

JSC INTERVIEW ROUND: APRIL 2024

CANDIDATE: JUDGE SHANAAZ CHRISTINE MIA

COURT FOR WHICH CANDIDATE APPLIES: LAND COURT (JUDGE PRESIDENT)

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

1.1. The candidate holds the following degrees:

1.1.1. BA (University of Cape Town, 1989);

1.1.2. LLB (University of Cape Town, 1995); and

1.1.3. LLM (University of the Western Cape, 2002): dissertation on the Child's Voice in Court Proceedings in terms of the Hague Convention on the Civil Aspects of International Child Abduction.

1.2. The candidate was a public defender for one year, from January 1996 to January 1997.

1.3. The candidate held the position of family advocate at the Department of Justice and Constitutional Development for four years until 2002.

1.4. In June 2002, the candidate was appointed as a Magistrate in Cape Town. At the time, she presided in the family law section of the Magistrate's Court and Divorce Court. After the candidate's appointment was confirmed in October 2003, she presided in the

family and criminal courts for Orlando, Protea, Lenasia, Meadowlands and Kliptown.

- 1.5. The candidate also presided in the civil courts held at Randburg and Kempton Park as well as Atteridgeville and Mahikeng.
- 1.6. In May 2009, the candidate began acting in the Land Claims Court for a period of eight months.
- 1.7. The candidate acted in the Western Cape Division of the High Court from October 2010 until April 2011 – a period of seven months.
- 1.8. During February 2013 to April 2014, the candidate was an Acting Judge of the High Court, Gauteng Division, Johannesburg – a period of seven weeks.
- 1.9. From April 2015 to September 2015, the candidate was an Acting Judge in the Free State High Court, Bloemfontein – a period of 6 months.
- 1.10. The candidate was appointed as a Judge in January 2020 and has been serving since in the Gauteng Division, Pretoria and Johannesburg.

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. The permanently appointed heads of the superior courts comprise (as far as could be ascertained):

3.1.1. three black women (three African);

3.1.2. nine black men (eight African, one Coloured); and

3.1.3. one white man.

3.2. The candidate is a black (Coloured) 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 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. At the time of the interviews, the candidate will be approximately 55 years and 3 months old and will have completed a period of approximately 4 years and 3 months of active service.

4.5. The candidate is eligible to complete a further period of 14 years and 8 months' active service as a judge.

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

5.1. The candidate's judgments demonstrate a commitment to constitutional values and an understanding of constitutional imperatives.

5.2. This is evident from her judgments handed down in the Land Claims Court as well as from judgments in which she concurred in the matters:

5.2.1. *White Wall Trading (CC) and Another v Biyela and Others* [2024] ZAGPJHC 54 (26 January 2024) concerned an eviction brought under section 5 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE"). This was an urgent application following two fires in the Johannesburg CBD in August and September 2023. In finding that the applicants had not satisfied the stringent test for urgency required in terms of section 5 PIE, the candidate held:

"I am of the view that there is no imminent danger to the property if the unlawful occupiers are not forthwith evicted. The likely hardship to the owners of the properties does not exceed the hardship to the

occupiers if the court were to grant an order for eviction. The City is not able to offer TEA [temporary emergency accommodation] immediately. [...] The reference to the recent fires, loss of lives and damage in other premises is merely convenient; however, without any indication of the cause of the fire in those buildings, it cannot be extrapolated to the present properties, is speculative and cannot be taken into account in making out a case for imminent danger in the present application.”

5.2.2. *D v D* [2022] ZAGPJHC 1034 (19 December 2022) involved a divorce proceeding with a focus on a minor child’s care. The main issues for determination were the urgency of the application and whether it was in the best interest of the minor child to be permanently removed from South Africa to a foreign country by considering the provisions of section 28 of the Constitution. Having considered the relationship between the minor with the applicant and the first respondent, the child report and the family advocate report and the urgency of the application, the child’s stability and schooling and the need for a speedy resolution, the candidate emphasised that decisions concerning children must prioritise their best interest as outlined in section 28 of the Constitution.

5.2.3. *K.L.E and Others v Department of Social Development and Others* [2023] ZAGPJHC 301 (22 March 2023). The applicants, who were based in the USA, sought in an urgent application to be awarded joint parental responsibilities and

rights in respect of certain minor children in terms of the Children's Act, 2005. This included removing the children from South Africa and enrolling them in schools in the USA. The applicants were the minor children's adoptive siblings. The Department of Social Development, the Central Authority for South Africa and the Minister of Home Affairs opposed the application, raising concerns about the legal implications of granting parental rights to non-nationals, and the need for proper processing and investigation due to the unique circumstances of the case. As a champion of the Child's Voice in Court proceedings in terms of the Hague Convention on Civil Aspects of the International Child Abduction, the candidate showed her proficiency on constitutionally protected procedural rights in delivering her judgment. The candidate found the application was not sufficiently urgent and referred the matter to the relevant authorities for consideration under section 25 of the Children's Act. The candidate highlighted the importance of due legal process, the best interest of the children, and thorough examination of cases involving parental rights and responsibilities, even when urgent relief is sought.

- 5.3. The candidate is actively involved in the South African Chapter of the International Association of Women Judges as well as the African Regional Judges Forum subcommittee on Education on HIV and TB, and *Shura Ya Bafazi*. The candidate does voluntary work with civil society non-profit organisations NICRO, SANCA (South African National Council on Alcoholism and Drug Dependence) and *Khulisa Social Solutions*.

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

6.1. The candidate’s judgments across different areas of the law demonstrate her knowledge of law, including constitutional law.

6.2. The candidate has published or written the following extra-curial works that show her proficiency on constitutionally protected procedural rights:

6.2.1. “The Child’s voice in Court Proceedings in terms of the Hague Convention on the Civil Aspects of International Child Abduction: Does ascertaining the child's view realise the best interests of the child in legal and related proceedings in terms of the Hague Convention on the Civil Aspects of International Child Abduction?” (LLM Dissertation, UWC, 2002).

6.2.2. “Impact of Cultural Values on Maintenance Orders” (Civil Court Newsletter, May 2008).

6.3. Of the judgments considered the following judgments of the candidate are of some significance:

6.4. *Farjas (Pty) Ltd v Minister of Agriculture and Land Affairs of the Republic of South Africa and Others, Rainy Days Farms (Pty) Ltd v Minister of Agriculture and Land Affairs of the Republic of South Africa and Others* [2011] ZALCC 22 (23 June 2011) – upheld in [2012] ZASCA 173 ([2013] 1 All SA 381 (SCA); 2013 (3) SA 263 (SCA)) (29 November 2012):

6.4.1. Two companies had developed land for purposes of establishing a residential township. The land was

expropriated, and the companies sought compensation. The candidate considered section 25 of the Constitution and section 33 of the Restitution Act, 1994 to determine the ‘just and equitable’ compensation. The companies appealed the finding by the candidate that the CPI adequately addressed the changes in the value of money over time. The appeal was dismissed by the SCA, which confirmed the candidate’s judgment and reasoning.

6.5. *Baphiring Community v Uys* 2010 (3) SA 130 (LCC):

6.5.1. The dispute concerned members of a community that had been relocated from land occupied by them, seeking restitution of the land in terms of Section 33(cA) of the Restitution of Land Rights Act, 1994. The land had become privately owned by different owners and was being used for farming. The candidate was required to consider the feasibility of restitution in terms of the provisions of the said Act. Although the decision was overturned on appeal, the candidate sought to find a proper balance in respect of the constitutional imperatives underlining the Act and the practical implications of restitution and provided a proper and succinct judgment which retains its value.

6.6. *Ceres Fruit Processors v Folotie and Another* [2009] ZALCC 17 (28 December 2009):

6.6.1. The judgment dealt with the proper interpretation and application of section 19(3) of the Extension of Security of Tenure Act, 1977, together with an eviction order that did not appear to comply with the peremptory requirements

specified in section 9(2) of the Act with specific reference to the terms of section 10(2) where the court of first instance had to consider the availability of suitable alternative accommodation.

6.7. *Ferreira v: Q No More (Pty) Ltd and Another* [2013] ZAGPJHC 48 (8 March 2013):

6.7.1. The matter concerned the law of contract, interpreting the validity of suspension conditions and the non-fulfilment thereof. The candidate was seized with interpreting the parties' intention by having regard to the conduct of the parties as the relevant clauses in the lease agreement were ambiguous. The judgment succinctly sets out the pertinent issues that had to be decided. The candidate clearly understood and crystallised what was relevant and interpreted the relevant case law in respect of the issue in an appropriate manner, providing a valuable reference in respect of this specific aspect of contract law.

6.8. *Weelson v Waterlinx Pool and Spa (Pty) Ltd In re: Waterlinx Pool and Spa (Pty) Ltd v Right Stuff Hardware CC t/a Kings Paint & Hardware Pool Company* [2013] ZAGPJHC 47 (1 March 2013):

6.8.1. The application concerned an acknowledgement of debt. The applicant at the time sought a rescission of the judgment in terms of Rule 42(1)(a) of the Uniform Rules of Court. The legal position was properly articulated and referred to and the application of the Rule together with the requirements and the relevant law that underpins it were succinctly and crisply applied in order for the judgment to be reached.

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

7.1. The candidate's judgment in *Baphiring Community v Uys* 2010 (3) SA 130 (LCC) – overturned in *The Baphiring Community and Others v Tshwaranani Projects CC and Others* [2013] 4 All SA 292 (SCA); 2014 (1) SA 330 (SCA) (6 September 2013) was overturned on appeal:

7.1.1. The candidate was the Judge of first instance sitting in the Land Claims Court. The candidate was seized with an application for a restoration order in terms of the Restitution of Land Rights Act, 1994. The issues on appeal were the cost of restoration and the absence of evidence by the State.

7.1.2. The SCA set aside the non-restoration order made by the candidate and found that the absence of such evidence constituted a material irregularity that vitiated the non-restoration order.

7.2. The candidate's judgment in *Farjas (Pty) Ltd v Minister of Agriculture and Land Affairs and Others, Rainy Days Farms v Minister of Agriculture and Land Affairs and Others* [2011] ZALCC 22 (23 June 2011) – upheld in [2012] ZASCA 173 ([2013] 1 All SA 381 (SCA); 2013 (3) SA 263 (SCA)) (29 November 2012) was upheld on appeal:

7.2.1. The SCA found that:

“Mia AJ concluded that the CPI adequately catered for changes over time in the value of money. The Judge rejected the methods relied upon by the

appellants. She held that section 33(eC) of the Restitution Act did not envisage an application of compound interest rates and housing and land indices to determine changes over time in the value of money and that commercial instances had to be distinguished from claims for restitution under the Restitution Act. The Judge thereafter applied the CPI to adjust the amounts of under-compensation and awarded Farjas an amount of R1,053,376 and Rainy Days R1,454,192.60 She did not make any order with regard to the appellants' claims for solatia. The appellants appeal against this order with leave of the Land Claims Court, contending that it erred in applying the CPI and in failing to award them the solatia they were promised."

- 7.2.2. After dealing with the submissions made on appeal by the parties on the candidate's application of the CPI in the court a quo and considering the applicable authorities, the SCA concluded: *"It follows that the reasoning and conclusion of the court below with regard to the application of the CPI cannot be faulted."*

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

- 8.1. The candidate has an impressive professional history.
- 8.2. The candidate has been a public defender, a legal advisor at South Peninsula Municipality, a family advocate, has held acting appointments as a Magistrate and as a Judge in the High Courts, sitting in Cape Town, Bloemfontein, Pretoria, Johannesburg and

the Land Claims Court. She has been a district Magistrate, senior Magistrate and is presently a Judge in the High Court, Gauteng.

9. The candidate's linguistic and communication skills:

9.1. The candidate's judgments read well and show her linguistic and communication skills and an ability to write judgments succinctly.

9.2. The candidate's judgments are written in plain English, demonstrating a crisp grasp of the issues at hand and can be read easily by members of society.

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

10.1. The candidate generally delivers judgments within a period of three months. In a few instances, the candidate took slightly over six months to deliver judgments.

10.2. Of the six judgments that had been listed to be outstanding in the candidate's questionnaire only one, *Mastertrade 286 (Pty) Ltd v Wolmer Rodney*, reserved 11 August 2023, appears to remain outstanding.

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

11.1. Based on the judgments of the candidate under consideration, the candidate has the requisite judicial temperament and treats litigants and legal practitioners fairly and affords them sufficient time to ventilate any issue of dispute before her without undue interference. These judgments include the following:

- 11.1.1. *Sambo v Road Accident Fund* [2020] ZAGPJHC 119 (19 March 2020), in which the candidate demonstrated mindfulness of the trend to grant high awards slavishly or endorsing settlements which affect the public purse.
- 11.1.2. *Gauteng Department of Infrastructure Development and Another v Themba Consultants (Pty) Ltd* [2024] ZAGPJHC 99 (7 February 2024), an application to lift a bar, the candidate relied on *Ferris v Firstrand Bank Ltd* (2014 3 SA 39 (CC) in condoning the lateness of the Gauteng Department of Infrastructure Development's application for removal of a bar and condonation in terms of Rule 27. The candidate held that lateness is not the only consideration according to *Ferris*, but that the interests of justice and the applicant's prospects of success, as well as the importance of the issues to be decided, are also considerations.
- 11.1.3. In *Da Cruz v Manzella and Others* [2024] ZAGPJHC 136 (16 February 2024), the candidate – considering whether to grant the applicant leave to file a supplementary replying affidavit – held that the court in that case was exercising a discretion with regard to the facts, bearing in mind the interests of the administration of justice that must be served by observing the rules of court relating to the number and the sequence of affidavits in motion court proceedings. She held that where there was an opportunity to place evidence before the court at an earlier opportunity and the applicant failed to do so, it would not be allowed. However, the candidate found that circumstances had changed after the applicant filed his replying affidavit when the first respondent reported

the loss of the financial records of the second respondent, and she allowed the supplementary replying affidavit.

11.1.4. In *Golden Falls Trading 125 (Pty) Ltd v City of Ekurhuleni Metropolitan Municipality and Others* [2023] ZAGPJHC 849 (31 July 2023), the candidate considered an application for the review and setting aside of various decisions made by the municipality granting land use rights to a developer. The applicant sought interdictory relief to prevent construction activities by the developer and certain decisions by the municipality and developers. The applicant's concerns were about the conversion of land development applications, approval of townships, and amendments to conditions imposed by the development tribunal. The candidate highlighted the legal framework governing town planning and land use rights, in particular to the Development Facilitation Act and the Constitutional Court's decision on municipal planning competencies. The applicant contended that the conduct of the municipality lacked fidelity to just administrative action. The candidate analysed the legal principles under the Promotion of Administrative Justice Act (PAJA) and the requirements of condonation in bringing the review application. The candidate dismissed the condonation application, citing the applicant's unreasonable delay and lack of justification. She also considered the interests of justice, the impact on other landowners and developers, as well as the legal validity of the decisions made by the municipality. Of importance was the emphasis by the candidate of the separation of powers and the imperative

consideration of the implications of setting aside previous decisions on township development.

- 11.2. The candidate demonstrated proficiency in crystalising the detailed analysis of the legal issues and procedural aspects of this matter.
- 11.3. Moreover, feedback received to the candidate's application suggests that the candidate, whilst maintaining proper judicial decorum as well as being polite and patient, conducts proceedings with a firm hand and retains firm control of all proceedings in her court.
- 11.4. The candidate does not shy away from assisting junior members of both the Bar and the Side Bar in her Court without compromising either her independence or the dignity and the proper functioning of the court.

12. The candidate's independent mindedness:

- 12.1. The candidate does not bow to societal pressure when deciding matters of public interest, especially pertaining to land issues because those are delicate given the history of land in the country. The candidate decides matters on facts and law without fear or favour.
- 12.2. One of her judgments demonstrating this is *South African Legal Practice Council v Harper and Another* [2021] ZAGPJHC 829 (21 December 2021), in which the LPC sought the urgent suspension or striking off of an attorney under section 43 of the Legal Practice Act for, *inter alia*, a trust account deficit of R7,9 million, the candidate found as follows in a judgment concurred in by Sutherland DJP:

“in my view it is plain that a striking off is not justified at all on these papers. It is further a matter of genuine concern that suspension may indeed be premature. The evidence does not point to a systematic pattern of defalcations. The appointment of a curator to control the accounts removes the risk of any further mischief and moreover provides the appropriate arrangements to plumb the depths of the history of the accounts. The future of the firm and its employees, although not a factor that can ever be decisive, is nonetheless germane as regards an interim regime pending the disciplinary enquiry.”

The candidate concluded: *“The appropriate relief is to allow the practice to continue and appoint a curator to take over the accounts. An order to that effect shall be made.”*

12.3. There is no reason to doubt that the candidate is independent minded.

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

13.1. The candidate was appointed to the Gauteng Division with seats in both Johannesburg and Pretoria. She previously acted in the Free State Division, Bloemfontein and the Western Cape Division, as well as in the Land Claims Court.

13.2. It can be inferred from the candidate’s judicial record that she has the requisite administrative ability to manage her caseload efficiently in a busy division’s rotation schedule between Motion Court, both opposed and unopposed, Criminal Appeals, Civil

Appeals, Urgent Court sittings and well as the Trial Court having regard to her list of diverse judgments.

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

14.1. The candidate has extensive experience from acting in the Land Claims Court and different Divisions of the High Court until she was permanently appointed to the Gauteng Division. Her experience presiding over diverse matters across various divisions of the High Court and in the Land Claims Court contribute to enriching her exposure in a judicial leadership role.

14.2. The candidate is a black woman who rose through the judicial ranks from the lower court. Her appointment will send a positive message to the community at large.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:

- 1.1. *Talacar Holdings (Pty) Ltd v Cole* 2023 (6) SA 626 (GJ)
- 1.2. *Ekurhuleni Municipality v New Star Technology CC* 2023 (3) SA 579 (GJ)
- 1.3. *Baphiring Community v Uys* 2010 (3) SA 130 (LCC)

2. Unreported judgments:

- 2.1. *Da Cruz v Manzella and Others* [2024] ZAGPJHC 136 (16 February 2024)
- 2.2. *Gauteng Department of Infrastructure Development and Another v Themba Consultants (Pty) Ltd* [2024] ZAGPJHC 99 (7 February 2024)
- 2.3. *Ndhlovu v Minister of Justice and Correctional Services and Others* [2024] ZAGPJHC 24 (17 January 2024)
- 2.4. *White Wall Trading (CC) and Another v Biyela and Others* [2024] ZAGPJHC 54 (26 January 2024)
- 2.5. *Firststrand Bank Limited v Mavie* [2024] ZAGPJHC 56 (29 January 2024)
- 2.6. *K.L.E and Others v Department of Social Development and Others* [2023] ZAGPJHC 301 (22 March 2023)
- 2.7. *Golden Falls Trading 125 (Pty) Ltd v City of Ekurhuleni Metropolitan Municipality and Others* [2023] ZAGPJHC 849 (31 July 2023)

- 2.8. *D v D* [2022] ZAGPJHC 1034 (19 December 2022)
- 2.9. *Nzimande and Others v Director General of the Department of Rural Development and Land Reform and Others* [2022] ZALCC 47 (8 July 2022) [2022] ZALCC 47 (8 July 2022)
- 2.10. *I O obo N O v The Member of the Executive Council for Health and Social Development of the Gauteng Provincial Government* [2022] ZAGPJHC 208 (4 April 2022)
- 2.11. *South African Legal Practice Council v Harper and Another* [2021] ZAGPJHC 829 (21 December 2021)
- 2.12. *Nzimande and 129 Others v The Director General of the Department of Rural Development and Land Reform and Others* [2021] ZALCC 26 (18 October 2021)
- 2.13. *Selwane v Majeje Traditional Authority* [2021] ZALCC 10 (30 July 2021)
- 2.14. *Msezeni and Others v Workforce Group (Pty) Ltd and Another* [2021] ZAGPJHC 133 (17 May 2021)
- 2.15. *Helm Construction (Pty) Ltd v Noortman and Another* [2020] ZAGPJHC 245 (21 September 2020)
- 2.16. *Makhalima and Another v S* [2020] ZAGPJHC 192 (29 May 2020)
- 2.17. *Mkhonza and Others v City of Johannesburg and Others* [2020] ZAGPJHC 117 (21 April 2020)
- 2.18. *Compressor Valves and Accessories (Pty) Limited v Thackeray* [2020] ZAGPJHC 116 (30 March 2020)

- 2.19. *German Shepherd Federation of South Africa v Registrar of Animal Improvement: Department of Agriculture, Forestry & Fisheries* [2020] ZAGPJHC 121 (11 May 2020) *Sambo v Road Accident Fund* [2020] ZAGPJHC 119 (19 March 2020)
- 2.20. *Little Stars Early Intervention Centre NPC t/a The Star Academy v White and Another* [2020] ZAGPJHC 48 (17 February 2020)
- 2.21. *Olantunji v S* [2020] ZAGPJHC 51 (27 January 2020)
- 2.22. *Ferreira v Q No More (Pty) Ltd and Another* [2013] ZAGPJHC 48 (8 March 2013)
- 2.23. *Weelson v Waterlinx Pool and Spa (Pty) Ltd In re: Waterlinx Pool and Spa (Pty) Ltd v Right Stuff Hardware CC t/a Kings Paint & Hardware Pool Company* [2013] ZAGPJHC 47 (1 March 2013)
- 2.24. *Anton Killian Inc and Another v Rodel Financial Services (Pty) Ltd* [2013] ZAGPJHC 56 (21 February 2013)
- 2.25. *Booth and Others v Minister of Land Affairs and Agriculture and Others* [2010] ZALCC 4 (19 March 2010)
- 2.26. *Ceres Fruit Processors v Folotie and Another* [2009] ZALCC 17 (28 December 2009)

3. Judgments upheld on appeal:

- 3.1. *Farjas (Pty) Ltd v Minister of Agriculture and Land Affairs and Others, Rainy Days Farms v Minister of Agriculture and Land Affairs and Others* [2011] ZALCC 22 (23 June 2011) – upheld in [2012] ZASCA 173 ([2013] 1 All SA 381 (SCA); 2013 (3) SA 263 (SCA)) (29 November 2012)

4. Judgments overturned on appeal:

- 4.1. *Baphiring Community v Uys* 2010 (3) SA 130 (LCC) – overturned in *The Baphiring Community and Others v Tshwaranani Projects CC and Others* [2013] 4 All SA 292 (SCA); 2014 (1) SA 330 (SCA) (6 September 2013)