

**APPLICANT: JUDGE ZEENAT CARELSE**

**COURT FOR WHICH CANDIDATE APPLIES: LAND CLAIMS COURT**

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

1.1. The candidate holds the following degrees:

1.1.1. BA LLB (1992) University of Durban, Westville.

1.2. The candidate has been a Judge of the Gauteng Local Division of the High Court (2009 – date).

1.3. The candidate has been a seconded Judge of the Land Claims Court (2009 – date).

1.4. The candidate was an Acting Judge of the Supreme Court of Appeal (October 2018 – March 2019).

1.5. The candidate was a Regional Magistrate for the Gauteng Regional Court at Tembisa (2004 – 2008).

1.6. The candidate was a Magistrate for the Magisterial District of Johannesburg (1998 – 2004).

1.7. The candidate was a Prosecutor under the NPA for Pietermaritzburg Magistrates Court (1994 – 1998).

1.8. The candidate is appropriately qualified.

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

- 2.1. The candidate has been a Judge of the Gauteng Local Division of the High Court and a seconded Judge of the Land Claims Court.
- 2.2. There are no adverse comments as to the candidate's fitness for appointment as a Judge of the Land Claims Court, which position she has occupied for a period of 11 years in a seconded role.
- 2.3. Accordingly, the candidate is eminently fit and proper for appointment to the position of a seconded Judge of the Land Claims Court as she has held this position for an extended period of time.

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 appointment of the candidate would therefore broadly help to reflect 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 firm commitment to adhering to Constitutional Values and a pursuit of arriving at judgments that are just and equitable.
- 4.2. The candidate has faced her fair share of Constitutional questions both in the civil and criminal spheres of justice and has acted within an acceptable ambit for a Constitutional Democracy such as South Africa.
- 4.3. The candidate's commitment to constitutional values is further evident in her involvement in committees that advance the objectives of gender

equality and her membership in the International Association of Woman Judges.

- 4.4. The candidate has throughout her career demonstrated a firm commitment to the values that enshrine the Constitution.
- 4.5. A prime example of the candidate's commitment to the values of the Constitution was displayed in *NM v Presiding Officer of Children's Court, Krugersdorp and Others* 2013 (4) SA 379 (GSJ) in which the candidate's judgement created firm guidelines for the lower courts regarding access to grandparent's to foster care grants. The candidate did not shy away from her Constitutional duty to remove stumbling blocks as well as uncertainty when it came to making a decision over the plight of our society's most vulnerable citizens, being orphaned children.
- 4.6. The candidate displayed the ability to make a decision which did not merely give lip service to Constitutional imperatives but rather gave a judgement that cleared the road in reality for many to access the foster care grants for the purpose for which they were intended.
- 4.7. The candidate has a career driven by equality for gender transformation and in the criminal sphere has on more than one occasion given hefty sentencing to sexual offenders. Our Constitution is very clear on the aspects of protecting woman and children in our society and the candidate has made it clear that this protection will be afforded to victims of sexual crimes.

4.8. The candidate further displayed her commitment to Constitutional values in her judgement of *Florence v Government of the Republic of South Africa* (CCT 127/13) [2014] ZACC 22; 2014 (6) SA 456 (CC); 2014 (10) BCLR 1137 (CC) (26 August 2014) which was upheld by the Constitutional Court whereby restitution was given to the Applicant within the spirit of the Constitution and the ambit of the Restitution of Land Rights Act 22 of 1994.

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

5.1. The candidate held a variety of positions in 20 years of serving as either a Magistrate or a Judge.

5.2. The candidate held the positions of both a District and Regional Magistrate since 1999 for a combined period of a decade prior to being appointed as a Judge of the Gauteng Local Division during 2009, which position she continues to hold and since 2009 has been constantly seconded to serve at the Land Claims Court.

5.3. In 2016 the candidate was appointed to the High Court and continues to occupy that position.

5.4. The candidate is active in numerous activities that promote advancements in equality and has participated as a member of:

5.4.1. IAWJ from 2004 to present;

5.4.2. CMJA Gender Committee 2000; and

5.4.3. JOASA 2006.

5.5. The candidate addressed students at the University of Johannesburg during 2014 in an address entitled “*Empowering Young Women in Law*” wherein she shared her insights into the lack of transformation in South Africa.

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

6.1. The candidate only had one matter that was overturned on appeal and currently has one matter pending appeal where leave to appeal was granted by the candidate - *Capital Profound 2 (Pty) Ltd v Caterco CC (In Liquidation) and Others* (18003/2014) [2019] ZAGPJHC 132 (30 April 2019)

6.2. *Areva NP Incorporated in France v Eskom Holdings Soc Limited and Others* (CCT20/16, CCT24/16) [2016] ZACC 51; 2017 (6) BCLR 675 (CC); 2017 (6) SA 621 (CC) (21 December 2016)

6.2.1. This matter concerned a tender that was called for by Eskom for the replacement of six steam generators at the Koeberg Nuclear Power Station to the value of R5 billion. Two companies were invited to bid on the tender being Westinghouse Electric Belgium Société Anonyme (WEBSA) and Areva NP. The Board Tender Committee awarded the tender to Areva NP. WEC took the decision on review to the Gauteng Local Division of the High Court. Areva NP argued that WEBSA had no *loci standi* to bring the Application and that Westinghouse Electric Company LLC was the true tenderer. The candidate ruled against Areva NP and confirmed WEBSA’s *loci standi*. The Court reasoned that

Eskom had treated WEBSA as a tenderer. The High Court found that Eskom acted lawfully in awarding the tender to Areva NP.

6.2.2. The Supreme Court of Appeal concurred with the judgement of the Gauteng Local Division by confirming that WEBSA had *loci standi*, however ruled that Eskom did not lawfully award the tender to Areva NP.

6.2.3. The matter was taken on appeal to the Constitutional Court. The Constitutional Court ruled that WEBSA had no *loci standi* to institute the review proceedings before the High Court in its own right and replaced the High Court's order and dismissed WEBSA's application with costs only to Areva NP. Since the Constitutional Court ruled that WEBSA did not have *loci standi* the Court refused to rule on whether or not Eskom acted lawfully when awarding the tender to Areva NP.

6.3. *Florence v Government of the Republic of South Africa* (CCT 127/13) [2014] ZACC 22; 2014 (6) SA 456 (CC); 2014 (10) BCLR 1137 (CC) (26 August 2014)

6.4. The matter involved the Applicant seeking compensation for being dispossessed of land under the pre-democratic era of South Africa. The Land Claims Court found in favour of the Applicant and ordered compensation which was pinned to the CPI rate in the amount of R1 488 890.00 as under-compensation.

6.5. The Supreme Court of Appeal confirmed that it was bound by its own judgement and confirmed that the Land Claims Court was correct in using the CPI as the measure to determine the compensation.

6.6. In an appeal to the Constitutional Court the Land Claims Court and the Supreme Court of Appeal judgments were overturned and the Court rejected the use of CPI and ruled that in the amount of R2 211 732.54 is the correct amount being the amount of under-compensation escalated according to the 32 day notice deposit rate.

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

7.1. The candidate has an impressive professional history that covers a multiple of dimensions within the legal fraternity and includes:

7.1.1. Obtaining a BA LLB degree.

7.1.2. Serving as a public prosecutor for the National Prosecuting Authority.

7.1.3. District Magistrate from 1998 – 2004.

7.1.4. Regional Magistrate 2004 – 2008.

7.1.5. Judge of the Gauteng Local Division of the High Court 2009 – present.

7.1.6. Seconded Judge of the Land Claims Court 2009 – present.

7.1.7. Acting Judge of the Supreme Court of Appeal - October 2018 – March 2019.

7.1.8. The candidate also has membership with several legal organisations with special emphasis on gender equality.

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

8.1. The candidate's judgments read comprehensively and logically. The candidate's judgements are not vague or wanting of detail. Attention to detail is a trait of the candidate's judgment style. Considering the candidate has served as a Judge of the Gauteng Local Division of the High Court as well as a seconded Judge of the Land Claims Court it is impressive that she in all this time has only had two matters overturned on appeal.

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

9.1. The candidate has no outstanding reserved judgments. Her record indicates an ability to work efficiently and to produce judgments 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. The candidate's judgments do not attempt to appease popular sentiment or views but rather seek to promote the spirit of the Constitution and adhere to the principles that govern due process, equality and fairness. The candidate does not shy away from her duty as a member of the

judiciary and objectively considers the law and facts when delivering her judgments.

- 11.2. 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 is no stranger to occupying the presiding officer's chair in roles of magistrate and judge for a combined period exceeding two decades.

- 12.2. The candidate maintains orderly and respectful decorum over the proceedings she presides over and has a courteous and polite manner, yet firm when need calls for a firmer hand.

- 12.3. There is no information that the candidate is unfit to conduct herself properly in proceedings assigned to her.

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

- 13.1. The candidate has a solid track record to produce judgment's in a timeous and reasonable manner.

- 13.2. The candidate has displayed a talent for coping with a busy schedule serving as both High Court Judge and Land Claims Judge concurrently and this testifies to a strong discipline to administer her time and resources adequately in the pursuit of justice.

- 13.3. No adverse comments have been received to the contrary herein.

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

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

14.2. There is nothing else on record to indicate that the candidate's integrity or ethics have ever been compromised.

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

15.1. The candidate conducts herself in line with the best traditions of the distinguished body of the judiciary. She is courteous and polite and displays aptitude to conduct her courtroom with discipline and decorum.

15.2. 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 has often mentored juniors and participated in advocacy training.

16.2. The candidate further serves as member of several legal organisations that are dedicated to gender equality and her commitment to serving as a Judge of the Land Claims Court strongly indicates her passion for human rights as the land issue in South Africa is one of the biggest historical blemishes of inequality. Her commitment to serve as a Judge in a specialised court is commendable as the Land Claims Court has its noble mandate to redress serious injustices of pre-1994 South Africa.

16.3. It is clear from reviewing the judgments of the candidate that she is completely dedicated to the Constitution and its values especially the fundamental rights that are a cornerstone of our democracy.

**17. The candidate's potential**

17.1. The candidate has had extensive experience as a Judge and there is every reason to believe that she will continue to serve in that capacity with distinction. Her experience as a Land Claims Court Judge will greatly benefit the Court with her rich experience as well as provide her with an opportunity to further her experience in an arena to which she is duly dedicated.

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

18.1. The candidate's appointment would serve to affirm that there is consistency within the ranks of the Judiciary as a whole. The candidate has had a distinguished career in the Land Claims Court and her continued service will send the message that experienced Judges will continue to provide much needed guidance in an important specialist court.

18.2. The candidate, as a woman from a historically disadvantaged background, will serve as a strong message that a person who understands gender and racial discrimination will be a part of a body that seeks to redress past injustices. There can be no better message than one that testifies that a person who lived through oppression will be the

same person who sees its negative legacy dismantled in a society where victims can claim to be victors.

- 18.3. The candidate has vast experience and will dispel any notion of an appointment based on gender or race alone, but will rather send a message that experience and dedication to the Constitution will ensure success regardless of background.

## **ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

### **Reported Judgments**

*Florence v Government of the Republic of South Africa [2014] ZACC 22*

*Emantajeni Community vs Commission on Restitution on Land Rights and Others (LCC 17/2018) [2019] ZALCC 31 (8 November 2019)*

*CDH Invest NV v Petrotank South Africa (Pty) Ltd and Others (483/2018) [2019] ZASCA 53; 2019 (4) SA 436 (SCA) (1 April 2019)*

*Stow v Regional Magistrate, Port Elizabeth NO and Others; Meyer v Cooney NO & others (911/2017; 047/2018) [2018] ZASCA 186; 2019 (1) SACR 487 (SCA) (12 December 2018)*

*Illovo Sugar Limited and the Regional Land Claims Commissioner KZN and 3 Others (LCC122/2014)*

*NM v Presiding Officer of Children's Court, Krugersdorp and Others 2013 (4) SA 379 (GSJ)*

*Khanye v S (A66/2015) [2017] ZAGPJHC 320 (13 March 2017)*

*Mpume v Drakenstein Municipality and Another (128/2014) [2016] ZALCC 11 (24 June 2016)*

*Westinghouse Electric Belgium v Eskom Holdings and Another (2014/35650) [2015] ZAGPJHC 315 (19 May 2015)*

*Ntuli and Another v Taag Trust and Others (LCC98/2017) [2017] ZALCC 20 (3 November 2017)*

*Aliko v S (552/2018) [2019] ZASCA 31 (28 March 2019)*

### **Judgments upheld on appeal**

*Stow v Regional Magistrate, Port Elizabeth NO and Others; Meyer v Cooney NO & others (911/2017; 047/2018) [2018] ZASCA 186; 2019 (1) SACR 487 (SCA) (12 December 2018)*

*BMW South Africa (PTY) LTD v The Commissioner for the South African Revenue Service (A553/16) [2018] ZAGPPHC 780 (28 June 2018)*

*BMW South Africa (PTY) LTD v The Commissioner for the South African Revenue Service (A553/16) [2018] ZAGPPHC 780 (28 June 2018)*

*Du Plooy v S (940.2013) [2014] ZASCA 200; 2015 (2) SACR 363 (SCA) (28 November 2014)*

*Juna Trading CC vs We are the Stars A5034/2018*

*Khumalo v The State (62/17) [2017] ZASCA53 (18 May 2017)*

*Mpikheleli Samsung Mazibuko v Pieter Martins NO & Others LCC116/2013*

### **Judgments overturned on appeal**

*Areva NP Incorporated in France v Eskom Holdings Soc Limited and Others (CCT20/16, CCT24/16) [2016] ZACC 51; 2017 (6) BCLR 675 (CC); 2017 (6) SA 621 (CC) (21 December 2016)*

*Florence v Government of the Republic of South Africa (CCT 127/13) [2014] ZACC 22; 2014 (6) SA 456 (CC); 2014 (10) BCLR 1137 (CC) (26 August 2014)*