

APPLICANT: ADVOCATE HEINRICH FREDERICH BRAUCKMANN

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

1 The candidate's appropriate qualifications

1.1 The candidate is duly qualified, having obtained:

1.1.1 B. Iuris (UOFS) in March 1983.

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).

1.2.3 he is currently acting as a Judge in 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 has 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;
- 2.1.4 Between the period 1986 to 2013 the candidate served as a member of the then Law Society of the Northern Provinces.
- 2.1.5 There does not appear to be any:
 - 2.1.5.1 Complaint or disciplinary proceedings pending against him in his professional capacity;
 - 2.1.5.2 Criminal or civil litigation pending against him.
- 2.1.6 Apart from 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.

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 and his appointment will not contribute to reflect the racial and gender composition of South Africa *per se*.
- 3.2 The Commission should however have regard to the current composition of the Court to which the candidate has applied.

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, save for *The Administrator of JS Moroka and 3 others v Kubheka and Another* (1170/2020) [2020] ZAMPMHC 3 (03 April 2020) wherein the candidate granted a controversial cost order to the effect that the attorneys and counsel that appeared in the said matter were not permitted to charge their clients for any fees or disbursements incurred for purposes of that matter because their appearance at Court was in contravention of the Covid19 regulations applicable at the time.
- 4.3 The said order was made without granting any of the parties an opportunity of *audi alteram parte*, which judgment, the candidate has granted leave to appeal same as per *Ex Parte Zondo and Others; In Re: Administrator of JS Moroka and Others v Kubheka and Another* (1170 / 2020) [2020] ZAMPMHC 12 (29 May 2020)
- 4.4 This is the candidate's second attempt or application to be appointed as a judge and during the interview for his first application, a considerable amount of time was spent on the aforementioned judgment. However, the candidate owned up to his mistake and thus he granted leave to appeal in the said matter.
- 4.5 There is still no indication that the candidate is experienced in constitutional matters.

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

5.1.1 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. There was a lady who was appointed by him, who later opened her own practice, viz., Nkgadima Attorneys in Middelburg.

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

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

6.1 From the candidate's application it appears that there are no judgments, save for the aforementioned judgment, which have been taken on appeal.

6.2 However, upon further investigation another matter was found wherein an appeal against one of the candidate's judgments was upheld.

6.3 The candidate delivered a judgment marked "reportable" in the matter of *Remhoogte v Durr Trust and Another*, and granted leave to appeal to a full bench.

6.4 The appeal was upheld, and a portion of the order set aside, in a reported judgment [2021] JOL 50047 (ML).

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:

7.1.1.1 27 years as an attorney (1986-2013);

7.1.1.2 6 years as a practising advocate; and

7.1.1.3 January 2019 to date as an Acting Judge.

7.1.2 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, this is subject to the comments made at paragraph 4 and 6 above; and

8.1.2 the manner in which he penned his submission along with some of the other judgments in support of his application 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 not only shown in the number of judgments he has attached his application but also gleaned from his own words during the first interview with the JSE.

9.2 The candidate has held acting appointments from January 2019 to date.

10. The candidate's fairness and impartiality

10.1 The applicant failed to apply the *audi alteram* principle in the matter mentioned *supra*. Apart from the foregoing, there is no reason to believe that he is not fair and impartial.

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 Question omitted from review.

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 behavior are unblemished.

15. The candidate's judicial temperament

15.1 The candidate has acted for a considerable period of time.

16. The candidate's commitment to human rights, and experience regarding 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 demeanor.

17.2 The candidate's age, to wit, 62 years, may inhibit his ability to reach his full potential before reaching retirement age, however he can still serve the minimum period of at least 13 years before his retirement at the age of 75 years as per section 4(4) of the Judges' Remuneration and Conditions of Employment Act No. 47 of 2001.

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 understands 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.

Anderson Insurance Underwriting Managers CC v The Only Professional Modern Autobody CC t/a Modern Collision Repair Centre, Case No. A 03/2019.

The rest of the judgments by the candidate are not indicated as to whether they are reportable or not

Fikie Masina v Jabulane Nkosi, case no 2334/2017.

Khati LS v The State, Case No. 807/2021.

Zitha SC v RAF, Case No. 126/2018.

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.