

CANDIDATE: SHANAAZ CHRISTINE MIA

CANDIDATE: SHANAAZ CHRISTINE MIA

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

1. The candidate's appropriate qualifications:

1.1. The candidate holds the following degrees:

1.1.1. BA;

1.1.2. LLB;

1.1.3. LLM – Dissertation on the Child's Voice in Court proceedings in terms of the Hague Convention on the Civil Aspects of International Child Abduction.

1.2. The candidate has held positions in the Department of Justice and Constitutional Development since February 1998.

1.3. In 2002, she was appointed as a Magistrate in Cape Town which appointment was confirmed in October 2003. At the time she presided in the Family Law section of the Magistrate's Court and Divorce Court.

1.4. After the candidate's appointment was confirmed in October 2003, she presided in the Family and Criminal Courts for Orlando, Protea, Lenasia, Meadowlands and Kliptown.

CANDIDATE: SHANAAZ CHRISTINE MIA

- 1.5. She further presided in the Civil Courts held at Randburg and Kempton Park as well as Atteridgeville and Mahikeng.
- 1.6. In May 2009, the candidate was elevated to the position of Acting Judge in the Land Claims Court, for a period of 8 months.
- 1.7. In October 2010, the candidate was appointed as an Acting Judge of the High Court – Western Cape Division, for the period October 2010 until April 2011, a period of 7 months.
- 1.8. During February 2013 and April 2014, the candidate held the position as Acting Judge of High Court, sitting in Johannesburg for a period of 7 weeks.
- 1.9. From April 2015 to September 2015, the candidate held the position of Acting Judge in the Free State High Court, sitting in Bloemfontein. A period of 6 months.
- 1.10. Since 2017 to present, the candidate has served as an Acting Judge in the High Court sitting in Pretoria and Johannesburg.
- 1.11. She held the position as Family Advocate until 2002;

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

- 2.1. The candidate has been a Magistrate and has held Acting Appointments in the High Courts, sitting in Cape Town, Bloemfontein, Pretoria and presently, Johannesburg.

CANDIDATE: SHANAAZ CHRISTINE MIA

2.2. There are no adverse inferences or comments as to the candidate's fitness for appointment as a Judge in the South Gauteng Division.

2.3. A review of her judgments provides no indication that she is unfit for the position applied for.

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 of Indian descent.

3.2. The appointment of the candidate would assist in reflecting the racial and gender composition of South Africa

4. The candidate's commitment to the values of the constitution:

4.1. The candidate's judgments demonstrate a commitment to constitutional values and an understanding of constitutional imperatives.

4.2. This is evident from her judgments handed down in the Land Claims Court as well as from her joint judgment in the matter of *Momberg v S* (A206/2018) [2019] ZAGPJHC 183 (28 June 2019), sitting as the Court of Appeal, together with the Honourable Mudua J.

4.3. She is also involved in South African Chapter of the International Association of Women Judges as well as the African Regional Judges Forum subcommittee on Education on HIV and TB, and *Shura Ya Bafazi*. The candidate also does voluntary work with civil society organisations NICRO, SANCA and *Khulisa* Social Solutions.

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

- 5.1. The candidate studied law at the Universities of Cape Town and the Western Cape and has been conferred with an LLM degree.
- 5.2. The candidate holds a course certificate in *Race, Diversity, Social Justice and Transformation and Social Psychology* from the University of the Witwatersrand, 2014.
- 5.3. The candidate has authored the following works:
 - 5.3.1. The Child's voice in Court Proceedings in terms of the Hague Convention on the Civil Aspects of International Child Abduction, Master's Dissertation, UWC, 2002;
 - 5.3.2. Impact of Cultural Values on Maintenance Orders, Civil Court Newsletter, May 2008.
- 5.4. The candidate has served in the capacity as a Family Advocate, Magistrate in both Criminal and Civil Courts and has extensive experience presiding in the High Courts for the Western Cape, Free State and Gauteng where she continues to occupy the position as Acting Judge in Johannesburg.
- 5.5. Of the candidate's judgments listed as having been taken on appeal, 8.5% of the candidate's judgments have been successfully reversed on appeal.

- 5.6. Of the reported judgments the candidate lists the following judgments as being of some significance:

LAND CLAIMS COURT

- 5.7. *Farjas Propriety Limited vs The Minister of Agriculture and Land Affairs and others // Rainy Days Farms Propriety Limited vs the The Minister of Agriculture and Land Affairs, unreported under LCC 57/2008 and LCC 58/2009 but reported under Farjas (Pty) Ltd v Minister of Agriculture and Land Affairs of the Republic of South Africa and Others, Rainy Days Farms (Pty) Ltd v Minister of Agriculture and Land Affairs of the Republic of South Africa and Others (753/11) [2012] ZASCA 173; [2013] 1 All SA 381 (SCA); 2013 (3) SA 263 (SCA) (29 November 2012)*

- 5.7.1. The case involved 2 companies who had developed land for purposes of establishing a residential township. The land was expropriated, and the companies sought compensation thereafter. The candidate, sitting as the judge of first instance in the Land Claims Court, had to decide on the ‘just and equitable’ compensation for the Plaintiff companies by considering the section 25 of the Constitution and section 33 of the Restitution Act, Act 22 of 1994.

- 5.7.2. The Plaintiff companies appealed the candidate’s decision, with specific reference to the finding by the candidate that the CPI adequately addressed the changes in the value of money over

time. The appeal was dismissed by the SCA, having found favour with the candidate's judgment and reasoning.

5.8. Baphiring Community vs Uys & Others 2010 JOL 25081 (LCC)

5.8.1. In this case the Claimants were members of a community which had been relocated from land occupied by them. They sought restitution of the land in terms of Section 33(ca) of the Restitution of Land Rights Act, 22 of 1994. The land was now privately owned by different owners and was being used for farming. The candidate was required to consider the feasibility of restitution in terms of the provisions of the Act. The candidate applied her mind and found a proper balance in respect of the Constitutional imperative that underlined the Act and the practical implications of restitution and provided a proper and succinct judgment which retains its value.

5.9. Booth & Others vs The Minister of Land Affairs and Agriculture & Others (2010) JOL 25448 (LCC)

5.9.1. The judgment flows from the Land Claims Court sitting in Cape Town. In this present instance the candidate was seized with an application for the admission as an amicus curia who intended to make submissions and address the Court in review proceedings in a land restitution matter. The considerations of law were contained in Rule 14 of the Land Claims Court, with reference to Rule 14(2)(b)(iii) as to the requirements that had to be present.

In this instance the affidavit which sought at the time of the application to justify the appointment of the amicus curiae was absent. The matter concerned various interlocutory issues; firstly, the fact that the case took three years to be set down and, secondly, an application for condonation by the Applicant for the late filing of the application. The candidate's judgment dealt with the specific requirements of the Land Claims Court Rules, their impact and possible prejudice should they not be followed.

5.10. **Ceres Fruit Processors vs Folotie & Another 2010 JOL 25449 (LCC)**

5.10.1. The judgment dealt with with the proper interpretation and application of Section 19(3) of the Extension of Security of Tenure Act, 62 of 1977, together with an eviction order that was granted, which did not appear to comply with the peremptory requirements specified in Section 9(2) of the Act with specific reference to the terms of Section 10(2) where the Court of first instance had to consider the availability of suitable alternative accommodation.

THE HIGH COURT JOHANNESBURG

5.11. **Anton Killian Incorporated & Another vs Rodel Financial Services (Pty) Limited (2013) JOL 30851 (GSJ)**

5.11.1. In this matter the candidate was seized with an application for the rescission of a default judgment together with considering the

condonation for the late filing thereof and thus in terms of the applicable Rule 31(2) of the Uniform Rules of Court as well as the requirements in respect of Rule 27 of the Uniform Rules of Court. The main issue in this instance was that the Applicants had not properly explained the reason for their delay and thus there was an absence of good cause shown for the Court to apply its mind in respect of condonation.

5.12. **Ferreira vs Q No More (Pty) Limited & Another (2013) JOL 30680 (GSJ)**

5.12.1. The matter the candidate was seized with was that of contract and lease, interpreting the validity of suspension conditions and the non-fulfilment thereof. The candidate was seized with interpreting the parties' intention by having regard to the conduct of the parties as the relevant clauses in the lease agreement were ambiguous. The judgment succinctly sets out the pertinent issues that had to be decided. The candidate clearly understood and crystallised what was relevant and interpreted the relevant case law in respect of the issue in an appropriate manner providing a valuable reference in respect of this specific aspect of contract law.

5.13. **Weelson vs Waterlinx Pool and Spa (Pty) Limited; in re Waterlinx Pool and Spa (Pty) Limited vs Right Stuff Hardware CC t/a Kings Paint and Hardware Pool Company & Others (2013) JOL 30678 (GSJ)**

5.13.1. The application in this instance was based on an acknowledgement of debt. The Applicant at the time sought a rescission of the judgment in terms of Rule 42(1)(a) of the Uniform Rules of Court. The legal position in this instance was properly articulated and referred to and the application of the Rule together with the requirements and the relevant law that underpins it was succinctly and crisply applied in order for the judgment to be reached.

6. Whether any judgments have been overturned on appeal:

6.1. The Baphiring Community vs Tshwaranani Projects CC (806/12) (2013) ZASCA 99 (6 September 2013)

6.1.1. The candidate was the Judge of first instance sitting in the Land Claims Court. The candidate was seized with an application for a restoration order in terms of the Restitution of Land Rights Act, 22 of 1994. The issues specifically that turned on appeal were the cost of restoration and the absence of evidence having been led in regards thereto by the State. The SCA set the non-restoration order aside made by the candidate in the Court below and found that the absence of such evidence constituted a material irregularity that vitiated the non-restoration order made by the candidate.

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

7.1. The candidate has an impressive professional history as referred to in paragraph 2 *supra*.

8. The candidate's linguistic and communication skills:

8.1. The candidate's judgments read easily and show advanced linguistic and communication skills.

8.2. The candidate's judgements are written in plain English, demonstrating a crisp grasp of the issues at hand and can be read easily by members of ordinary society.

9. The candidate's ability to produce judgments promptly:

9.1. The candidate has no outstanding reserved judgements.

9.2. There is no reason to conclude that judgements are not produced promptly.

10. The candidate's fairness and impartiality:

10.1. No adverse comments have been received in this regard.

11. The candidate's independent mindedness:

11.1. There is no reason to doubt that the candidate is not independent minded.

11.2. The candidate does not shy away from crystallising the issue at hand, is able to do so succinctly and in a very simple and progressive manner.

11.3. There is no record of any complaint or incident indicating a lack of independent mindedness on the part of the candidate.

12. The candidate's ability to conduct court proceedings:

12.1. The candidate has held a seat at the High Court in both Johannesburg and Pretoria as well as Bloemfontein and the Western Cape, together with a tenure in the Land Claims Court as has been referred to.

12.2. As a Magistrate, the candidate was exposed to the requirements of Case Flow Management and is similarly well adapted to ensure the proper compliance with the same requirements in the High Court. The candidate is experienced in ensuring that judicial court or chambers hours are utilized fully.

12.3. Her judicial track record supports the fact that the candidate has the requisite ability to conduct Court proceedings properly. This is further evidenced by the fact that the candidate has been deployed in the High Court's normal rotation schedule between Motion Court, both opposed and unopposed, Criminal Appeals, Civil Appeals, Urgent Court sittings and well as the Trial Court.

12.4. The candidate's continued deployment in the service of these courts demonstrates an inherent trust in her abilities.

CANDIDATE: SHANAAZ CHRISTINE MIA

- 12.5. Moreover, feedback received to the candidate's application suggests that the candidate, whilst maintaining proper judicial decorum as well as being polite and patient, conducts proceedings with a firm hand and retains firm control of all proceedings in her Court.
- 12.6. The candidate does not shy away from assisting junior members of both the Bar and the Side Bar in her Court without compromising either her independence or the dignity and the proper functioning of the Court.
- 12.7. There is no reason to doubt her ability to conduct Court proceedings and no information to the contrary has been received.
- 12.8. The candidate has presided over diverse matters in various jurisdictions. The candidate's judgments exhibit sufficient competence to conduct court proceedings.
- 12.9. The candidate applies her mind to isolating the relevant facts and identifying the applicable legal principles. The candidate's reasoning is logical and this is clearly evident in the appropriate costs order handed down in **AM v NM**.
- 12.10. The candidate brought an urgent application declaring the respondent in contempt of a court order. The candidate held that the respondent's reasons for failing compliance were 'absurd'. She nevertheless ordered the respondent to pay costs on a party and party scale, despite there being sufficient cause for a punitive costs order

13. The candidate's administrative ability:

13.1. The candidate has expressed her commitment to case flow management.

13.2. No adverse comments have been received.

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

14.1. No adverse information has been made which casts doubt on the candidate's integrity and ethical behaviour.

15. The candidate's judicial temperament:

15.1. No adverse information has been received.

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

16.1. As evident from her efforts with NICRO, *Shura Ya Bafazi* and *Khulisa*, the candidate demonstrates an interest in the promotion of women's and children's rights.

17. The candidate's potential:

17.1. The candidate has extensive experience in the Land Claims Court, Western Cape High Court, Bloemfontein and Johannesburg High Court.

CANDIDATE: SHANAAZ CHRISTINE MIA

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

18.1. The candidate is a black woman and her appointment will send a positive message to the community at large.

CANDIDATE: SHANAAZ CHRISTINE MIA

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Baphiring Community v Uys and Others [2010] 3 ALL SA 353 (LCC)

Booth and Others v Minister of Land Affairs and Agriculture and Others [2010] JOL 25448 (LCC)

Anton Killian Inc and another v Rodel Financial Services (Pty) Limited [2013] JOL 30851 (GSJ)

Anton Killian Incorporated and another v Rodel Financial services (Pty) Limited [2013] JOL 31067 (GS)

Baphiring Community v Uys & others [2010] JOL 25081 (LCC)

Ceres Fruit Processors v Folutie & another [2010] JOL 25449 (LCC)

Farjas (Pty) Limited and another [2013] JOL 30680 (GSJ)

Heavy Commercial Vehicle Underwriting Managers (Pty) Limited and another v Ossie Pretorius Landgoed [2017] ZAGPJHC 363

AM v NM [2019] ZAGPJHC 223

MTA v Raf [2018] ZAGPJHC 451

Khumalo & Others v ERF 507 Charles Street (Pty) Limited & Others [2010] JOL 25454 (LCC)

Majola v Mortimer NO & others [2010] JOL 25455 (LCC)

Lawangee and another v ABSA Bank Limited [2013] JOL 30685 (GSJ)

CANDIDATE: SHANAAZ CHRISTINE MIA

*Madulamoho Housing Association v Masibi Gaitsewe and others [2013] JOL 30684
(GSJ)*

Matt Trading (Pty) Limited v Sibiya [2010] JOL 25377 (LCC)

Molefe and another v Twala and others [2016] JOL 36714 (GSJ)

*Mollem Boerdery (Pty) Limited and another v Munchu & another [2010] JOL 25456
(LCC)*

*Mollem Boerdery (Pty) Limited & others v Modisane & others [2010] JOL 25457
(LCC)*

Padi v Jordan NO [2018] JOL 39620 (GJ) (1)

Pienaar v Gmeiner NO and another [2013] JOL 31066 (GSJ)

*Rainy Days Farm (Pty) Limited v Minister of Agricultural & Land Affairs, RSA &
others [2012] JOL 28480*

Seth v Seth [2018] JOL 40665 (GJ)

Rock Farm (Pty) Limited v Nkosi [2010] JOL 25459 (LCC)

Swart v Mahlangu [2010] JOL 25460 (LCC)

Tshamela (Nee Mbangata) v Tshamela and others [2018] JOL 39432 (GJ)

Wastie v McConnahie and another [2013] JOL 30629 (GSJ)

*Weelson v Waterlinx Pool and Spa (Pty) Limited in re Waterlinx Pool and Spa (Pty)
Limited v Right St [2013] ZAGPJHC 47*