

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: MS SHAIDA ABOO BAKER MAHOMED

COURT FOR WHICH CANDIDATE APPLIES: HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION

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

1.1. The candidate is appropriately qualified.

1.2. The candidate holds the following qualifications:

1.2.1. Post-Graduate Certificate, Management Advancement Program from the Wits Business School (2005);

1.2.2. LLM (Corporate Law) from the University of Pretoria (2002);

1.2.3. Postgraduate Diploma in Corporate Law from the University of Johannesburg (2001);

1.2.4. Certificate in Commercial Crime Investigation, SA Detective Academy (2001);

1.2.5. Postgraduate Diploma in Criminal Justice and Forensic Auditing from the University of Johannesburg (2000);

1.2.6. Certificate in Anti-Corruption Strategies from the Tshwane University of Technology (2000);

1.2.7. Certificate in Statement Analysis and Witness Interviewing from the Tshwane University of Technology (2000);

1.2.8. LLB from the University of KwaZulu-Natal (1990); and

1.2.9. BA from the University of KwaZulu-Natal (1987).

1.3. Professional Admissions:

1.3.1. Committee Member Training, AFSA Mediation (2018 – present);

1.3.2. Member, Johannesburg Society of Advocates (2007 – present);

1.3.3. Member, Law Society of the Northern Provinces (2004 – 2007); and

1.3.4. Member of the Natal Law Society (1995 – 1999).

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 79 full time judges on the Gauteng Division bench, comprising (as far as could be ascertained):

3.1.1. 23 black women (17 African, 4 Indian, 2 coloured);

3.1.2. 25 black men (19 African, 3 Indian, 3 coloured);

3.1.3. 15 white women; and

3.1.4. 16 white men.

3.2. The candidate is a black woman of Indian descent.

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 70 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 70 to continue serving until the age of 75 if, at the time of turning 70, they have not yet served 15 years’ active service.

4.4. The candidate is 60.

4.5. If appointed, the candidate could serve up to 15 years actively in office.

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

5.1. The candidate has participated in legal aid clinics since the start of her legal career and has assisted indigent communities to gain access to legal support.

- 5.2. The candidate is on the panel of legal practitioners at ProBono.org who provide pro bono legal services to ProBono.org's clients and has contributed a significant amount of time to assisting their clients.
- 5.3. The candidate worked at the Legal Resources Centre and dealt with issues such as people's access to housing, education, and health, as well as unlawful police action.
- 5.4. When the candidate was practising as a senior attorney, she was instructed by the Legal Aid Board and focused on strengthening the socio-economic rights of people by working on class action litigation, including assisting with the funding of the silicosis litigation on behalf of mineworkers and the *Fourie and Another v Minister of Home Affairs* matter, regarding the Constitutional Court's recognition of same sex marriages.
- 5.5. The candidate has been involved in identifying areas of law and constitutional rights requiring development and motivating to the executive committee of the Legal Aid Board to approval increased funding.
- 5.6. The candidate has been involved in lecturing law students, has been a mentor to two pupils (both women) whilst a member of the Johannesburg Society of Advocates, has assisted the JSA Judicial Candidate Review Sub-committee, and participated in a fact-finding mission into, and drafting a report on, atrocities committed by the Myanmar military, including human rights abuses, which report was submitted to the United Nations.
- 5.7. The candidate attended a fellowship programme in the United States and was granted an accolade by the Eisenhower Foundation

regarding the investigation into ways to develop class action litigation in South Africa and to extend this beyond the Bill of Rights and into areas such as product liability.

- 5.8. The candidate is a board member of The Living Link, which is a non-profit organisation which assists people with intellectual disabilities to gain employment, through skills provision and job placements.

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

- 6.1. The candidate has been employed in various positions in legal practice since 1989 and has been a practising member of the Johannesburg Society of Advocates since 2007.

- 6.2. The candidate appears to have a good general knowledge of the law.

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

- 7.1. The candidate indicates that in the matter of *Africa Best Foods (Pty) Ltd v CISA* (Case No. 7505/2022), she refused leave to appeal and a petition to the SCA was also refused.

- 7.2. In the matter of *Devrog Family Trust v Future Infinite Investments 180 (Pty) Ltd* 2022 JDR 2901 (GJ), leave to appeal to the full bench was granted. However, there does not appear to be a judgment from the full bench pertaining to this matter.

- 7.3. In the matter of *RJ Brady v D & F Farming*, leave was granted to appeal to the full bench. The appeal was granted but the full court found that the court *a quo* had committed an error in terms of the

order because the reasoning of the judgment was correct, but the order did not follow.

7.4. There do not appear to be any other matters which have been overturned, upheld or commented on, on appeal.

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

8.1. The candidate's career has been dedicated to the legal profession. The candidate was an attorney from 1996 until she joined the bar in 2007.

8.2. During 1999 to 2001 the candidate worked as a senior investigator at the office of the Public Protector and thereafter as a senior state advocate at the Directorate of Special Operations ("The Scorpions").

8.3. The candidate has attended several training programmes offered by LEAD and the LSA, including courses in procurement law contracts and competition law. The candidate is also an accredited mediator and is a member of AFSA. The candidate has presented workshops in mediation to the State Attorney in Pretoria and the Department of Health in Johannesburg.

8.4. The candidate attended the Wallenberg training programmes in appeals in 2016 and witness examination in 2019.

8.5. The candidate attended the Aspirant Judges Training programme in 2021 and 2023.

8.6. The candidate has sat as an acting judge on numerous occasions (3 weeks in 2020, 4 weeks in 2021, 19 weeks in 2022 and 13 weeks thus far in 2023), in both the civil and criminal courts.

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

9.1. The candidate's judgments are well written and well reasoned.

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

10.1. The candidate has produced her judgments timeously. In fact, she has delivered all of the judgments reviewed (except for one) in under three months and on occasion has delivered her judgment within a few days of having heard the matter.

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

11.1. Adv Mohammed A Chohan SC indicates in his nomination that he understands from his colleagues that the candidate has a good temperament and is diligent, hardworking, and willing to accommodate parties and counsel.

11.2. We have received no adverse comments.

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

12.1. The candidate appears to be independent minded.

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

13.1. The candidate demonstrates sound administrative ability.

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

14.1. The candidate has extensive experience in the legal profession and has dedicated much of her time to assisting individuals who are not

able to afford legal representation and to educating future members of the legal profession.

- 14.2. The candidate's appointment would show the public that appointments are made not only on the basis of experience and knowledge of the law, but also on a commitment to the socio-economic rights of the people of South Africa.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

1.1. None

2. Unreported judgments:

2.1. *Lacky Madi Auto Dealers and Another v Standard Bank of South Africa Ltd* (Case Number: 42798/209) [2020] ZAGPJHC 375 (15 December 2020)

2.2. *Kganare v Nedbank Limited and Others* (Case No. 49738/2017) [2020] ZAGPJHC 412 (15 December 2020)

2.3. *Stiglingh and Another v Debt Rescue* (Case No. 26324/2019) [2020] ZAGPJHC 378 (15 December 2020)

2.4. *Khunou v Sebesho and Another In re: Sebesho v Khunou and Another* (24798/17) [2021] ZAGPJHC 429 (13 September 2021)

2.5. *The Prudential Authority v Mayonga and Another* (Case Number: 21547/2020) [2022] ZAGPJHC 38 (26 January 2022)

2.6. *Sebata v Master of the High Court and Another* (25821/19) [2022] ZAGPJHC 95 (23 February 2022)

2.7. *MFC (A division of Nedbank Limited) v Mkhwanazi and Others* (15047/2020) [2022] ZAGPJHC 203 (6 April 2022)

2.8. *Mathe v Minister of Police* (13425/2019) [2022] ZAGPJHC 489 (9 May 2022)

- 2.9. *FirstRand Bank Limited v The Magistrate for the District of Ekurhuleni North and Others* (13341/2021) [2022] ZAGPJHC 338 (16 May 2022)
 - 2.10. *Machingwane v National African Federated Chamber of Commerce and Industry and Another* 2022 JDR 1906 (GJ) (11 July 2022)
 - 2.11. *RJ Brady v D & F Farming* (12 September 2022)
 - 2.12. *Kaslassy v O'Neill and Others* (26412/2022) [2022] ZAGPJHC 658 (19 September 2022)
 - 2.13. *Gonenbaba v Road Accident Fund* 2022 JDR 2919 (GJ) (10 October 2022)
 - 2.14. *Devrog Family Trust v Future Indefinite Investments 180 (Pty) Ltd* 2022 JDR 2901 (GJ)
 - 2.15. *Imalenia v Khwela* (Case Number: 48512/2021) [2022] ZAGPJHC 835 (26 October 2022)
 - 2.16. *TN Molefe Construction (Pty) Ltd v Soki (Pty) Ltd* 2022 JDR 3346 (GJ) (7 November 2022)
 - 2.17. *Bidvest Bank Limited v Moeng* (Case Number: 42419/2021) [2022] ZAGPJHC 878 (14 November 2022)
 - 2.18. *Machingwane v National African Federated Chamber of Commerce and Industry and Another* 2022 JDR 1906 (GJ)
3. Judgments upheld on appeal:
- 3.1. None

4. Judgments overturned on appeal:

4.1. None