

**JSC INTERVIEW ROUND: APRIL 2024**

**CANDIDATE: JUDGE ZEENAT CARELSE**

**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 a BA LLB (1992) from the University of Durban, Westville.

1.2. The candidate was appointed to the following judicial roles:

1.2.1. Magistrate (1998 – 2004), Johannesburg Magistrates Court / Mitchells Plain Magistrates Court;

1.2.2. Regional Magistrate (2004 – 2008), Tembisa Magistrates Court;

1.2.3. Judge of the High Court (2009 – 2021), High Court of South Africa, Gauteng Division, Johannesburg; and

1.2.4. Justice of Appeal (1 July 2021), Supreme Court of Appeal.

**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 57 years and 6 months old and will have completed a period of approximately 15 years and 3 months of active service.
- 4.5. The candidate is eligible to complete a further period of 12 years and 5 months' active service as a judge.
5. **The candidate's personal commitment to the values of the constitution:**
- 5.1. The candidate has been involved in activities that promote advancements in equality and gender equality and has participated as a member of:
- 5.1.1. IAWJ (International Association of Women Judges) from 2004 to present;
- 5.1.2. CMJA (Commonwealth Magistrates' and Judges Association) Gender Committee 2000; and
- 5.1.3. JOASA (Judicial Officers Association of South Africa) 2006.
- 5.2. The candidate is presently a network Judge at the Hague Conference on Private International Law, Gauteng, RSA.
- 5.3. The candidate addressed students at the University of Johannesburg during 2014 in an address entitled "*Empowering Young Women in Law*" wherein she shared her insights into the lack of transformation in South Africa.

5.4. The candidate has provided, and continues to provide, mentorship to undergraduates, graduates, masters students and junior colleagues as a member of the IAWJ from 2009 to date.

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

6.1. The candidate has been a Magistrate and then a Judge since 1994 and has been acting in the Supreme Court of Appeal since 2018, whereafter she was permanently appointed in July 2021.

6.2. The candidate has penned 21 judgments since 2012 which have demonstrated exposure to a vast array of matters. Since her appointment to the SCA, the candidate has penned 6 judgments, some involving complex legal issues such as a review in security of tenure (*Nimble Investments*), the interplay between the Conservation of Agricultural Resources Act and the Extension of Security of Tenure Act (*Loskop Landgoed*), and a reconsideration by the President of the SCA (*S v Mashilo*).

6.3. The candidate was seconded to the Land Claims Court for the period 2009 – 2021 (approximately 12 years). The majority of the judgments she has penned are during her tenure at the Land Claims Court, and her knowledge of the subject matter shows in the recent SCA judgments where issues surrounding land claims and entitlement to occupation were at play. The candidate has shown that she has a good grasp of the principles in land claims and would be an asset as the Court's head.

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

- 7.1. In *Areva NP Incorporated in France v Eskom Holdings Soc Limited and Others* (CCT20/16, CCT24/16) [2016] ZACC 51 (21 December 2016); 2017 (6) BCLR 675 (CC); 2017 (6) SA 621 (CC), the Constitutional Court overturned the candidate's finding regarding *locus standi* of one of the litigants to institute review proceedings. The Supreme Court of Appeal confirmed the candidate's finding regarding *locus standi*, but on different grounds.
- 7.2. In *Florence v The Government of the RSA* (550/12) [2013] ZASCA 104 (13 September 2012), the Supreme Court of Appeal confirmed the candidate's finding that the Consumer Price Index was the appropriate measure to determine the changes over time in the value of money. In *Florence v Government of the Republic of South Africa* (CCT 127/13) [2014] ZACC 22 (26 August 2014); 2014 (6) SA 456 (CC); 2014 (10) BCLR 1137 (CC), the Constitutional Court confirmed this finding by both the candidate and the Supreme Court of Appeal.
- 7.3. In *BMW South Africa (Pty) Ltd v Commissioner, South African Revenue Service* (1156/2018) [2019] ZASCA 107 (6 September 2019); 2020 (1) SA 484 (SCA), the Supreme Court of Appeal considered the judgment penned by the candidate as part of the Full Court which considered an appeal from the Tax Court. The Full Court had agreed with the conclusions of the Tax Court and concluded that firstly, the expatriate employees received a benefit or advantage when BMW paid tax consultancy firms for tax

services and secondly, rejected the argument that the tax consultancy services were not for the expatriate employees' private or domestic use as there was no evidence that KPMG rendered any services to the BMW Group. The SCA held that the Tax Court and Full Court findings could not be faulted.

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

8.1. The candidate has extensive experience as a Judge. She has held permanent appointments for 15 years.

8.2. The candidate has been a Magistrate since 1994 and a Judge since 2009. The candidate has taken acting appointments in the Supreme Court of Appeal since 2018, whereafter she was permanently appointed in July 2021. The candidate presently holds the position of Justice of the Supreme Court of Appeal.

8.3. During this time the candidate has presided over a vast array of matters, including, but not limited to, land claims matters dealing with the Restitution Act, 22 of 1994 and the Extension of Security of Tenure Act, 6 of 1997, constitutional matters, commercial matters, criminal matters and family law matters.

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

9.1. The candidate's judgments are well written, and she is able to set out the legal points, the facts and the reasoning for her findings in a succinct manner, rendering her judgments concise, well-reasoned and easy to understand.

9.2. The candidate demonstrates her clear understanding of the matters over which she presides and the law relating thereto by her ability to produce clear and concise judgments.

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

10.1. The candidate has no reserved judgments outstanding.

10.2. The candidate produces judgments promptly, on average she hands down judgments well within 3 months.

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

11.1. There have been no adverse comments received regarding the candidate's ability to conduct court proceedings and her judicial temperament.

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

12.1. The candidate's judgments indicate her commitment to the advancement of the rule of law and constitutional objectives, and there appears to be no evidence of a lack of independent mindedness.

12.2. There have been no adverse comments received regarding the candidate's independent mindedness.

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

13.1. On many occasions the candidate has undertaken acting appointments while remaining a Judge of the High Court and providing mentorship in various rolls in various organisations.

Despite taking on so much responsibility, there have been no adverse comments received regarding the candidate's administrative abilities.

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

- 14.1. The candidate has 15 years' experience as a Judge and took on the role of the Acting Deputy Judge President of the High Court, Johannesburg from June 2020 to December 2020. The candidate therefore appears to have the support of her peers to hold a leadership role. Furthermore, the appointment of black and Coloured women to leadership roles in the judiciary demonstrates a commitment to transformation.



## ANNEXURE: LIST OF JUDGMENTS CONSIDERED

### 1. Reported judgments:

- 1.1. *Nimble Investments (Pty) Ltd (formerly known as Tadvest Industrial (Pty) Ltd and Old Abland (Pty) Ltd v Malan and others* [2021] 4 All SA 672 (SCA); 2022 (4) SA 554 (SCA)
- 1.2. *Maluleke NO v Sibanyoni and others* (1012/2020) [2022] ZASCA 40 (4 April 2022); 2022 JDR 0607 (SCA)
- 1.3. *Emantajeni Community vs Commission on Restitution on Land Rights and Others* (LCC 17/2018) [2019] ZALCC 31 (8 November 2019)
- 1.4. *CDH Invest NV v Petrotank South Africa (Pty) Ltd and Others* (483/2018) [2019] ZASCA 53; 2019 (4) SA 436 (SCA) (1 April 2019)
- 1.5. *Aliko v S* (552/2018) [2019] ZASCA 31 (28 March 2019)
- 1.6. *Stow v Regional Magistrate, Port Elizabeth NO and Others; Meyer v Cooney NO & others* (911/2017; 047/2018) [2018] ZASCA 186; 2019 (1) SACR 487 (SCA) (12 December 2018)
- 1.7. *Ntuli and Another v Taag Trust and Others* (LCC98/2017) [2017] ZALCC 20 (3 November 2017)
- 1.8. *NM v Presiding Officer of Children's Court, Krugersdorp and Others* 2013 (4) SA 379 (GSJ)*Khanye v S* (A66/2015) [2017] ZAGPJHC 320 (13 March 2017)
- 1.9. *Mpume v Drakenstein Municipality and Another* (128/2014) [2016] ZALCC 11 (24 June 2016)

- 1.10. *Westinghouse Electric Belgium v Eskom Holdings and Another* (2014/35650) [2015] ZAGPJHC 315 (19 May 2015)
- 1.11. *Illovo Sugar Limited and the Regional Land Claims Commissioner KZN and 3 Others* (LCC122/2014) 2017 JDR 1267 (LCC)
- 1.12. *Florence v Government of the Republic of South Africa* (550/12) [2014] ZACC 22 (13 September 2012)

1. Unreported judgments:

- 1.1. *Mosselbaai Boeredienste (Pty) Ltd v OKB Motors CC* 2023 JDR 2033 (SCA)
- 1.2. *The State v Mashilo* (2 June 2022) 2022 JDR 1528 (SCA)
- 1.3. *Magwala v Chief Sinthumule and others* (744/2021) [2023] ZASCA 62 (5 May 2023); 2023 JDR 385 (SCA)
- 1.4. *Loskop Landgoed Boerdery (Pty) Ltd and others v Moeleso and Others* (390/2021) [2022] ZASCA 53 (12 April 2022); 2022 JDR 0771 (SCA)
- 1.5. *Adendorff NO and another v Kubheka* 2022 JDR 0598 (SCA) (24 March 2022)
- 1.6. *Davidan v Polovin NO and others* [2021] 4 All SA 37 (SCA); 2021 JDR 1781 (SCA) (5 August 2021)

2. Judgments upheld on appeal:

- 2.1. *Juna Trading CC s We are the Stars* A5034/2018

- 2.2. *Stow v Regional Magistrate, Port Elizabeth NO and Others; Meyer v Cooney NO & others* (911/2017; 047/2018) [2018] ZASCA 186; 2019 (1) SACR 487 (SCA) (12 December 2018)
- 2.3. *BMW South Africa (Pty) Ltd v The Commissioner for the South African Revenue Service* (A553/16) [2018] ZAGPPHC 780 (28 June 2018)
- 2.4. *Khumalo v The State* (62/17) [2017] ZASCA53 (18 May 2017)
- 2.5. *Du Plooy v S* (940.2013) [2014] ZASCA 200; 2015 (2) SACR 363 (SCA) (28 November 2014)
- 2.6. *Mpikheleli Samsung Mazibuko v Pieter Martins NO & Others* LCC116/2013
3. Judgments overturned on appeal:
  - 3.1. *Areva NP Incorporated in France v Eskom Holdings Soc Limited and Others* (CCT20/16, CCT24/16) [2016] ZACC 51; 2017 (6) BCLR 675 (CC); 2017 (6) SA 621 (CC) (21 December 2016)
  - 3.2. *Florence v Government of the Republic of South Africa* (CCT 127/13) [2014] ZACC 22; 2014 (6) SA 456 (CC); 2014 (10) BCLR 1137 (CC) (26 August 2014)