

**APPLICANT: ALLYSON ASHLEY CRUTCHFIELD, SC**

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

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

- 1.1. Bachelor of Arts (Wits, 1986).
- 1.2. Bachelor of Law (Wits, 1998).
- 1.3. HDip (Tax) (UJ, 1996).
- 1.4. Advanced Programme in Insolvency Litigation and Administration Practice (UP, 2014).
- 1.5. Post-graduate programmes/courses in Cyberlaw (Wits, 2018), Competition Law (Wits, 2018), Pension Law I and II – attendance only (Wits, 2019).
- 1.6. Coursework completed for 2 x LLM degrees (Wits, 2006 – 2007; Wits, 2016 – 2017) – theses in respect of both degrees remain outstanding.
- 1.7. The candidate is appropriately qualified.
- 1.8. The candidate's efforts at continuing legal education while in practice are commendable.

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

- 2.1. The candidate has been a member of the Johannesburg Society of Advocates ("JSA") since 4 December 1989.

- 2.2. The candidate was conferred with Senior Counsel status on 10 March 2018.
- 2.3. On the evidence available, there is nothing to suggest that the candidate is not a fit and proper person.
- 2.4. It is notable that the candidate enjoys the nomination and support of two former Chairs of the JSA, as well as her Group Leader.
- 2.5. All of the candidate's supporters draw attention to her fitness and propriety, and the appropriateness of her being elevated to the Bench.
- 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. While the candidate's appointment will undoubtedly assist the gender balance of the Gauteng Division of the High Court (48 males : 31 females),<sup>1</sup> the candidate's appointment may constitute an over-representation of white Judges (47 black : 30 white).<sup>2</sup>
- 3.3. However, the candidate's appointment will reflect a better gender balance among white Judges within the Division (18 white men : 12 white women).<sup>3</sup>

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<sup>1</sup> Judiciary Annual Report (2019/2020), accessible at: <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports#>

<sup>2</sup> Judiciary Annual Report (2019/2020), accessible at: <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports#>

<sup>3</sup> Judiciary Annual Report (2019/2020), accessible at: <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports#>

4. **The candidate's knowledge of the law, including constitutional law:**
- 4.1. Reference is made to para 4 above regarding constitutional law.
- 4.2. There is nothing to suggest that the candidate will not be able to bring an appropriate judicial mind to considering constitutional issues.
- 4.3. Upon surveying the candidate's judgments, it is clear (by reference thereto and analysis thereupon) that the candidate pays due and adequate regard to the Constitution.
- 4.4. Examples of such judgments include:
- 4.4.1. *S v Miti* 2019 JDR 2348 (GJ), a criminal appeal where the candidate relied, in part, on section 28 of the Constitution to vacate a sentence, remitting it back to the trial Court, for failing to consider section 28 of the Constitution adequately. The appellant in the case was married with a child of approximately two years of age. The candidate took into account the child's best interests.
- 4.4.2. *Malinga v Absa Bank Limited* (55937/2016) [2018] ZAGPPHC 315 (23 April 2018), where the candidate looked to, inter alia, the obligations in section 39(2) of the Constitution to interpret laws in the light of the Bill of Rights, in order to grant a rescission of judgment.
- 4.4.3. *Mostert and Another v Nash and Others* (12120/19) [2020] ZAGPJHC 187 (28 July 2020), where the candidate carefully considered the balancing exercise required in defamation matters between the rights to freedom of expression and dignity, in order to grant a "defamation interdict".

- 4.4.4. *National Director of Public Prosecutions v Starplex 513 (Pty) Ltd* (2015/10851) [2018] ZAGPJHC 104 (4 April 2018), where the candidate refused a Rule 30 application (in the context of “POCA” proceedings) brought by the NDPP on the basis that the application, if granted, would undermine the respondent’s Section 34 (access to Court) rights.
- 4.4.5. *Barker v Altrisk, A Division of Hollard Life Assurance Company Limited* (23841/2014) [2016] ZAGPJHC 197 (22 July 2016), where the candidate granted an application in a matter that involved the impugning of a contract on the developed jurisprudence regarding the constitutional adjudication of contractual claims.
- 4.5. In addition to what is stated above, it is clear from the candidate’s judgments (in matters where she either sat as an Acting Judge or acted as counsel), that the candidate may be considered highly competent in criminal and family law matters. Some of these judgments are already mentioned above.
- 4.6. The candidate has also shown the requisite aptitude in other matters that one would expect of a High Court Judge.
- 4.7. Although the candidate indicates that when she has previously acted she only sat in the Civil Court, her initial work in criminal matters as junior counsel and subsequent engagement with criminal matters (mostly on appeal) demonstrates the candidate’s ability in criminal law.

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

5.1. Reference is made to the support enjoyed by the candidate. It is notable that in their support, all of the candidate's supporters positively reflect on her commitment to transformation at the Bar and her number of years of service within the Bar to achieve transformational outcomes.

5.2. The candidate states that her work "indirectly involves Constitutional law". The candidate was counsel in *MB v NB* 2010 (3) SA 220 (W), a divorce case which implicated the rights of children. She does not, however, have much experience in constitutional law.

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

6.1. The candidate only mentions one judgment in which she granted leave to appeal to the Full Court (*Barker v Altrisk, A Division of Hollard Life Assurance Company Limited* (23841/2014) [2016] ZAGPJHC 197 (22 July 2016)), but her judgment was upheld.

6.2. The candidate has provided a helpful summary ("Schedule C") of matters in which she either refused or granted leave to appeal (the outcomes of further such appeals being unknown to her).

6.3. Attempts to follow up on these judgments have revealed that:

6.3.1. Of the 4 judgments in which leave was refused, no further appeal judgments (either refusing or granting leave to appeal and/or dismissing or upholding any appeal) could be found.

6.3.2. No further appeal judgments (either refusing or granting leave to appeal and/or dismissing or upholding any appeal) could be

found in respect of the 2 judgments in which leave to appeal was granted.

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

7.1. The candidate has practised as an advocate for some 30+ years. In that time, as noted by her, her practice has moved from “a busy practice [baby and middle junior]”, while her “senior junior and senior practitioner” practice is “less busy, with less frequent appearances in Court”.

7.2. However, the candidate is undoubtedly appropriately experienced for the purpose of being a High Court Judge, having regard to, inter alia:

7.2.1. her service to her Group and the JSA;

7.2.2. her years of practice; and

7.2.3. her 13 stints as an Acting Judge, which add up to more than 235 days.

7.2.4. While the candidate positions herself as only practising in certain areas of law (“initially ... in the field of criminal law”, thereafter mostly “short-term insurance law, matrimonial and family law and general commercial law”), the candidate has sufficient experience for the purpose of serving as a High Court Judge.

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

- 8.1. The candidate is proficient in English. There is no further information available to assess her proficiency in other languages, if any.

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

- 9.1. For this section, the candidate's judgments where no information regarding the hearing and hand-down dates, as well as where she was not cited as the first author of the judgment, have been excluded.
- 9.2. Of the 22 "qualifying" judgments, the applicant appears to produce judgments within an average time of 3.4 months after the date of hearing.
- 9.3. One judgment worthy of mention is *Mostert and Another v Nash and Others* (12120/19) [2020] ZAGPJHC 187 (28 July 2020) where the candidate took nearly 1 year in which to produce a judgment (argued on 30 July 2019 and handed down on 28 July 2020).
- 9.4. Other than to note that the application was a special motion and that the record was in excess of 1 600 pages, there is no apparent explanation for this considerable period of time.
- 9.5. Similarly, the leave to appeal judgment in the same matter was argued on or about November 2020. This judgment is recorded as still outstanding (at the time of the candidate's application); however it appears that the judgment was handed down on or about 11 February 2021. This is some 3 months later.
- 9.6. The *Mostert* judgment is the only instance where a delay of this nature has been noted. Although there are 7 judgments (representing

approximately one-third of the “qualifying” judgments) in which the candidate took longer than 3 months, most of these judgments were handed down within 6 months of the hearing.

9.7. Save as reflected above, the candidate does seem able to produce judgments promptly.

**10. The candidate’s fairness and impartiality:**

10.1. There is no reason to doubt the candidate’s fairness and impartiality. No evidence has been disclosed that suggests otherwise.

**11. The candidate’s independent mindedness:**

11.1. There is no reason to doubt the candidate’s independent mindedness. No evidence has been disclosed that suggests otherwise.

**12. The candidate’s ability to conduct court proceedings:**

12.1. Save to note the issues above regarding the delay in delivery of some judgments, there is no reason to doubt the candidate’s ability to conduct court proceedings. No evidence has been disclosed that suggests otherwise.

**13. The candidate’s administrative ability:**

13.1. The candidate’s involvement in the JSA’s affairs in multiple portfolios, over a number of years, while maintaining a busy practice, as well as occasionally acting as a Judge, speaks for itself.

13.2. It is an open question as to how the candidate will handle the busy workload of the Gauteng court, in the light of the timeframe in which she has handed down judgments in her acting stints.

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

- 14.1. The candidate's letters of support are replete with examples of her integrity and ethical behaviour, right from her early days of practice. No evidence has been disclosed that suggests otherwise.

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

- 15.1. There are no known instances of the candidate's judicial temperament being placed in issue by any party or practitioner that appeared before her.
- 15.2. In fact, the candidate's Group Leader speaks positively about her judicial temperament, having recently appeared in front of her.
- 15.3. No evidence has been disclosed that suggests otherwise.

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

- 16.1. The candidate does not appear to have a commitment to human rights per se, but it is clear that she is nonetheless committed to the "values and needs of the community" by having regard to her judgments (above), and her work for her Group and the JSA specifically on the subject of transformation.

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

- 17.1. The candidate has potential to be a good High Court Judge.

**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, specifically for the appointment and advancement of women within the legal profession.

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

None found

**Unreported Decisions:**

*Mostert and Another v Nash and Others* (12120/19) [2020] ZAGPJHC 187 (28 July 2020)

*Anabella Resources CC v Genric Insurance Company Limited* (A5025/2019) [2020] ZAGPJHC 163 (2 July 2020)

*Miti v S* (A35/2007) [2019] ZAGPJHC 402 (18 October 2019)

*Fournews Developments (Pty) Ltd v Brand Contact Consultant CC* (A5060/2018) [2019] ZAGPJHC 371 (27 August 2019)

*Pretorius v Visagie Drilling Contractors* (14/30734) [2018] ZAGPJHC 675 (19 November 2018)

*Prodist (Pty) Ltd v Coca Cola Shanduka Beverages SA (Pty) Ltd and Another; Coca Cola Shanduka Beverages SA (Pty) Ltd v Total Auctioneering Services and Sales CC t/a Consolidated Auction Group* (2016/28375) [2018] ZAGPJHC 543 (17 September 2018)

*Volschenk v Lambrechts and Another* (53673/2012) [2018] ZAGPPHC 555 (3 August 2018)

*Tait NO and Another v Wescom Business Ventures (Pty) Ltd and Others, Tait NO and Others v Van Niekerk and Others* (29833/2016, 2495/2016) [2018] ZAGPPHC 575 (29 June 2018)

*Malinga v Absa Bank Limited* (55937/2016) [2018] ZAGPPHC 315 (23 April 2018)

*National Director of Public Prosecutions v Starplex 513 (Pty) Ltd* (2015/10851) [2018] ZAGPJHC 104 (4 April 2018)

*Santam Limited and Another v Group Five Limited and Another* (33380/16) [2018] ZAGPJHC 54 (22 March 2018)

*Tait NO and Another v Wescom Business Ventures (Pty) Ltd and Others, Tait NO and Others v Van Niekerk and Other* (29833/2016, 2495/2016) [2018] ZAGPPHC 639 (2 March 2018)

*IDL Transport CC t/a Old Fashioned Fish and Chips and Others v Soleprops 39 (Pty) Ltd* (38854/2013) [2018] ZAGPPHC 771 (13 February 2018)

*Tlokwe Local Municipality v Gqweta and Others* (34243/2016) [2018] ZAGPPHC 770 (13 February 2018)

*The Law Society of the Northern Provinces v Msibi v Kgokong and Another* (75100/2016) [2017] ZAGPPHC 1101 (1 November 2017)

*Nomandla v S* (A752/2016) [2017] ZAGPPHC 1212 (20 October 2017)

*Moodley v Ekurhuleni Metropolitan Municipality and Another* (2015/04528) [2017] ZAGPJHC 235 (23 August 2017)

*H v H* (83614/2014) [2017] ZAGPPHC 273 (19 June 2017)

*Intratrek Properties (Pty) Ltd and Another v XTLS Investments 90 (Pty) Ltd and Another* (2015/08599) [2017] ZAGPJHC 6 (1 February 2017)

*Cleaverlad Projects (Pty) Limited v Venmop 275 (Pty) Limited and Another* (2010/36492) [2016] ZAGPJHC 344 (12 December 2016)

*Tshabalala v Bidi and Another* (03791/2016) [2016] ZAGPJHC 343 (12 December 2016)

*Jubi Properties (Pty) Ltd v Boyce* (12286/2016) [2016] ZAGPJHC 338 (7 December 2016)

*P v P* (21615/2015) [2016] ZAGPJHC 312 (7 November 2016)

*Barker v Altrisk, A Division of Hollard Life Assurance Company Limited* (23841/2014) [2016] ZAGPJHC 197 (22 July 2016)

*Solgas (Pty) Ltd v Tang Delta Properties CC* (11388/2015) [2016] ZAGPJHC 158 (20 April 2016)

*Body Corporate of the Delfora Scheme NO SS 117/1984 v H & M Property Management* (34270/2014) [2016] ZAGPJHC 44 (8 March 2016)

*Schilling NO v Gao and Another* (2015/26685) [2016] ZAGPJHC 19 (14 February 2016)

*D v D* (A3079/15) [2016] ZAGPJHC 31 (12 February 2016)

*M v M* (A3046/2015) [2016] ZAGPJHC 30 (12 February 2016)

*Kale v Carletonville United Taxi Association* (07965/2013) [2016] ZAGPJHC 18 (12 February 2016)

#### **Judgments Upheld on Appeal:**

None found

#### **Judgments Overturned on Appeal:**

None found.