

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE, GAUTENG DIVISION OF THE HIGH COURT

ADVOCATE SHAIDA ABOO BAKER MAHOMED

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

1.1. The candidate holds the following tertiary qualifications:

- 1.1.1. BA, University of Natal (Durban), 1987
- 1.1.2. LLB, University of Natal (Durban), 1990
- 1.1.3. LLM (Corporate Law), University of Pretoria, 2002.

1.2. The candidate has also attended the following courses:

- 1.2.1. Diploma in Corporate Law, University of Johannesburg, 2001
- 1.2.2. Diploma in Criminal Justice and Forensic Auditing, University of Johannesburg, 2000
- 1.2.3. Certificate in Management Advance Program, Wits Business School, 2005
- 1.2.4. Certificate in Fraud Detection, Crime Scene Management, South African Detective Academy, 2001
- 1.2.5. Certificate in Anti-Corruption Strategies, Tshwane University of Technology, 2000
- 1.2.6. Certificate in Statement Analysis and Witness Interviewing, Tshwane University of Technology, 2000.

1.3. The candidate holds the following professional admissions and honours:

- 1.3.1. admitted as an attorney of the High Court of South Africa (KwaZulu-Natal Division, Pietermaritzburg) on 4 July 1995
- 1.3.2. admitted as an attorney of the High Court of South Africa (Gauteng Local Division, Pretoria) on 26 July 2004

1.3.3. admitted as advocate of the High Court of South Africa (Gauteng Local Division, Johannesburg) on 16 May 2007.

2. The candidate's integrity and ethics

2.1. No circumstances are known to the reviewers that would suggest that the candidate is not a person of integrity with a reputation for ethical behaviour nor a fit and proper person for appointment.

3. The racial and gender composition on the bench

3.1. As far as could be ascertained, there are currently 76 permanent judges of the Gauteng Division of the High Court:

3.1.1. 24 black women (19 African, 2 Coloured, 3 Indian)

3.1.2. 23 black men (17 African, 2 Coloured, 4 Indian)

3.1.3. 14 white women

3.1.4. 15 white men

3.2. According to the questionnaire, the candidate is an Indian woman.

4. The maximum period the candidate could serve if appointed

4.1. At the time of the interviews, the candidate will be approximately 61 years and 4 months old and will have completed a period of approximately 1 year of service as an acting judge.

4.2. If appointed, the candidate would be eligible to serve as a judge for approximately 13 years and 7 months until the age of 75.

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

5.1. The candidate participated in Legal Aid clinics early on in her university career and continued to be committed to access to justice and deeply committed to the rule of law. She joined various community drives to assist indigent communities with legal challenges relating to accessing identity documents, pensions, labour concerns, and unfair dismissals.

5.2. The candidate is on ProBono.Org's panel of legal practitioners who provide *pro bono* legal services to clients through law clinics. She has volunteered her time to provide *pro bono* legal services at ProBono.Org since 2017.

- 5.3. The candidate has provided mentorship to the ProBono.Org legal practitioners and legal interns final year LLB Varsity College students and afforded an opportunity to two interns to join her in attendance at certain of her court appearances.
- 5.4. The candidate states that in her work as senior attorney at Legal Aid SA, she focused on strengthening the socio-economic rights of people as part of her work in class action litigation and precedent setting matters. The business unit which she managed engaged in and funded the silicosis litigation on behalf of mineworkers against mining houses. She was also part of the silicosis litigation team as counsel in 2008.
- 5.5. The candidate states that in her work as senior attorney at Legal Aid SA, her business unit provided funding for litigation on a number of important cases, such as the matter on the recognition of same sex marriages before the Constitutional Court. (*Fourie Bonthys v Minister of Home Affairs and Others*). Her unit also played a critical role in the matter of *Rail Commuter Action Group v Transnet and Others* before the Constitutional Court, in which the court declared that the police service was responsible for safety and security at train stations.
- 5.6. The candidate states that her position as senior attorney at Legal Aid SA included identifying areas of law and constitutional rights.
- 5.7. The candidate maintains a strong commitment to education development and fair opportunity as it became clear to her that our society is crippled by weak education systems, limited opportunities and exposure. She mentored two women pupils. Her contributions to their development included funding a course on litigation strategies training offered by LSSA. She also included pupil advocates in her group in her acting sessions.
- 5.8. The candidate is a member of the JSA Human Rights Committee and the High Court Committee.
- 5.9. The candidate has participated in a fact-finding mission into atrocities/genocide by the Myanmar military on its Rohingya community. She contributed to a report which was submitted to the United Nations, and which has served as a resource for the team litigating on behalf of the people of Myanmar on human rights abuses.
- 5.10. The candidate states that she attended a fellowship/leadership programme during 2006 in the USA; investigating ways to develop class action litigation in South Africa and to extend beyond the Bill of Rights into areas such as product liability. She also

investigated various corporate social responsibility programmes in the law firms she visited in the USA.

- 5.11. The candidate is a board member of The Living Link, which is a non-profit organisation which assists intellectually disabled persons in gaining the necessary life skills to gain employment, and the job placements of those people.
- 5.12. The candidate served as an acting judge for a period of 55 weeks (one and a half year) in 2020 during which period she acted on a *pro bono* basis for a period of five weeks.

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

- 6.1. The candidate has had exposure to diverse areas of the law, from criminal law to matrimonial, family, delict, labour law, and consumer law.
- 6.2. The candidate was a senior investigator at the Public Protectors Office and with the Scorpions.
- 6.3. The candidate had exposure to constitutional law during her employment at the Legal Resources Centre and the Legal Aid board, where the business unit she managed engaged in two matters before the Constitutional Court.
- 6.4. The candidate was a lecturer in public law which includes administrative law, labour law and interpretation of statutes.
- 6.5. The candidate has extensive academic knowledge of the law and completed three degrees, two post-graduate diplomas and a number of post-graduate certificates in the law.
- 6.6. Whilst in practice, the candidate did not practise in the field of constitutional law.
- 6.7. The candidate has been employed in various positions in legal practice since 1989 and has been a practising advocate since 2007.
- 6.8. The candidate appears to have a good general knowledge of the law.

7. Judgments of the candidate that have been taken on appeal

- 7.1. The candidate indicates that in the matter of *Africa Best Foods (Pty) Ltd v CISA* (Case No. 7505/2022) and *Sithole v RAF* (Case No. 24698/14), she had refused leave to appeal and a petition to the SCA was also refused.

- 7.2. The candidate previously indicated that 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; however, the error was only 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.
- 7.5. No other judgments have been found which overturn decisions by the candidate.

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 Special Operations, Scorpions, also known as the Scorpions.
- 8.3. The candidate has attended several training programmes offered by LEAD and the LSSA, 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 on 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 served as an acting judge on numerous occasions (3 weeks in 2020, 4 weeks in 2021, 19 weeks in 2022, 22 weeks in 2023 and 5 weeks thus far in 2024), in both the civil and criminal courts.

9. The candidate's linguistic and communication skills

- 9.1. The judgments the candidate has written exhibit good linguistic and communication skills.
- 9.2. The candidate's judgments are well structured, well written, and easy to follow, as she deals directly with the point in issue and simplifies the application of the law to the facts logically.
- 9.3. The candidate has written 77 judgments over the period she has acted as a judge.
- 9.4. Nothing in the judgments and other writings considered by the reviewers indicates that the candidate's linguistic and communication skills are not adequate.

10. The candidate's ability to produce judgments promptly

- 10.1. The candidate indicated that one judgment was outstanding at the time of completing the questionnaire, but that judgment would be delivered on 21 June 2024.
- 10.2. The candidate disclosed in her application that she required an extension of time to finalise her judgment in one matter. The closing arguments were heard a week before she took up an acting appointment in October 2023. She had 16 reserved judgments in that term and could only commence writing the judgment thereafter. The trial record was 3790 pages and two lever arch files of annexures. The matter concerned testamentary capacity over 3 wills, and claims of undue influence and collusion against two defendants.
- 10.3. The candidate has produced her judgments timeously. She has delivered all of her judgments (except for three out of the 77), in under three months and on occasion has delivered judgment within a few days of having heard the matter.
- 10.4. The candidate delivers judgments within the prescribed three-month target and appears to be alive to the need for an expeditious resolution of disputes.

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

- 11.1. The reviewers received no adverse comments from colleagues relating to the candidate's ability to conduct court proceedings fairly, efficiently, and effectively.
- 11.2. No concerns appear from the judgments of the candidate which were considered.

11.3. The candidate appears to deal with cases efficiently and expeditiously. Positive reports from colleagues indicate that the candidate is diligent in ensuring that her judgments are sound and seeks out opportunities to debate and discuss legal relevant legal principles with colleagues.

12. The candidate's independent-mindedness

12.1. The reviewers received no adverse comments from colleagues relating to the candidate's independent-mindedness.

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

13.1. The candidate has written 77 judgments, and she provided a comprehensive list of her judgments where she kept a record of the dates of hearing, area of law etc. Most of her judgments were completed within a month.

13.2. The candidate was a board member of The Living Link which assists young intellectually disabled persons with life skills and eventual job placements.

13.3. She was a member of the Eisenhower Foundations, has served on the selection panel for several years and she is the recipient of a fellowship award in 2006 among representatives of 32 countries.

13.4. The candidate practiced as an attorney which, in general, involves more administrative duties than an advocate.

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

14.1. The candidate's appointment would send the message that experienced and diligent legal practitioners with a commitment to constitutional values are sought out for judicial appointment.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. None.

Unreported judgments

2. *Lacky Madi Auto Dealers and Another v Standard Bank of South Africa Ltd* (Case Number: 42798/209) [2020] ZAGPJHC 375, unreported (15 December 2020)
3. *Kganare v Nedbank Limited and Others* (Case No. 49738/2017) [2020] ZAGPJHC 412, unreported (15 December 2020)
4. *Stiglingh and Another v Debt Rescue* (Case No. 26324/2019) [2020] ZAGPJHC 378, unreported (15 December 2020)
5. *Khunou v Sebesho and Another In re: Sebesho v Khunou and Another* (24798/17) [2021] ZAGPJHC 429, unreported (13 September 2021)
6. *The Prudential Authority v Mayonga and Another* (Case Number: 21547/2020) [2022] ZAGPJHC 38, unreported (26 January 2022)
7. *Sebata v Master of the High Court and Another* (25821/19) [2022] ZAGPJHC 95 (23 February 2022)
8. *MFC (A division of Nedbank Limited) v Mkhwanazi and Others* (15047/2020) [2022] ZAGPJHC 203 (6 April 2022)
9. *Mathe v Minister of Police* (13425/2019) [2022] ZAGPJHC 489 (9 May 2022)
10. *FirstRand Bank Limited v The Magistrate for the District of Ekurhuleni North and Others (13341/2021)* [2022] ZAGPJHC 338 (16 May 2022)
11. *Machingwane v National African Federated Chamber of Commerce and Industry and Another* 2022 JDR 1906 (GJ) (11 July 2022)
12. *RJ Brady v D & F Farming* (12 September 2022)
13. *Kaslassy v O'Neill and Others* (26412/2022) [2022] ZAGPJHC 658 (19 September 2022)
14. *Gonenbaba v Road Accident Fund* 2022 JDR 2919 (GJ) (10 October 2022)
15. *Devrog Family Trust v Future Indefinite Investments 180 (Pty) Ltd* 2022 JDR 2901 (GJ)
16. *Imalenia v Khwela* (Case Number: 48512/2021) [2022] ZAGPJHC 835, unreported (26 October 2022)
17. *TN Molefe Construction (Pty) Ltd v Soki (Pty) Ltd* 2022 JDR 3346 (GJ) (7 November 2022)
18. *Bidvest Bank Limited v Moeng* (Case Number: 42419/2021) [2022] ZAGPJHC 878, unreported (14 November 2022)

19. *Machingwane v National African Federated Chamber of Commerce and Industry and Another* 2022 JDR 1906 (GJ)

Judgments upheld on appeal

20. None

Judgments overturned on appeal

21. None