

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: JUDGE SHARISE ERICA WEINER

COURT FOR WHICH CANDIDATE APPLIES: SUPREME COURT OF APPEAL

1. The candidate's tertiary qualifications, professional admissions, honours, and permanent judicial appointments:

1.1. The candidate holds the following qualifications:

1.1.1. BA, University of Witwatersrand (1975); and

1.1.2. LLB, University of Witwatersrand (1977).

1.2. The candidate is appropriately qualified.

2. The candidate's integrity and ethics:

2.1. No circumstances are known that would suggest that the candidate is not a person of integrity with a reputation for ethical behaviour or is not a fit and proper person for appointment.

3. Whether the candidate's appointment would help to achieve an appropriate racial and gender composition on the bench:

3.1. There are currently 21 full time judges in the Supreme Court of Appeal, comprising (as far as could be ascertained):

3.1.1. 10 black women (7 African, 2 Indian, 1 Coloured);

3.1.2. 6 black men (5 African, 1 Indian);

3.1.3. 1 white woman; and

3.1.4. 4 white men.

3.2. The candidate is a white woman.

4. **The maximum time period the candidate could serve if appointed:**

4.1. Section 176(2) of the Constitution provides that all judges other than Constitutional Court judges “*hold office until they are discharged from active service in terms of an Act of Parliament.*” The Act in question is the Judges Remuneration and Conditions of Employment Act 47 of 2001.

4.2. Section 3(2)(a) of the Act provides that, subject to section 4(4), a judge will ordinarily be discharged from active service upon reaching the age of seventy if, by that date, they have completed a period of active service of not less than ten years. If not, they will be discharged from active service after having completed ten years of active service.

4.3. Section 4(4) allows for a judge who reaches the age of seventy to continue serving until the age of seventy-five if, at the time of turning 70, they have not yet served 15 years’ active service.

4.4. The candidate is 68 years of age and has completed a period of 11 years of active service as a judge.

4.5. If appointed, the candidate could serve up to 7 years actively in office.

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

5.1. The candidate's conduct has shown commitment to the achievement of dignity, equality and freedom for all, and human rights generally, through public service, civil society, and community involvement.

5.2. The candidate has participated in conferences geared towards transformation and the advancement of women at the Bar.

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

6.1. 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.

6.2. The candidate refers to eight matters as significant.

6.3. Many of these judgments include questions of constitutional law.

6.4. The candidate 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.

6.5. During her time at the Bar, the candidate made significant contributions to the Bar Council, and continues to be deeply involved in advocacy training.

6.6. The candidate appears to produce judgments promptly, with only two outstanding judgments at the time of submitting her application.

7. Judgments of the candidate that have been overturned, upheld or commented on, on appeal:

- 7.1. The candidate lists four judgments that were successfully appealed against. These include:
- 7.2. *S v Mokoena* 2019 (2) SACR 355 (SCA) – Criminal Procedure Regional court magistrate *mero motu* closing defence case in terms of s 342A(3)(d) of the Criminal Procedure Act 51 of 1977 (the Act) - notice in terms of s 342A(4)(a) not given by the State – evidence irregularly excluded – appeal court incorrectly remitting matter back to same magistrate to continue hearing – conviction and sentence set aside – s 324(c) applied.
- 7.3. *AFGRI Grain Marketing (Pty) Ltd v Trustees for the time being of Copenship Bulkers A/S (in liquidation) and Others* (797/2018) [2019] ZASCA 67; [2019] 3 All SA 321 (SCA) (29 May 2019) – security arrest in terms of s 5(3)(a) of the Admiralty Jurisdiction Regulation Act 105 of 1983 – such restricted to property existing at the time the arrest order was made – reconsideration of arrest order granted *ex parte* in terms of Uniform Rule 6(12)(c) – procedure – where party seeking reconsideration delivers an affidavit dealing with the merits and the applicant replies reconsideration takes place on basis of all material then before the court – onus remains on applicant to establish a genuine and reasonable need for security on a balance of probabilities – whether onus discharged.
- 7.4. *Benhaus Mining (Proprietary) Limited v Commissioner for the South African Revenue Service* (165/2018) [2019] ZASCA 17; 2020 (3) SA 325 (SCA) (22 March 2019) – a company that excavates ground and digs up mineral-bearing ore for a fee on delivery to

another entity that processes the ore, undertakes mining operations within the meaning of ss 1 and 15(a) of the Income Tax Act 58 of 1968. It is thus entitled to claim deductions of the full amount of capital expenditure on mining equipment in the tax year in which it is incurred, in terms of s 36(7C) of the Act.

- 7.5. *Road Accident Fund v Faria* (567/2013) [2014] ZASCA 65; 2014 (6) SA 19 (SCA); [2014] 4 All SA 168 (SCA) (19 May 2014) – general damages – Road Accident Fund Act 56 of 1996 as amended, read with Regulations promulgated under the Act – ‘serious injury’ to be determined in accordance with procedure prescribed in Reg 3 of the Regulations - RAF not bound by the determination of a ‘serious injury’ by its own expert - the high court wrongly awarded the plaintiff general damages.

8. The extent and breadth of the candidate’s professional experience:

- 8.1. Advocate: 1978-2011 (senior from 1995)
- 8.2. Barrister, England and Wales (1999)
- 8.3. Acting Judge, Gauteng Division (1995-2010)
- 8.4. Judge, Gauteng Division (July 2011)
- 8.5. Acting Judge, SCA (2019-2020)
- 8.6. The candidate has indicated involvement from 1996 to 2010 as the Convenor of the Johannesburg Bar and the General Council of the Bar Advocacy Training Committee. She has further conducted various workshops with attorneys and the Asset Forfeiture Unit. Further, the candidate has been involved in establishing the *pro bono*

office in conjunction with Judge President Mlambo at the High Court Gauteng Division, Johannesburg.

9. The candidate's linguistic and communication skills:

9.1. Excellent written and verbal communication skills. English language proficiency.

10. The candidate's ability to produce judgments promptly:

10.1. The candidate lists two reserved judgments still outstanding at the date of her application.

10.2. The first is an SCA judgment in which the candidate wrote the majority.

10.3. The second is a High Court matter emanating from the Commercial Court.

11. The candidate's ability to conduct court proceedings fairly, efficiently and effectively:

11.1. The candidate is fair and impartial in court. Her demeanour is friendly but firm.

11.2. 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.

11.3. Comments received from the members of the Johannesburg Society of Advocates, commend the candidate for ensuring that trial matters proceed as expeditiously as possible, even when she is required to utilise her free time to do so.

- 11.4. She further, does not entertain frivolous applications for postponement, but rather entertains a matter on its merits to ensure that justice is expeditiously served.
- 11.5. 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.
- 11.6. All colleagues speak glowingly of the candidate, and the reviewers are not aware of any negative aspects of her demeanour or professional abilities. The candidate is an asset to the judiciary.

12. The candidate's independent mindedness:

- 12.1. 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.
- 12.2. The candidate is willing to stand up against gender-based violence in South Africa.

13. The candidate's administrative ability (other than in relation to court proceedings):

- 13.1. The candidate has shown administrative ability outside of the court processes in that she has participated in and overseen various conferences aimed at advancing skills transfer and gender equality.

14. **The message that the candidate's appointment would send to the public at large:**

- 14.1. An experienced, highly respected judge will be appointed to the Supreme Court of Appeal.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:

- 1.1. *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) (15 September 2020)
- 1.2. *Minister of Police and Another v Stanfield and Others* (1328/2018) [2019] ZASCA 183; 2020 (1) SACR 339 (SCA) (2 December 2019)
- 1.3. *Maswanganyi obo Machimane v Road Accident Fund* (1175/2017) [2019] ZASCA 97 (18 June 2019)
- 1.4. *Matshazi v Mezepoli Melrose Arch (Pty) Ltd and Another; Nyoni v Mezepoli Nicolway (Pty) Ltd and Another; Moto v Plaka Eastgate Restaurant and Another; Mohsen and Another v Brand Kitchen Hospitality (Pty) Ltd and Another* (2020/10556; 2020/10555; 2020/10955; 2020/10956;) [2020] ZAGPJHC 136; (2021) 42 ILJ 600 (GJ) (3 June 2020)
- 1.5. *Manuel v Sahara Computers (Pty) Ltd and Another* (38562/2017) [2018] ZAGPPHC 864; [2019] 2 All SA 417 (GP); 2020 (2) SA 269 (GP) (12 December 2018)
- 1.6. *Mtomba v Minister of Defence and Others* (95871/2016) [2018] ZAGPJHC 641 (29 October 2018)

2. Unreported judgments:

- 2.1. *Tladi Holdings (Pty) Ltd v Modise Jacob Rasetlhake Daniel & Others* (2008/ 40449) ZAGPJHC

- 2.2. *Systems Application Consultants (Pty) Ltd t/a Securinfo v Systems Applications Products AG* 2016 JDR 0320 (GJ)
- 2.3. *Ford v Ford* (2004) 2 All SA 396 (W)
3. Judgments upheld on appeal:
- 3.1. *Sasol South Africa (Pty) Ltd v Murray & Roberts Limited* (425/2020) [2021] ZASCA 94 (28 June 2021)
- 3.2. *Khan v Shaik* (641/2019) [2020] ZASCA 108; 2020 (6) SA 375 (SCA) (21 September 2020)
- 3.3. *Maswanganyi obo Machimane v Road Accident Fund* (1175/2017) [2019] ZASCA 97 (18 June 2019)
- 3.4. *Firststrand Bank Limited t/a First National Bank v Makaleng* (034/16) [2016] ZASCA 169 (24 November 2016)
- 3.5. *Firststrand Bank Limited v Makaleng* (29688/2015) [2015] ZAGPJHC 321 (3 December 2015)
- 3.6. *Fourie v Ronald Bobroff and Partners Inc* (653/2016) [2017] ZASCA 91 (7 June 2017)
- 3.7. *Fourie v Ronald Bobroff and Partners Incorporated* (12/3663) [2014] ZAGPJHC 405; [2015] 2 All SA 210 (GJ) (10 December 2014)
- 3.8. *Imperial Bank Ltd v Barnard NO and Others* (349/12) [2013] ZASCA 42; 2013 (5) SA 612 (SCA) (28 March 2013)
- 3.9. *Barnard & Others NNO v Imperial Bank Ltd & another* 2012 (5) SA 542 (GSJ)

4. Judgments overturned on appeal:

- 4.1. *S v Mokoena* (78 of 1991) [1993] ZASCA 69 (25 May 1993)
- 4.2. *Afgri Grain Marketing (Pty) Ltd v Trustees for the time being of Copenship Bulklers A/S (in liquidation) and Others* (797/2018) [2019] ZASCA 67; [2019] 3 All SA 321 (SCA) (29 May 2019)
- 4.3. *Trustees for the time being of Copenship Bulklers A/S (in liquidation) v Afgri Grain Marketing (Pty) Limited* 2018 JDR 0407 (GJ).
- 4.4. *Benhaus Mining (Proprietary) Limited v Commissioner for the South African Revenue Service* (165/2018) [2019] ZASCA 17; 2020 (3) SA 325 (SCA) (22 March 2019)
- 4.5. *Benhaus Mining (Proprietary) Limited v Commissioner for the South African Revenue Service* (2017) ZATC 4
- 4.6. *Road Accident Fund v Faria* (567/2013) [2014] ZASCA 65
- 4.7. *Faria v Road Accident Fund* (2210/12) [2013] ZAGPJHC 63