

APPLICANT: ADV HEINRICH FREDERICH BRAUCKMANN

**COURT FOR WHICH APPLICANT APPLIES: MPUMALANGA
DIVISION OF THE HIGH COURT, MIDDELBURG OR MBOMBELA**

1 The candidate's appropriate qualifications

1.1 The candidate is duly qualified, having obtained:

1.1.1 B. Iuris (UOFS) in March 1983; and

1.1.2 LLB (UOFS) in March 1986.

1.2 The candidate is experienced, having worked as:

1.2.1 an attorney (1986-2013);

1.2.2 a practising advocate as a member of the National Bar Council of South Africa (2013-2019); and

1.2.3 is currently acting as a Judge in the Mpumalanga Division of the High Court.

2 Whether the candidate is a fit and proper person

2.1 The Applicant is a fit and proper person, because:

2.1.1 the National Forum of Advocates, the National Bar Council of South Africa and the Mpumalanga Provincial Legal Practice Council have issued certificates of good standing in support of his application;

- 2.1.2 the candidate served in the Judge President Advisory Committee, Mpumalanga Division, during 2017;
- 2.1.3 the candidate was Chairperson of the National Bar Council of South Africa in 2016.
- 2.2 Between the period 1986 to 2013 the candidate served as a member of the then Law Society of the Northern Provinces.
- 2.3 There does not appear to be any:
 - 2.3.1 complaint or disciplinary proceedings pending against him in his professional capacity;
 - 2.3.2 criminal or civil litigation pending against him;
 - 2.3.3 as well as being a member of the National Bar Council of South Africa, he also served as a member of the judicial and disciplinary committees of the National Bar Council of South Africa (in Gauteng) between the years 2015-2018.
- 2.4 It is the candidate's belief that transformation of the legal profession is important. This trait he showed by employing only women as candidate attorneys and professional assistants, during his tenure as an attorney. One of the women appointed by him became his partner in his then firm of attorneys, viz., Brauckmann Jooma Attorneys between 2004 and 2008. Another woman who was appointed by him, later opened her own practice, Nkgadima Attorneys in Middelburg.

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 man.

3.2 The candidate's appointment would neither help to transform the racial or the gender composition of the bench.

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

4.1 The candidate possesses vast knowledge and experience in the law, having practised in different fields of the law, both as an attorney and advocate.

4.2 As an Acting Judge he has delivered well-reasoned and sound judgments.

4.3 There is no indication that the candidate is experienced in constitutional matters.

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

5.1 Apart from his passionate pursuit of promoting transformation of the legal profession by employing women candidate attorneys and professional assistants, the available information does indicate that the candidate went beyond that. For instance, he also assisted indigent litigants *pro amicus*.

6 Whether any judgments have been overturned on appeal

6.1 It appears that there are no judgments delivered by the candidate which were taken on appeal.

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

7.1 The candidate is a proficient lawyer, as can be seen from:

7.1.1 his 34-year experience in the law, comprising:

7.1.2 27 years as an attorney (1986-2013);

7.1.3 6 years as a practising advocate; and

7.1.4 January 2019 to date as an Acting Judge.

7.2 The candidate practised in the various fields of law, viz., criminal law, insolvency law, civil litigation, labour law, motion court procedure, criminal and civil appeals, reviews, misconduct inquiries, family law, arbitrations and administrative law.

8 The candidate's linguistic and communication skills

8.1 The candidate is proficient in the English language and communication skills, as is apparent from:

8.1.1 his well-researched and reasoned judgments; and

8.1.2 the manner in which he drafted his submission in support of his nomination.

9 The candidate's ability to produce judgments promptly

9.1 The candidate is able to produce judgments promptly, as is shown in the six judgments accompanying his submission to the JSC.

9.2 The candidate has held acting appointments for two years three months from January 2019 to March 2020. He has 4 reserved judgments from December 2019.

10 The candidate's fairness and impartiality

10.1 There are no reservations or concerns regarding the candidate's impartiality and fairness.

11 The candidate's independent mindedness

11.1 There are no reservations regarding the candidate's independent mindedness.

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 is administratively competent, as is shown by his career record, his involvement as a member of the National Bar Council of South Africa, member of the Judge President's Advisory Committee, Mpumalanga Division and as Chairperson, NBCSA Judicial Committee, Gauteng Region.

14 The candidate's reputation for integrity and ethical behaviour

14.1 The candidate's integrity and ethical behaviour are incontrovertible.

15 The candidate's judicial temperament

15.1 The candidate's integrity is undisputable, having regard to his appointment as Acting Judge for a considerable period of time.

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

16.1 The candidate's commitment to human rights, and experience regarding the values and needs of the community, appear from his involvement in the activities and subcommittees mentioned above.

17 The candidate's potential

17.1 The candidate demonstrates potential to contribute to the judiciary, having regard to his experience, capabilities, and demeanour.

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

18.1 If the candidate is appointed, it will convey to the community at large that the judiciary:

18.1.1 consists of judges that are competent, experienced, proficient, fair and just and open minded;

18.1.2 judges are involved in and understand the needs of the community.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reportable Decisions

S. Shongwe v The Magistrate, Barberton & 2 Others, Mpumalanga Division, Middelburg, Case No. 1948/2018.

The rest of the judgments by the candidate do not indicate whether they are reportable or not

First Rand Bank Ltd v S. L. Mgedesi & Another, Case No. 727/2016.

Govan Mbeki Municipality v New Integrated Solutions (Pty) Ltd, Case No. 1168/2017.

Minister of Police v J. S. Mtsweni & 2 Others, Case No. 1242/2017.

Hoosen Mansoor & 3 Others v The Magistrate, Ms Greyvenstein & Another, Case No. 1772/2018.

S. Shongwe v The Magistrate Barberton (Mr Mhlanga) & 2 Others, Case No. 1948/2018.

All the above-mentioned decided cases were heard in the Mpumalanga Division, Middelburg.