

CANDIDATE : ADV SEENA YACOOB SC

APPLICANT: SEENA YACOOB SC

**COURT FOR WHICH APPLICANT APPLIES: GAUTENG
DIVISION**

1. The candidate's appropriate qualifications

1.1. The candidate holds the following academic qualifications:

1.1.1. BMus (University of Durban-Westville, 1996);

1.1.2. LLB (University of Cape Town, 2000); and

1.1.3. LLM (Vrije Universiteit, 2006).

1.2. The candidate is appropriately qualified.

2. Whether the candidate is a fit and proper person

2.1. In considering the information submitted by the candidate, there are no facts that would indicate or suggest that the candidate is not a fit and proper person:

2.1.1. There are no circumstances which, to the best of the candidate's knowledge, would embarrass her in the office of a judge;

2.1.2. The candidate has never been convicted of an offence involving dishonesty, violence or any other disreputable, dishonourable conduct;

- 2.1.3. The candidate has never been found guilty of unprofessional or disgraceful conduct.

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 Gauteng Division of the High Court comprises approximately 79 judges of which only 28 are woman (35%). The appointment of the candidate would therefore advance the cause of gender representivity.
- 3.3. The candidate's appointment would also help reflect the racial composition of South Africa.
- 3.4. The candidate has been involved in the promotion and advancement of transformation and gender equality through her membership of Advocates for Transformation ("AFT"), the Johannesburg Society of Advocates ("JSA"), National Association of Democratic Lawyers ("NADEL") and the General Council of the Bar ("GCB").

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

- 4.1. The candidate's knowledge and experience lies mainly in the fields of public and constitutional law.
- 4.2. The candidate recently received her letters patent and has not practised extensively as Senior Counsel.

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

5.1. The candidate has a high level of commitment to the values of the Constitution, as evinced through:

5.1.1. her practice;

5.1.2. her involvement in transformation;

5.1.3. her involvement in NADEL.

6. Whether any judgments have been overturned on appeal

6.1. To date, it does not appear that the judgments delivered by the candidate have been overturned on appeal.

6.2. The candidate granted leave to appeal in four matters and refused leave to appeal in two matters.

6.3. The Supreme Court of Appeal heard the Argent appeal (*Argent Industrial Investment (Pty) Ltd v Ekurhuleni Metropolitan Municipality* 2017 (3) SA 146 (GJ)) on 18 May 2018. Judgment has not yet been handed down.

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

7.1. The candidate has worked in the following areas:

7.1.1. During the period February to July 2001, the candidate was employed as a researcher at Thorton & Morris Attorneys and obtained experience in telecommunications law, with an emphasis on public interest matters.

- 7.1.2. During the period August 2001 to June 2003, the candidate was employed as a researcher at the Land Claims Court of South Africa.
- 7.1.3. The candidate became a member of the Johannesburg Bar in December 2003 and was recommended for Silk in May 2016. Her letters patent were signed in March 2018.
- 7.1.4. The candidate has practised as an advocate for more than 14 years. During this period, the candidate's interest and experience was Constitutional and Administrative Law, with a focus on regulated industry particularly related to telecommunications; Local and Provincial Government, Finance, Human Rights and Pension law. The candidate's practice comprises of approximately 70% of work in the field of Constitutional and Administrative Law.
- 7.1.5. The candidate has performed work in other areas of law including Family, Contractual, Delictual and Commercial Law. The aforesaid comprises approximately 30% of the candidate's practice.
- 7.1.6. During the first few years of the candidate's practice, the candidate performed work in respect of criminal appeals and has since been indirectly involved with aspects pertaining to criminal law related to applications for legal aid and the right against self-incrimination in civil proceedings.
- 7.1.7. The candidate obtained experience in Labour Law during the first five years of practice.

7.2. The candidate has been appointed as arbitrator by the Chairman of the JSA on two occasions.

7.3. The candidate was appointed as an acting judge in the Gauteng Division of the High Court and in the Land Claims Court of South Africa during the following periods:

7.3.1. Gauteng Division:

7.3.1.1. 18 November 2013 to 6 December 2013;

7.3.1.2. 3 November 2014 to 21 November 2014;

7.3.1.3. 11 May 2015 to 22 May 2015;

7.3.1.4. 1 August 2016 to 26 August 2016;

7.3.1.5. 28 November 2016 to 9 December 2016;

7.3.1.6. 29 May 2017 to 16 June 2017;

7.3.1.7. 30 October 2017 to 17 November 2017;

7.3.1.8. 4 June 2018 to 29 June 2018.

7.3.2. Land Claims Court:

7.3.2.1. 4 April 2016 to 22 July 2016; and

7.3.2.2. 3 October 2016 to 29 January 2017.

7.4. Although the candidate has obtained experience, both in practice and as an acting judicial officer, the length and duration of the candidate's experience may be a concerning factor as regards the appointment of candidate:

- 7.4.1. The candidate has not acted as a judge for periods longer than a month (excluding the Land Claims Court).
- 7.4.2. The candidate has been practicing as Senior Counsel for less than six months.
- 7.4.3. The candidate has not been engaged in trials with a duration of more than one day.
- 7.4.4. The candidate's practice predominantly comprises of chamber work (opinion and advice).

8. The candidate's linguistic and communication skills

- 8.1. From the candidate's judgments and two published articles, it appears that she has suitable linguistic and communication skills to express herself in a clear and understandable manner.

9. The candidate's ability to produce judgments promptly

- 9.1. In the Gauteng Division, the candidate delivered judgments within a reasonable time with most being delivered within the same month or shortly thereafter.

Parties	Hearing Date	Judgment Date	Period
<i>Lloyd v Lloyd</i>	11/2013	11/2013	Same month

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<i>Joubert v Yikusasa Building Contractors</i>	11/2013	26/11/2013	Same month
<i>Matsane v Road Accident Fund</i>	05/2015 (14,15 & 22)	24/08/2015	3 months
<i>MAN Financial Services (SA) (Pty) Ltd v FST Logistics and Others</i>	20/05/2015	25/09/2015	4 months
<i>S v Bodi</i>	08/2016	25/08/2016	Same month
<i>Pitje and another v Joubert and others</i>	08/2016	06/12/2016	Approx. 4 months
<i>S v Radebe</i>	05/12/2016	07/12/2016	2 days
<i>Van der Merwe v City of Johannesburg</i>	05/12/2016	10/12/2016	5 days
<i>Ardent Industrial Investment (Pty) Ltd v Ekurhuleni</i>	06/12/2016	13/02/2017	Approx. 2 months

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<i>Metropolitan Municipality</i>			
<i>IEMAS Financial Services (Co-op) Ltd v Nswedana</i>	05/2017	31/05/2017	Same month
<i>Zizema v Nedbank and another</i>	11/2017	17/11/2017	Same month
<i>Van Coller and another v Machele and others</i>	11/2017	24/11/2017	Same month
<i>S v Mandlazi</i>	02/11/2017	24/11/2017	Same month
<i>Fibreworks CC v Wilkinson</i>	30/10/2017	07/12/2017	Approx. 5 weeks
<i>Mbangeni v MEC for Health, Gauteng Province and another</i>	07/11/2017	15/12/2017	Approx. 5 weeks

<i>Zamalwandle Transport Logistics (Pty) Ltd v Azania Infracon (Pty) Ltd</i>	05/06/2018	12/06/2018	6 days
<i>Smuts NO v Gumede</i>	04/06/2018	12/06/2018	7 days
<i>Stofile v Mvulane and another</i>	05/06/2018	12/06/2018	7 days

- 9.2. In the Land Claims Court, the candidate did not deliver all her judgments within a reasonable time, with four of them taking longer than six months:

Parties	Hearing	Judgment	Period
<i>Wilgerweg Trust v Ockhuis</i>	Review in chambers	19/04/2016	-
<i>Amahlubi Land Claim Community</i>	01/06/2016	02/06/2016	1 day

<i>Ljinplaas Boerdery (Edms) Bpk v Mofokeng and others</i>	Review in chambers	23/07/2016	-
<i>Gregory NO and others v Mathebula and others</i>	Review in chambers	18/08/2016	-
<i>Barnard v September and others</i>	Review in chambers	10/11/2016	-
<i>Fourie v Stander and others</i>	Review in chambers	12/04/2017	-
<i>Dinoko Community Trust v Mapela Tribal Authority and others</i>	15/12/2016	13/06/2017	6 months
<i>Mdakane v Cochester Zoo SA Properties (Pty) Ltd</i>	05/2016 (3 to 6); 10/2016 (4 to 7 & 10 to 13); 05/01/2017	13/07/2017	Approx. 6 months

<i>Venter v Masiagwala and others</i>	13/12/2016	28/07/2017	Approx. 7 and a half months
<i>Khumalo and others v Sharp Sharp Fresh Foods (Pty) Ltd</i>	11/2026 (24 & 25); 03/02/2017	08/09/2017	Approx. 7 months

10. The candidate's fairness and impartiality

10.1. Based on the candidate's written judgments, she displays a sense of fairness, reasonableness and impartiality.

11. The candidate's independent mindedness

11.1. The candidate has demonstrated independence in her judgments. She has granted leave to appeal in some matters and recognises that another court may reach a different conclusion.

12. The candidate's ability to conduct court proceedings

12.1. The candidate exhibits an understanding of judicial process, Rules of Court and procedure and has exhibited flexibility and assertiveness in this regard, as demonstrated in her the judgment in Amahlubi:

"11. The Court ruled that it would adjourn until 4pm on Wednesday afternoon, to permit the Inkosi to use Monday afternoon, Tuesday, and

most of Wednesday to consult, and that if there was no agreement, the matter would proceed on Thursday morning.

12. As a result of technical difficulties, the Court was able to resume only at 6pm on Wednesday evening. Argument continued until almost 9pm, and the decision was reserved until this morning.”

13. The candidate’s administrative ability

13.1. The candidate has a well-developed administrative ability having been involved in a number of committees, associations and activities, including:

13.1.1. Deputy honorary secretary of the Johannesburg Bar Council (2006/2007; 2007/2008);

13.1.2. Member of the Johannesburg Bar Council (2011/2012; 2014/2015; 2016/2017; 2017/2018);

13.1.3. Advocacy training for pupil advocates (2017/2018);

13.1.4. Secretary of the Professional Committee, Johannesburg Bar Council (2011-2013);

13.1.5. Member of the following committees falling under the auspices of the Johannesburg Bar Council during the period 2003 to date:

13.1.5.1. Library Committee;

13.1.5.2. Bursary Committee;

13.1.5.3. Pro Bono Committee;

- 13.1.5.4. High Court Committee, and
- 13.1.5.5. The Professional Committee.
- 13.1.6. Member of various Committee's at Group Level;
- 13.1.7. Deputy Secretary of Advocates of Transformation (National) 2010 – 2013;
- 13.1.8. Member of Advocates for Transformation;
- 13.1.9. Member of National Association of Democratic Lawyers;
- 13.1.10. Anonymous peer reviews for Juta.

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

- 14.1. The candidate has a sound reputation for integrity and ethical behaviour.
- 14.2. The candidate has no record of disciplinary proceedings.
- 14.3. The candidate has the respect and support of her peers and members of the legal fraternity, as evidenced by the letters attached to her application.

15. The candidate's judicial temperament

- 15.1. The candidate appears to possess a suitable judicial temperament and is fair, honest, and impartial.
- 15.2. The candidate states that, "*every judgment I have given is also significant, although none of them groundbreaking, because they are important to the litigants and because they contribute to the body of law in South Africa*", which illustrates her appreciation of

the responsibility of being in judicial office.

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

- 16.1. The candidate is committed to human rights and understands the values and needs of the community.
- 16.2. The candidate's involvement in public interest litigation, pro bono work and work on a reduced fee basis, illustrates her commitment to these aspects, as does her involvement in AFT and NADEL, and in drafting policies such as the Maternity Policy and Sexual Harassment Policy at the JSA.

17. The candidate's potential

- 17.1. Although the candidate does not appear to have extensive knowledge and experience in commercial and criminal law, she is conscientious and committed to her responsibilities and has the ability to develop in these areas.
- 17.2. Given the candidate's constitutional background and attention to matters of public interest, equality and transformation, she has the potential to become a sound judicial officer.

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 in that:
- 18.1.1. The candidate is suitably qualified for the position; and

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18.1.2. The candidate exhibits independence, fairness, impartiality and a solid work ethic.

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

South Africa Human Rights Commission v Qwelane 2018 (2) SA 149 (GJ)

Organisasie vir Godsdienste-Onderig en Demokrasie v Laerskool Randhart and Others 2017 (6) SA 129 (GJ)

National Director of Public Prosecutions and Others v Freedom Under Law 2014 (4) SA 298 (SCA)

KwaZulu-Natal Joint Liason Committee v MEC for Education, KwaZulu-Natal and Others 2013 (4) SA 262 (CC)

Wiese v Government Employees Pension Fund and Others 2012 (6) BCLR 599 (CC)

KwaZulu- Natal Agricultural Union v Minister of Co-Operative Governance and Traditional Affairs and Others 2011 (4) SA 266 (KZP)

Koyabe and Others v Minister for Home Affairs and Others (Lawyers for Human Rights as Amicus Curiae) 2010 (4) SA 327 (CC)

Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others 2010 (6) SA 182 (CC)

Argent Industrial Investment (Pty) Ltd v Ekurhuleni Metropolitan Municipality 2017 (3) SA 146 (GJ)

Unreported decisions

Mbangeni v MEC Health, Gauteng Province and Another (24217/16) [2017] ZAGPJHC 401 (15 December 2017)

Matsane v Road Accident Fund (12/19810) [2015] ZAGPJHC 177 (24 August 2015)

Ex parte Amahlubi Land Claim Community (LCC74/09) (2 June 2016)

Mdakane and Another v Colchester Zoo SA Properties (Pty) Limited (LCC 157/2015) (13 July 2017)

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Judgments upheld on appeal

None.

Judgments overturned on appeal

None.