

**APPLICANT: SUSANNAH JANE COWEN SC**

**COURT FOR WHICH CANDIDATE APPLIES: GAUTENG DIVISION  
OF THE HIGH COURT FOR SECONDMENT TO THE LAND CLAIMS  
COURT**

**1 The candidate's appropriate qualifications**

1.1 The candidate holds the following degrees:

1.1.1 BA (UCT, 1992);

1.1.2 LLB (UCT, 1994); and

1.1.3 BCL (Oxford, 1999).

1.1. The candidate is appropriately qualified and experienced for appointment as a Judge of the Gauteng High Court and the Land Claims Court.

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

2.1 There is no information in the candidate's application or judgments to suggest that she is not a fit and proper person.

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

3.1 As far as could be ascertained, there are currently two judges in the Land Claims Court: an Indian woman and a Black woman.

3.2 There are currently 73 full time judges on the Gauteng bench, comprising (as far as could be ascertained):

3.2.1 22 black women (17 African, 3 Indian, 2 Coloured);

3.2.2 25 black men (18 African, 5 Indian, 2 Coloured);

3.2.3 13 white women; and

3.2.4 13 white men.

3.3 The candidate is a white woman.

#### **4 The candidate's commitment to the values of the Constitution**

4.1 The candidate has in her judgments as an acting judge demonstrated a firm commitment to the values of the Constitution and to the rule of law.

4.2 The candidate's contribution to the values of the Constitution also appears from her clerkship at the Constitutional Court, her role in the Constitutional Litigation Unit of the Legal Resources Centre, her service to the Cape Bar, JSA and PABASA and her acting appointments as judge of the High Court.

#### **5 The candidate's knowledge of the law, including Constitutional law**

5.1 The candidate has practiced as an advocate for the last 20 years (from 2001), and as Senior Counsel since July 2018.

5.2 The candidate has furthermore worked and gained experience in the following capacities:

5.2.1 Human Rights Committee – legislative monitoring and advocacy project (March 1995 – 1997);

5.2.2 Law Clerk to Chaskalson P (later CJ) – Constitutional Court (1999 – 2000);

- 5.2.3 Advocate and Acting Director – Constitutional Litigation Unit (“CLU”) Legal Resources Centre (Jan 2010 – March 2011);
- 5.2.4 Member of Legal Committee, Medicines Control Council – Department of Health (2011 term – various appointments); and
- 5.2.5 Ad hoc appointments as Acting Judge in the Gauteng Divisions (2018 – 2021).
- 5.3 She has experience across many areas of law.
- 5.4 Her judgments show a thorough understanding and knowledge of various areas of law and constitutional law.
- 5.5 The candidate has a firm understanding of our constitutional jurisprudence and the proper approach thereto.
- 5.6 Her judgments are detailed, balanced and thoroughly researched. The candidate cites considerable case law in support of her decisions, with attention to detail and analysis.
- 5.7 The candidate is well versed in constitutional law and the rules of court which has resulted in clear and comprehensive judgments. Her application of the law is clear and concise.
- 5.8 It deserves mentioned that the candidate specializes in constitutional law matters, matters which address gender inequality, the rights of citizens to housing and land, and rural land reform law. She is accordingly particularly well-suited for appointment to the Land Claims Court.

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

6.1 The JSA has not found any of the candidate's judgments that have been overturned on appeal.

6.2 The candidate, refers to one judgment in which she refused leave to appeal. The SCA similarly refused leave to appeal. The matter is currently pending (for leave to appeal) before the Constitutional Court.

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

7.1 The candidate has extensive experience as a practising advocate over a period of 20 years. She has also regularly and for extended periods acted as a judge in the High Court, in total 45 weeks and 4 days. She will further be serving as an acting judge for the fourth term of 2021. She has delivered in excess of 38 judgments while acting as a judge.

7.2 The candidate has extensive and broad professional legal experience.

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

8.1 From the candidate's judgments, it appears that she has excellent written linguistic skills in English.

8.2 The candidate is able to articulate complex legal principles in understandable terms.

8.3 No adverse comments have been received regarding the candidates linguistic and / or communication skills.

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

9.1 Several judgments handed down by the candidate were considered.

9.2 All of these judgments appear to have been delivered promptly, some within a matter of days of hearing.

9.3 The candidate had one reserved judgment at the time that she submitted her application. The candidate appears to manage her work load efficiently.

## 10 **The candidate's fairness and impartiality**

10.1 The candidate's fairness and impartiality are evident from the judgments which she has written, which resonate with fairness, humanity and a determination to do justice to the parties.

10.2 Counsel who have appeared before her speak highly of her fairness and impartiality in court.

10.3 The candidate is held in high regard as an acting judge.

10.4 There is nothing in the candidate's application to suggest that she does not perform her duties as a judicial officer with fairness and impartiality.

10.5 No adverse comments have been received regarding the candidate's fairness and / or impartiality.

## 11 **The candidate's independent mindedness**

11.1 The candidate's independence is demonstrated in her judgments.

11.2 There is nothing to suggest that the candidate is not independently minded.

## 12 **The candidate's ability to conduct court proceedings**

- 12.1 The candidate has numerous reported and unreported judgments. The candidate appears to have conducted proceedings efficiently and delivered judgments timeously.
- 12.2 Nothing suggests an inability to conduct court proceedings.
- 12.3 From the accounts of counsel who have appeared before her it appears that the candidate conducts court proceedings efficiently and with the necessary decorum.

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

- 13.1 No adverse comments have been received in this regard.
- 13.2 The candidate has held several positions of leadership of bodies (such as the Legal Resources Centre's Constitutional Litigation Unit) and committees, within and outside the legal profession, whilst managing a demanding professional life.
- 13.3 The candidate has served on numerous committees, including the Johannesburg Bar's standing committee on sexual harassment and transformation committee.
- 13.4 As an acting judge the candidate is known to prepare diligently for hearings and has a thorough knowledge of the proceedings before her. This evinces her administrative ability to manage a heavy case load, yet remaining on top of the facts of the matter that serve before her.

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

14.1 The candidate has a good reputation for integrity and ethical behaviour. Over a period of 20 years at the Johannesburg Society of Advocates, the candidate has never been charged with or found guilty of any disciplinary indiscretions.

14.2 The JSA is unaware of any aspect which may impugn the reputation of the candidate. The candidate has a good reputation amongst her colleagues at the bar.

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

15.1 The JSA is unaware of any matter which suggests a lack of judicial temperament. The candidate appears to have a good reputation for having an even temperament in court. Counsel who have appeared before her regard her as fair to counsel and gives parties on both sides a fair hearing.

#### **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 the values of the Constitution is demonstrated in the manner she discharges her duties as a judicial officer.

16.2 Her experience in the field of rural land reform work and issues of gender equality affecting the legal field, demonstrate that the candidate is dedicated to human rights and the values and needs of the community.

## 17 **The candidate's potential**

17.1 The candidate is 50 years old and has significant potential as a judge.

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

18.1 In light of the candidate's diligence, legal insight, experience, commitment, and perseverance to join the ranks of the judiciary, the candidate's appointment would send a positive message to the community at large for the following reasons:

18.1.1 She is a senior advocate with considerable experience and expertise particularly in the areas of law adjudicated by the Land Claims Court;

18.1.2 She has acted as a judge for a considerable period, commencing from 2018 including in the Land Claims Court;

18.1.3 She has a wide understanding of the various fields and aspects of law;

18.1.4 She is well regarded by those who have appeared before her, and we are advised that she is polite and courteous in her exchanges with her colleagues;

18.1.5 She displays a range of qualities and values that lie at the core of judicial service, including fairness, impartiality and a strong work ethic; and

18.1.6 Considering her extensive experience and expertise, the candidate's knowledge of the law and commitment to applying it

in a manner which gives effect to constitutional values, her appointment would be an enhancement to the judiciary.

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

*Mphatsoi v Van Staden* 2021 (5) SA 267 (LCC).

*Tsotetsi and Others v Raubenheimer NO and Others* 2021 (5) SA 293 (LCC).

*The Fonarun Naree Trustees, Copenship Bulkiers A/S (in liquidation) and Others v Afri Grain Marketing (Pty) Ltd and Others* 2020 (4) SA 188 (GJ).

**Unreported Decisions:**

*Ameer v Regional Commissioner, KwaZulu Natal and Others* (LCC 168/2020) (2 July 2021) (copy provided in application).

*CDH Watson NO and Others v Tsoanyane and Another* [2020] ZALCC 35 (21 December 2020).

*Changing Tides 17 (Pty) Ltd v Muriritirwa and Another* [2020] ZAGPPHC 132 (7 April 2020).

*Delta 200 Properties (Pty) Ltd v D and Others* [2020] ZALCC 24 (12 August 2020).

*Du Plessis and Another v Ross and Others* [2020] ZALCC 30 (26 May 2020).

*Du Plessis and Another v Ross and Others* [2020] ZALCC 20 (31 August 2020) (decision on application for leave to appeal).

*Firststrand Bank Limited t/a Wesbank v Mogodiri* [2020] ZAGPPHC 126 (7 April 2020).

*Kim v Agri Staff Pension Fund and Others* [2019] ZAGPJHC 156 (6 Feb 2019).

*Makgahlela v Maboi 6 Community Trust* [2020] ZALCC 29 (10 November 2020).

*Mosenogi NO and Another v Webster* [2020] ZAGPPHC 127 (7 April 2020).

*Mosita v Firstrand Bank Limited* [2020] ZAGPPHC 127 (7 April 2020).

*Ngobeni v Minister of Police* [2019] ZAGPJHC 170 (25 April 2019) (10 May 2019).

*NT Makhubele Enterprises CC and Another v Business Partners Limited and Another* [2019] ZAGPJHC 399 (30 September 2019).

*Ramohloki and Others v Raiden (Pty) Ltd and Others* [2020] ZALCC 31 (12 November 2020).

*Regional Land Claims Commissioner and Another v Registrar of Deeds Cape Town (South African Riding for the Disabled Association Intervening)* [2020] ZALCC 23 (30 June 2020).

*S v C* [2020] ZAGPPHC 134 (23 April 2020) (contempt of court family law matter).

*Vuma and Another v Minister of Agriculture, Land Reform and Rural Development and Another* [2020] ZALCC 34 (23 December 2020).

#### **Judgments upheld on appeal:**

*Du Plessis and Another v Ross and Others* [2020] ZALCC 20 (31 August 2020) (decision on application for leave to appeal). A petition to the SCA was refused by Dambuza JA and Gorven AJA thereby upholding this decision. Leave to appeal has now been sought from the Constitutional Court.

#### **Judgments overturned on appeal:**

None could be ascertained from the available caselaw resources.