

APPLICANT: JUDGE SHARISE ERICA WEINER**COURT FOR WHICH CANDIDATE APPLIES: SUPREME COURT OF APPEAL****1. The candidate's appropriate qualifications:**

1.1. BA, University of Witwatersrand (1975)

1.2. LLB, University of Witwatersrand (1977)

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

2.1. Confirmed in testimonials attached to application.

3. Whether the candidate's appointment would help to reflect the racial and gender composition of South Africa:

3.1. Yes, the candidate is female.

3.2. Judge Weiner's appointment to the Supreme Court of Appeal would not only improve the gender composition of the Court from a statistical point of view. She has also been quite vocal about the need for transformation in the judiciary and in the legal profession and her commitment to advancing such transformation.

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

4.1. A list of reported and unreported judgments from 2011 to date shows a wide range of knowledge of the law, including complex actions and motions involving criminal, family, evictions, property, provident fund, civil commercial, company law, insolvency, business rescue, banking, road accident fund and public law issues.

- 4.2. What is notable is the large number of judgments written by the candidate, ranging from 16 to 32 per year in the High Court. She was an acting judge of appeal to the SCA in 6 matters in 2019-2020.
- 4.3. She is particularly proud of her judgment in the High Court which included complex issues of ‘corporate opportunity’, directors’ duties and liabilities, contract, BEE and prescription, *Tladi Holdings (Pty) Ltd v Modise and Others*, (2018-11-27) Case No. 2008/40440, annexed to her application from p. 23.
- 4.4. She has also placed emphasis on her judgment in the Supreme Court of Appeal (with whom Maya P and Wallis JA concurred) in *P M o.b.o. T M v Road Accident Fund*, (2019-06-18) Case No. 1175/2017, [2019] ZASCA 97; [2019] 3 All SA 409 (SCA); 2019 (5) SA 407 (SCA).
- 4.5. Many of these judgments included questions of constitutional law.
- 4.6. Judge Weiner also has a strong commitment to human rights and constitutional law and has continued to show a commitment to access to justice and the rule of law.
- 4.7. During her time at the Bar, Judge Weiner made significant contributions to the Bar Council, and continues to be deeply involved in advocacy training.
- 4.8. Judge Weiner wrote three judgments during her acting stint in the SCA. One of these (PM v RAF) was accompanied by a dissenting judgment; however, leave to appeal to the Constitutional Court against Judge Weiner’s majority judgment was refused. The other two judgments she wrote were unanimously supported.

4.9. Judge Weiner appears to produce judgments promptly, with only one outstanding judgment at the time of submitting her application.

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

5.1. The candidate is a strong advocate for gender and racial equality in South Africa in general and the judiciary in particular, from her days as a student, practice as an advocate and her judicial service.

5.2. The candidate's publication list attests to this commitment.

5.3. The candidate has shown exceptional commitment to advocacy training for young advocates, as a senior advocate and during her tenure as judge.

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

6.1. None of the appeals of reported judgments were successful.

6.2. Four of her unreported judgments were overturned on appeal. Note that there were between 16 and 30 written judgments per year.

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

7.1. Advocate: 1978-2011 (senior from 1995)

7.2. Barrister, England and Wales (1999)

7.3. Acting Judge, Gauteng Division (1995-2010)

7.4. Judge, Gauteng Division (July 2011)

7.5. Acting Judge, SCA (2019-2020)

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

8.1. Excellent written and verbal communication skills.

8.2. English language proficiency.

8.3. No black African language proficiency.

8.4. Friendly but firm demeanour in court.

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

9.1. Excellent.

9.2. Only one outstanding judgment could be identified.

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

10.1. The candidate is fair and impartial in court.

10.2. An efficient and active participant as a judge in motion court, as well as trial court, while giving counsel and witnesses a fair opportunity to respond to questions from the bench.

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

11.1. The candidate follows judicial precedent, but is willing to differ from other judges, for example in her judgment for the majority in *PM o.b.o. TM v RAF* in the SCA.

11.2. The candidate is willing to stand up against gender-based violence in South Africa.

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

12.1. The candidate is a good listener, asking incisive questions from the bench. Her experience in the motion court in Gauteng Division has also shown her to be efficient when conducting court proceedings,

while ensuring that all parties are properly heard. In long trials, she has also shown incisive intervention to ensure proceedings are fair and not unduly delayed on procedural grounds.

13. The candidate's administrative ability:

13.1. The candidate's large number of written judgments (16 to 30 per year), while being an active judge on the very busy Gauteng Division bench has proven her administrative ability.

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

14.1. The candidate's reputation is good.

14.2. She has reported one matter to the Deputy Judge President in her Division in which she was accused of corruption in the press, which was investigated by the press ombudsman.

15. The candidate's judicial temperament:

15.1. The candidate has a fair, even-handed, and firm judicial temperament.

15.2. No known instances of a lost temper are obvious to the participants in the courts over which she presided.

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

16.1. A long-standing, public commitment to human rights, including race and gender equality, since her university years in the 1970s.

16.2. As an advocate, she provided *pro bono* services to the indigent and oppressed in the community.

17. The candidate's potential:

- 17.1. The candidate has good potential, given her experience as acting judge on the Supreme Court of Appeal in 2019-2020, including the writing of reported judgments on behalf of the Court.

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

- 18.1. An experienced, highly respected judge appointed to the Supreme Court of Appeal.
- 18.2. An attempt has been made to correct the perceptions of gender bias in the Supreme Court of Appeal.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions:

Mathsazi v Mezepoli Melrose Arch (Pty) Ltd and Another [2020] 3 All SA 499 (GJ): employees' rights in company under business rescue during Covid-19 lockdown

Moodliar and Others v Recycling and Economic Initiative of South Africa NPC and Others; Gore and Others v Kusaga Taka Consulting (Pty) Ltd and Others (977/2019) [2020] ZASCA 101; 2020 (6) SA 386 (SCA)

P M obo T M v Road Accident Fund (1175/2017) [2019] ZASCA 97; [2019] 3 All SA 409 (SCA); 2019 (5) SA 407 (SCA) (18 June 2019)

Maswanganyi v RAF 2019 (5) SA 407 (SCA): duty of court to scrutinize settlement agreements.

Manuel v Sahara Computers (Pty) Ltd and Another 2020 (2) SA 269 (GP)

Gauteng Department of Agriculture and Rural Development and others v Interwaste (Pty) Ltd and others [2019] 3 All SA 344 (SCA)

AN v MEC for Health, Eastern Cape [2019] 4 All SA 1 (SCA)

Eskom Holdings Ltd v Masinda 2019 (5) SA 386 (SCA)

National Home Builders' Registration Council and another v Xantha Properties 18 (Pty) Ltd 2019 (5) SA 424 (SCA)

Botha v Standard Bank of South Africa Limited 2019 (6) SA 388 (SCA)

Member of the Executive Council for the Department of Co-operative Governance and Traditional Affairs v Maphanga [2020] 1 All SA 52 (SCA)

Zikhulise Cleaning Maintenance and Transport CC v The Chairman of the Investigating Committee of the Construction Industry Development Board and others [2020] 1 All SA 677 (SCA)

Minister of Police and another v Stanfield and others 2020 (1) SACR 339 (SCA)

Body Corporate of Marine Sands v Extra Dimensions 121 (Pty) Ltd 2020 (2) SA 61 (SCA)

Shepherd Real Estate Investments (Pty) Ltd v Roux Le Roux Motors CC 2020 (2) SA 419 (SCA)

Tellytrack v Marshalls World of Sport (Pty) Ltd and others 2020 (2) SA 435 (SCA)

Umgeni Water v Sembcorp Siza Water (Pty) Ltd and others; Minister of Water and Sanitation v Sembcorp Siza Water (Pty) Ltd and others 2020 (2) SA 450 (SCA)

Commissioner for the South African Revenue Service v Atlas Copco South Africa (Pty) Ltd 2020 (4) SA 61 (SCA)

Laco Parts (Pty) Ltd t/a Aca Clutch v Turners Shipping (Pty) Ltd 2008 (1) SA 279 (W)

Muller v Lilly Valley [2012] 1 All SA 187 (GSJ)

Barnard NO and others v Imperial Bank Ltd and another 2012 (5) SA 542 (GSJ)

Laniyan v Negota SSH (Gauteng) Incorporated and others [2013] 2 All SA 309 (GSJ)

S v Luruli and another 2014 (1) SACR 511 (GJ): sentencing in gender-based violence criminal conviction

Krog v Botes 2014 (2) SA 596 (GSJ)

Maleth Investment Fund (Pty) Ltd v Paget [2014] 3 All SA 79 (GJ)

Fourie v Ronald Bobroff and Partners Inc [2015] 2 All SA 210 (GJ)

Leask and another v Road Accident Fund 2015 (5) SA 20 (GJ)

Mtomba v Minister of Defence and others 2019 (3) SA 548 (GP): dismissal under
Defence Act

Manuel v Sahara Computers (Pty) Ltd and another 2020 (2) SA 269 (GP)

Matshazi v Mezepoli Melrose Arch (Pty) Ltd and another and related matters
[2020] 3 All SA 499 (GJ)

Minister of Police and Another v Stanfield and Others 2020 (1) SACR 339 (SCA)
Unlawful possession of firearms while proceedings pending

Unreported Decisions:

[Candidate has written on average 16 to 30 judgments per year since 2011. What follows is a list of key unreported judgments)

Cell C (Pty) Ltd and Others v Prokas and Another (40902/2014) [2014]
ZAGPJHC 430 (13 November 2014)

*Systems Application Consultants (Pty) Ltd t/a Securinfo v Systems Applications
Products AG* 2016 JDR 0320 (GJ)

Tladi Holdings (Pty) Ltd v Modise and Others, (2018-11-27) Case No.
2008/40440 (27 November 2018)

Moela and Another v Habib and Others (2020/9215) [2020] ZAGPJHC 69: university closed campus during Covid-19 lockdown. Students opposed closure.

Judgments upheld on appeal:

Barnard NO and others v Imperial Bank Ltd and Another 2012 (5) SA 542 (GSJ) upheld in *Imperial Bank Limited v Hendrick Barnard NO* [2-13] ZASCA 42 (28 March 2013)

Ford v Ford [2004] 2 All SA 396 (W) upheld in *F v F* [2006] 1 All SA 396 (W)

Fourie v Ronald Bobroff and Partners Inc [2015] 2 All SA 210 (GJ) upheld in *Fourie v Ronald Bobroff and Partners Inc* (653/2016) [2017] ZASCA 91 (7 June 2017)

Judgments overturned on appeal:

None of the reported judgments was overturned on appeal.

Of the unreported judgments (of which there were over 150), we could identify four that were overturned on appeal.