

**APPLICANT: ADVOCATE HARSHILA KHOOSAL KOOVERJIE SC**

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

**1 The candidate's appropriate qualifications**

1.1 BA (WITS) 1987-1990;

1.2 LLB (WITS) 1991-1993;

1.3 Certificate in the Law of Third-Party Compensation (University of Pretoria and Multilateral Motor Vehicle Accident Fund (1995);

1.4 Diplomas from the University of Pretoria and FSA:

1.4.1 Alternative Dispute Resolution (2002);

1.4.2 International Commercial Arbitration (2002);

1.4.3 Mediation and Arbitration (2002);

1.4.4 Labour Dispute Resolution (2002).

1.5 Mediation course (Geneva Institute of Social Services, Switzerland) (2019);

1.6 Negotiation and Leadership course (Harvard Law School, Boston) (2019).

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

2.1 There is nothing 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 There are currently 73 full time judges on the Gauteng bench, comprising (as far as could be ascertained):

3.1.1 22 black women (17 African, 3 Indian, 2 Coloured);

3.1.2 25 black men (18 African, 5 Indian, 2 Coloured);

3.1.3 13 white women; and

3.1.4 13 white men.

3.2 The candidate is an Indian woman.

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

4.1 The candidate's judgments evidence good knowledge of the law and correctly make reference to legal principles.

4.2 The candidate has in at least one instance given consideration to constitutional law and the tension between the interests of justice and personal freedoms. See for example *S v Jansen* 2013 JDR 2447 (GNP) (A717/2013, 25 October 2013).

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

5.1 The candidate appears to be committed to the values of the Constitution.

5.2 The candidate is a member of the South African Women Lawyers Association (SAWLA, from 2019 to current) and Advocates for

Transformation Pretoria (AFT, from inception of the organisation in 1998 or 1999 to current).

- 5.3 The candidate is a member of a community-based organisation, the Shree Pretoria Hindu Seva Samaj which serves the Hindu community and other communities. It is primarily concerned with the welfare of the elderly and financially assists families who require financial support. It also assists students through a bursary fund.

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

- 6.1 We have been unable to find any judgments by the candidate that have been overturned on appeal.

- 6.2 In her application, the candidate indicates that the matter of *Information Technology Consultants (Pty) Ltd t/a Intecon and Others v The National Credit Regulator and Others* (22556/2017) [2019] ZAGPPHC 1005 (20 November 2019) was heard by the SCA, but the appeal was withdrawn after the hearing of the appeal.

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

- 7.1 The candidate has extensive and impressive professional experience including:

- 7.1.1 Uninterrupted practice as an advocate for approximately 25 years, including appearances in the Labour Court, High Courts, SCA and Constitutional Court and before the Zondo Commission.

- 7.1.2 46 weeks of acting in the North and South Gauteng High Courts.

- 7.1.3 Service on the Appeal Board of the Financial Services Board and Financial Services Tribunal (nine years in total over three terms), including presiding over appeals and writing the decisions.
- 7.1.4 Service on the Financial Sector Tribunal (three years).
- 7.1.5 Service on the Financial Intelligence Centre Appeal Board since 1 July 2011 (11 years in total over three terms), including chairing the Appeal Board Panel.
- 7.1.6 Service on the Council for Medical Schemes, including as Deputy Chair of the Council for Medical Schemes, including chairing Appeal Committee hearings (four years in total).
- 7.1.7 Service on the SARS Tax Board for a period of five years from 2013, including presiding over various matters.
- 7.1.8 Presiding over various arbitrations, mostly through AFSA (since 2002, 19 years in total).
- 7.2 The candidate also attended the Sajej's training programme for aspirant judges and the advanced training course.

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

- 8.1 In general, the candidate's linguistic and communication skills are very good.
- 8.2 As a general comment, the candidate's judgments appear to follow a set formula which sometimes results in the narrative or essence of the case getting lost and the judgment being harder to follow. In a few instances

there are linguistic or typographical errors that appear to have resulted from a failure to proof-read judgments.

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

9.1 The candidate is able to produce judgments properly.

9.2 We considered over 30 judgments written by the candidate. It does not appear that any judgments were delivered late.

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

10.1 There is nothing to suggest that the candidate is not fair or impartial. The judgments considered were balanced and fair.

**11 The candidate's independent mindedness**

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

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

12.1 There is nothing to suggest that the candidate is not able to conduct court proceedings

12.2 Members who have appeared before the candidate have no criticism of the candidate's ability to conduct court proceedings.

**13 The candidate's administrative ability**

13.1 The candidate appears to have good administrative ability. The candidate has acted prolifically (46 weeks in total) and has produced numerous judgments (more than 30) without delay.

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

14.1 There is nothing to suggest that the candidate does not behave ethically or with integrity.

**15 The candidate's judicial temperament**

15.1 The candidate's judgments are in general indicative of good judicial temperament.

**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 demonstrated a commitment to human rights and has extensive experience regarding the values and needs of the community, including:

16.1.1 The candidate is a member of a community-based organisation which concerns itself with the welfare of the elderly (SPHSS Pretoria).

16.1.2 The candidate has extensive involvement in matters of transformation at the Bar, including chairing the Transformation Committee of the Pretoria Society of Advocates and serving as a member on that Committee and preparing and championing a Transformation Policy. The main objective of the policy was to upskill and expose junior black members in specialized and complex matters.

- 16.1.3 The candidate was also part of the development of the Legal Service Sector BEE Code, including deliberations with stakeholders and role players such as the Department of Justice.
- 16.1.4 The candidate served on the LPC's Benevolent Committee which was tasked with assisting legal practitioners with funding in order to ease their financial burden during the Covid-19 lockdown.
- 16.1.5 The candidate engaged with a group of international mediation experts to conduct mediation training in South Africa. The training will take place during September 2021.
- 16.1.6 In senior practice, the candidate has undertaken extensive work with black woman juniors. In at least 90% of the candidate's matters in which a junior was appointed, a black woman junior was appointed. The candidate has also brought on juniors on her own account in the form of devilling fees.

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

- 17.1 The candidate will make a good judge.
- 17.2 The judgments reviewed were correct and can be described as solid.
- 17.3 The candidate will bring a wealth of experience to the bench.

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

- 18.1 The appointment of the candidate will send a message that the judiciary appoints experienced candidates.

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

### **Reported decisions**

N/A

### **Unreported Decisions**

*Baloyi v S* (A283/2015) (30 November 2015)

*Blair v Smith* 2013 JDR 2454 (GNP)

*Breytenbach v Minister of Home Affairs* (50365/2014) [2016] ZAGPPHC 470 (27 May 2016)

*Burger v Strydom* (54112/2015) [ZAGPPHC 867 (23 June 2016)

*Caranet Properties (Pty) Ltd v Boshoff NO* (57562/13) [2015] ZAGPPHC 480 (12 June 2015)

*Engels v Minister of International Relations and Cooperation and Others (Embassy of the Republic of Zimbabwe intervening)* (58792/2017) [2017] ZAGPPHC 667 (6 October 2017)

*Herbst v City of Tshwane* (32443/2015) [2016] ZAGPPHC 497 (27 May 2016)

*Incredible Sand (Pty) Ltd v Bucon Development and Construction (Pty) Ltd and Another* (90421/2016) [2017] ZAGPPHC 430 (2 August 2017)

*Information Technology Consultants (Pty) Ltd t/a Intecon v National Credit Regulator* (22335/2017) [2019] ZAGPPHC 1005 (20 November 2019)

*Kotze and Others v Grobler and Others* (38988/2015) [2016] ZAGPPHC 397 (27 May 2016)

*Land and Agricultural Development Bank of South Africa v Venter* 2013 JDR 2438 (GNP)

*Law Society of the Northern Provinces v Khoza* (81339/2014) [2016] ZAGPPHC 574 (3 May 2016)

*Law Society of the Northern Provinces v Le Roux* (81229/2014) [2016] ZAGPPHC 574 (3 May 2016)

*Mafora v S* (A506/15) [2016] ZAGPPHC 364 (10 May 2016)

*Manka v Ika & Others* (69567/2012) [2016] ZAGPPHC 499 (27 May 2016)

*Marishane v Body Corporate of Mont Rouge A1, In re: The Body Corporate of Mont Rouge A1 v Marishane and Another* (78076/2015) [2018] ZAGPPHC 736 (29 March 2018)

*Mathebula v Minister of Police* (15535/2015) [2016] ZAGPPHC 1073 (15 December 2016)

*Mkhabela v RAF* 2016 JDR 2272 (GP)

*Moabi v S* (A888/2014) [2015] ZAGPPHC 773 (4 September 2015)

*Mogotsi v S* (A359/2015) [2016] ZAGPPHC 867 (10 August 2016)

*Mponya v Minister of Police* (36594/2012), judgment dated 14 November 2013

*Nearhou v Netcare Hospital (Pty) Ltd t/a Netcare Milpark Hospital* (40774/2013) [2016] ZAGPPHC 1036 (15 December 2016)

*Nearhou v Netcare Hospital (Pty) Ltd t/a Netcare Milpark Hospital* (40774/2013)  
[2017] ZAGPPHC 556 (16 August 2017)

*Nkosi v S* (A484/2015), judgment handed down 11 December 2015

*Ntoi v RAF* (36977/2014) [2016] ZAGPPHC 1122 (2 December 2016)

*Olwagen v Minister of Agriculture* (44187/2009) [2015] ZAGPPHC 509 (12 June 2015)

*Phalane v PRASA* (71408/2013) ZAGPPHC 804 (3 December 2015)

*Private Residential Mortgages (Pty) Ltd v Mokone* (37394/12) [2013] ZAGPPHC 430 (2 December 2013)

*Remade Holdings v Datnow* (27609/2013) 2013 JDR 2446 (GNP)

*S v Jansen* (A7117/2013) 2013 JDR 2447 (GNP)

*Standard Bank of South Africa Limited: Vehicle and Asset Finance Division v Bahlodi Cameron (Pty) Ltd* (57768/2014) [2015] ZAGPPHC 467 (12 June 2015)

*Van der Merwe v The Sheriff of the High Court Germiston* (24084/12) (14 November 2013)

### **Judgments upheld on appeal**

N/A

### **Judgments overturned on appeal**

N/A