial officer, having served as an Acting Judge of the High Court of South Africa on the following dates:
  - 7.1.8.1 2010:
    - 7.1.8.1.1 10 May to 21 May 2010
    - 7.1.8.1.2 14 to 18 June 2010
  - 7.1.8.2 2011:
    - 7.1.8.2.1 29 August to 23 September 2011
  - 7.1.8.3 2013:
    - 7.1.8.3.1 22 July to 9 August 2013
  - 7.1.8.4 2015:
    - 7.1.8.4.1 26 January to 6 February 2015



instances continues to exist), for female practitioners to practice almost exclusively in family law.

7.3 Her practice comprises both motion and trial work.

7.4 She appears in the High Courts and has appeared in Pretoria, Johannesburg, Durban, Pietermaritzburg, Bloemfontein, Mahikeng, Mthatha and Cape Town and in the Supreme Court of Appeal. She has regularly appeared in insolvency enquiries and in private arbitrations.

## **8. The candidate's linguistic and communication skills**

8.1 The candidate's judgments reflect excellent linguistic and communication skills.

## **9. The candidate's ability to produce judgments promptly**

9.1 From the judgments that we have reviewed:

9.1.1 the candidate appears to consistently hand down judgments within a period of three months or less, with a few exceptions;

9.1.2 the longest period during which any of the candidate's judgments remained outstanding, was a period of approximately 6 months.

9.2 We are of the view that the candidate has the ability to produce judgments promptly.

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

10.1 We have not found anything to suggest that the candidate would not conduct herself in a manner which is fair and impartial. Indeed, as we

reflect below, the candidate has conducted herself scrupulously fairly even when accusations have been made regarding her impartiality.

### **11. The candidate's independent mindedness**

11.1 The candidate's judgments reflect that she is independent minded.

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

12.1 There is nothing to suggest that the candidate has any difficulty in conducting court proceedings.

### **13. The candidate's administrative ability**

13.1 Save for repeating what is stated in paragraph 9 above in relation to the candidate's ability to produce judgments promptly, we are unable to comment on the candidate's administrative ability.

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

14.1 The candidate enjoys an excellent reputation for integrity and ethical behaviour amongst members of the Johannesburg Society of Advocates and members of the attorneys' profession.

14.2 This is evidenced by:

14.2.1 The letter of nomination of the candidate, authored by Thabile Fuhrmann of Cliffe Dekker Hofmeyr Inc;

14.2.2 The letter of support given by Advocate Altus Joubert SC;

14.2.3 The letter of support given by Advocate Arnold Subel SC; and

14.2.4 The letter of support given by Advocate Dennis Fine SC.

## **15. The candidate's judicial temperament**

15.1 We are of the view that the candidate has a good judicial temperament. We note that for the considerable period for which the candidate has acted, there have been no complaints made against her in the discharge of her judicial office.

15.2 We commend the candidate for the manner in which she handled the proceedings in the matter of *Wierzycka and Another v Manyi* (30437/2017) [2017] ZAGPJHC 323 (20 November 2017). In that matter, the respondent made application for the candidate's recusal on the basis that he had a reasonable apprehension that the candidate would be biased against him. This contention was based on the following grounds:

15.2.1 There existed, he asserted, a relationship between the candidate and the applicants' two counsel based on their common membership of the same set of Chambers, given the resultant collegiality flowing therefrom, coupled with the possibility that the case could well have been discussed between the applicants' counsel and the candidate prior to commencing her acting appointment;

15.2.2 Applicants' lead counsel, Mr Unterhalter SC (as he was then), was, professionally more senior than the candidate;

15.2.3 Respondent asserted that he observed a rapport between the candidate and the applicants' lead counsel during the course of oral argument on 7 September 2017;

15.2.4 The respondent asserted that there existed the possibility that the candidate may be receiving a fair amount of work from the firm of attorneys representing the applicants and may therefore be inclined in their clients' favour; and

15.2.5 The candidate, asserted the respondent, may as a white woman, be inclined to favour the case of the first applicant against the respondent, an African man, and may be inclined to have a certain outlook, which may not be different from that of the first applicant, who is also a white woman, given the politically and racially laden nature of the issues in the main application.

15.1 Assertions of this nature may or are likely to evoke strong emotion from a judicial officer who is the subject of attack. Notwithstanding this state of affairs, however, it is apparent from the judgment given in the recusal application that the candidate discharged her duties with a commendable measure of judicial temperament.

15.2 The application for refusal was dismissed and all parties, and in particular, the respondent, appears to have accepted the outcome.

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

16.1 The candidate cites her attempts to contribute to an awareness of gender equality and break-down stereotypes which persist in relation to women's abilities and endurance in commercial fields of practice, considering existing briefing patterns which favour men.

16.2 The candidate states that she has “...sought to practice ethically and morally and to zealously protect my clients' interests, which often involves more than purely commercial considerations and requires consultation and emphasis on broader socio-economic considerations involving the welfare of families and communities.”

### **17. The candidate's potential**

17.1 The candidate is 53 years of age.

17.2 Given the retirement age for Judges, and without even considering the prospects of elevation to a superior Court, the candidate could potentially serve for a considerable period of time.

17.3 With the candidate's self-evident experience and intellect and her diligence and work ethic, we are of the view that she has great potential for a long and successful career as a judicial officer and will be of great service to the Bench.

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

18.1 The candidate's appointment would send a positive message to the community at large.

18.2 The candidate has had a successful career at the Bar, notwithstanding practising in a field overwhelmingly dominated by men.

18.3 Her appointment would, in the circumstances, serve as a positive message to the community at large and to women in particular.

**ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

*Black Tad Investments CC v Mogale City Local Municipality* Case no 36299/2013 (GSJ) (18 April 2017) unreported. Appeal judgment (889/2017) [2018] ZASCA 7 4 (31 May 2018)

*Setsiba & Others v Trans-Orange Conference of Seventh Day Adventists* (6277/2014) [2018] ZAGPJHC 62 (28 March 2018)

*Treasure Karoo Action Group and Another v Department of Mineral Resources and Others* (95261/15) [2018] ZAGPPHC 334 (16 May 2018)

*Wierzycka and Another v Manyi* (30437/2017) [2017] ZAGPJHC 323 (20 November 2017)

*Louw obo Mahono v RAF* (2011/16477) [2013] ZAGPJHC 405 (6 June 2013)

*Investec Bank Ltd v Naidoo* (09/1041) [2010] ZAGPJHC 191 (24 November 2010)

*Columbia Rylaan 14 Northcliff CC & Another v Absa Bank Ltd & Others* (07/1185661) [2015] ZAGPJHC 190 (12 February 2015)

*Herbst v Ossemane* (2009/2024) [2011] ZAGPJHC 246 (26 September 2011)

*Medical Nutritional Institute (Pty) Ltd v Advertising Standards Authority* (15/30142) [2015] ZAGPJHC 317 (18 September 2015)

*De Wet & Others v Koen & Others* (20138/2011) [2011] ZAGPJHC 250 (9 December 2011) and [2012] ZAGPJHC 302 (29 June 2012)

*Bax Global (Pty) Ltd v Teemed (Pty) Ltd* (2009/53039) [2010] ZAGPJHC (4 November 2010)

*Van Rensburg & Another v Meyer & Another* (10879/2010) [2010] ZAGPJHC 193 (24 November 2010)

*Watkins-Ball NO & Others v Leggatt & Others* (9325/08) [2010] ZAGPAGPJHC 192 (24 November 2010)

*Newman Design Cc t/a Wizards Gallery v Document House (Pty) Ltd* (10515/2010) [2010] ZAGPJHC 190 (24 November 2010)

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*Screenworld (Pty) Ltd t/a Off the Wall v Medshield Medical Scheme* (09/526590 [2010] ZAGPJHC 195 (24 November 2010)

*Recycling & Economic Development Institute of SA NPC & Another v Broadcasting Complaints Commission of SA* (21662/2016) [2016] ZAGPJHC 319 (18 November 2016)

*Espag v Espag* (08/9066) [2015] ZAGPJHC 227 (17 April 2015)/ also cited as *Ev E* [2015] ZAGPJHC 63 (17 April 2015)

*Khiba v RAF* (2010/24278) [2015] ZAGPJHC 230 (14 August 2015)

*Masilela v RAF* (23556/2010) [2015] ZAGPJHC 193 (14 August 2015)

*Wilcocks v Hlongwa* (5230/2008) [2011] ZAGPJHC 248 (9 December 2011)

*MM De Wet & Others v HW Koen & Others* case no 20138/2011

*Absa Bank Ltd v Mykatrade* 361 CC case no 46917/2010

*F&R Diesel Belfast (Pty) Ltd & Others v Toyota South Africa Motors (Pty) Ltd* case no 21297/2011

*N v N* (21694/2010) [2011] ZAGPJHC 247 (9 December 2011)

### **Judgments upheld on appeal**

*Mogale City Local Municipality v Black Tad Investments CC* case no 889/2017 [appeal judgment [2018] ZASCA 74 (31 May 2018)]

*Medical Nutritional Institute (Pty) Ltd v Advertising Standards Authority* (15/30142) [2015] ZAGPJHC 317 (18 September 2015) Petition to SCA dismissed

### **Judgments overturned on appeal**

None.