

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: DEPUTY JUDGE PRESIDENT OF THE LAND COURT

JUDGE SHANAAZ CHRISTINE MIA

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 Cape Town, 1989)

1.1.2. LLB (University of Cape Town, 1995)

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 holds the following professional admissions and honours:

1.2.1. admitted as attorney in 1996

1.2.2. appointed as a family advocate at the Department of Justice in 1998

1.3. The candidate was permanently appointed to the following judicial roles:

1.3.1. Magistrate in October 2003

1.3.2. Judge of the High Court (Gauteng Division, Johannesburg) in January 2020

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 or is not a fit and proper person for appointment.

3. The racial and gender composition on the bench

3.1. There are currently 5 permanent judges of the Land Court:

3.1.1. 2 black women (1 African, 1 Coloured)

3.1.2. 1 African man

3.1.3. 1 white woman, and

3.1.4. 1 white man.

3.2. The President of the court is a Coloured woman.

3.3. According to the questionnaire, the candidate is a Coloured woman.

4. The maximum period the candidate could serve if appointed

4.1. At the time of the interviews, the candidate will be approximately 55 years and 9 months old and will have completed a period of approximately 4 years and 9 months of active service.

4.2. If appointed, the candidate would be eligible to complete a period of approximately 14 years and 2 months' active service as Deputy Judge President.

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

5.1. 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*.

5.2. The candidate also does voluntary work with civil society organisations NICRO, SANCA, and *Khulisa* Social Solutions.

5.3. The candidate's choice of dissertation topic indicates that she has an academic interest in human rights law.

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 in 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), in which she concludes: "*An approach, which realises the best interests of the individual child, has recently*

increasingly come to the fore. The application of the court's discretion in terms of Article 13(b) creates the opportunity to consult the child and to decide in the individual child's best interests. Albeit in a limited scenario, the Hague Convention does realise the interests of the individual child by consulting the child. It is necessary to consult the child to ascertain his/her view so that the court may apply its discretion as provided for in Article 13.”

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:

6.3.1. *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)

The case involved two companies that had developed land for purposes of establishing a residential township. The land was expropriated, and the companies sought compensation. The candidate, sitting as the judge of first instance in the Land Claims Court, had to decide on the “*just and equitable*” compensation for the plaintiff companies by considering section 25 of the Constitution and section 33 of the Restitution of Land Rights Act 22 of 1994 (the Act).

The plaintiff companies appealed the candidate’s decision, with specific reference to 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.

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

In this case the claimants were members of a community that had been relocated from land occupied by them. They sought restitution of the land. The issue was the feasibility of restoration in terms of section 33(cA) of the Act. 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 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.

- 6.3.3. *Booth and Others v Minister of Land Affairs and Agriculture and Others* [2010] ZALCC 4 (19 March 2010)

In this case the candidate was seized with an application for the admission of an *amicus curiae* who intended to make submissions in review proceedings in a land restitution matter. The procedural considerations were Rule 14(2)(b)(iii) of the Land Claims Court, on the requirements that had to be met.

In this instance the affidavit that sought to justify the appointment of the *amicus curiae* was absent. The matter concerned various interlocutory issues: firstly, the fact that the case took three years to be set down and, secondly, an application for condonation by the applicant for the late filing of the application. The candidate's judgment dealt with the specific requirements of the Land Claims Court Rules, their impact and possible prejudice should they not be followed.

- 6.3.4. *Ceres Fruit Processors v Folutie and Another* [2009] ZALCC 17 (28 December 2009)

The judgment dealt with the proper interpretation and application of section 19(3) of the Extension of Security of Tenure Act 62 of 1977, together with an eviction order that did not appear to comply with the peremptory requirements of 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.

- 6.3.5. *Anton Killian Inc and Another v Rodel Financial Services (Pty) Ltd* [2013] ZAGPJHC 56 (21 February 2013)

In this matter the candidate was seized with an application for the rescission of a default judgment together with considering the condonation for the late filing thereof in terms of Rules 31(2) and 27 of the Uniform Rules of Court. The main issue was that the applicants had not properly explained the reason for their delay and thus there was an absence of good cause shown for condonation.

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

The matter concerned the law of contract and lease, 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 issues.

- 6.3.7. *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)

The application concerned an acknowledgement of debt. The applicant 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 the application of the Rule together with the requirements and the relevant law were crisply applied.

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

- 7.1. The candidate has disclosed that two judgments have been taken on appeal. On appeal, one judgment has been upheld and one judgment has been overturned. No appeals remain to be decided.

- 7.2. The judgment of the candidate upheld on appeal is *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)

- 7.2.1. In *Farjas*, 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 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 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.*”
- 7.3. The judgment of the candidate overturned on appeal is *Baphiring Community v Uys* 2010 (3) SA 130 (LCC) overturned in *The Baphiring Community and Others v Tshwaranani Projects CC and Others* [2013] ZASCA 99; 2014 (1) SA 330 (SCA) (6 September 2013)
- 7.3.1. 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 Act. The issues on appeal were the cost of restoration and the absence of evidence having been led in regard thereto by the State.
- 7.3.2. The SCA found that the candidate had in this instance been correct to consider the cost implications of the restoration because this lies at the heart of a proper assessment of feasibility. These costs would include the cost of expropriating the land from the current landowners, resettling the claimants on this land, and supporting a sustainable development plan for the resettled community. The SCA however found that the problem in this case was that the evidence presented by the state on these aspects had been completely inadequate and that this meant that the court was hamstrung in making this assessment.
- 7.3.3. The SCA found that the court *a quo* had therefore not been in a position to determine the issue of feasibility conclusively and ought to have ordered the state to lead evidence on these and any other issues it considered relevant. The failure to call for such evidence constituted a material irregularity and vitiates the order of non-restoration.
- 7.3.4. The SCA set aside the non-restoration order made by the candidate in the court below and found that the absence of such evidence constituted a material irregularity that vitiated the non-restoration order made by the candidate and it remitted the matter to the court *a quo* for purposes of considering further evidence

on these and other issues it considers relevant to a determination of this issue.

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, and 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 presently is a judge in the High Court, Gauteng Division since January 2020.

9. The candidate's linguistic and communication skills

- 9.1. The candidate's judgments are written in English.
- 9.2. 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 two judgments, both reserved in May 2024, were outstanding at the time of completing the questionnaire.
- 10.2. As far as could be ascertained at the time of completing this review, both of these judgments are still outstanding, and have been outstanding for more than three months but not more than six months.
- 10.3. Of the 40 judgments of the candidate considered by the reviewers (of the approximately 141 judgments that were identified), 16 were handed down more than three months after hearing, five of which were handed down more than six months after hearing, namely:
 - 10.3.1. *Talacar Holdings (Pty) Ltd v Cole* 2023 (6) SA 626 (GJ) – 8 months;
 - 10.3.2. *Phasha v Phasha and Another* [2023] ZAGPJHC 937 (18 August 2023) – 7 months;
 - 10.3.3. *Golden Falls Trading 125 (Pty) Ltd v City of Ekurhuleni Metropolitan Municipality and Others* [2023] ZAGPJHC 849 (31 July 2023) – 7 months;
 - 10.3.4. *Wolmer v Mastertrade 286 (Proprietary Limited)* (2013/45428) [2024]

ZAGPHC 146 (21 February 2024) – 6 months; and

10.3.5. *Da Cruz v Manzella and Others* (42640/2021) [2024] ZAGPHC 136 (16 February 2024) – 6 months.

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.

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 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 the candidate 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, as 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 public 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 contributes to enriching her exposure in a judicial leadership role.

14.2. The candidate is a Coloured 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

Reported judgments

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

Unreported judgments

4. *Da Cruz v Manzella and Others* [2024] ZAGPJHC 136 (16 February 2024)
5. *Gauteng Department of Infrastructure Development and Another v Themba Consultants (Pty) Ltd* [2024] ZAGPJHC 99 (7 February 2024)
6. *Ndhlovu v Minister of Justice and Correctional Services and Others* [2024] ZAGPJHC 24 (17 January 2024)
7. *White Wall Trading (CC) and Another v Biyela and Others* [2024] ZAGPJHC 54 (26 January 2024)
8. *Firststrand Bank Limited v Mavie* [2024] ZAGPJHC 56 (29 January 2024)
9. *43 AIR School Holdings (Pty) Ltd and Others v AIG South Africa Ltd* [2023] ZAGPJHC 186 (20 February 2023)
10. *Phasha v Phasha and Another* [2023] ZAGPJHC 937 (18 August 2023)
11. *K.L.E and Others v Department of Social Development and Others* [2023] ZAGPJHC 301 (22 March 2023)
12. *Orkin v Goldleaf Investment (Pty) Ltd* [2023] ZAGPJHC 356 (21 April 2023)
13. *Golden Falls Trading 125 (Pty) Ltd v City of Ekurhuleni Metropolitan Municipality and Others* [2023] ZAGPJHC 849 (31 July 2023)
14. *D v D* [2022] ZAGPJHC 1034 (19 December 2022)
15. *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)
16. *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)
17. *South African Legal Practice Council v Harper and Another* [2021] ZAGPJHC 829 (21 December 2021)
18. *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)
19. *Selwane v Majeje Traditional Authority* [2021] ZALCC 10 (30 July 2021)
20. *Msezeni and Others v Workforce Group (Pty) Ltd and Another* [2021] ZAGPJHC 133 (17

May 2021)

21. *Helm Construction (Pty) Ltd v Noortman and Another* [2020] ZAGPJHC 245 (21 September 2020)
22. *Makhalima and Another v S* [2020] ZAGPJHC 192 (29 May 2020)
23. *Mkhonza and Others v City of Johannesburg and Others* [2020] ZAGPJHC 117 (21 April 2020)
24. *Compressor Valves and Accessories (Pty) Limited v Thackeray* [2020] ZAGPJHC 116 (30 March 2020)
25. *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)
26. *Little Stars Early Intervention Centre NPC t/a The Star Academy v White and Another* [2020] ZAGPJHC 48 (17 February 2020)
27. *Olantunji v S* [2020] ZAGPJHC 51 (27 January 2020)
28. *Ferreira v Q No More (Pty) Ltd and Another* [2013] ZAGPJHC 48 (8 March 2013)
29. *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)
30. *Anton Killian Inc and Another v Rodel Financial Services (Pty) Ltd* [2013] ZAGPJHC 56 (21 February 2013)
31. *Booth and Others v Minister of Land Affairs and Agriculture and Others* [2010] ZALCC 4 (19 March 2010)
32. *Ceres Fruit Processors v Folotie and Another* [2009] ZALCC 17 (28 December 2009)
33. *Mokone v S* (A02/2024) [2024] ZAGPJHC 717 (6 August 2024)
34. *Goldleaf Investments (Pty) Ltd v Orkin* (22321/18) [2024] ZAGPHC 695 (22 July 2024)
35. *Ramaphakela v Municipal Employees Pension Fund and Another* (40359/2016) [2024] ZAGPHC 634 (14 June 2024)
36. *Wolmer v Mastertrade 286 (Proprietary Limited)* (2013/45428) [2024] ZAGPHC 146 (21 February 2024)
37. *Da Cruz v Manzella and Others* (42640/2021) [2024] ZAGPHC 136 (16 February 2024)
38. *Gauteng Department of Infrastructure and Another v Themba Consultants (Pty) Ltd* (49557/202) [2024] ZAGPHC 99 (7 February 2024)

Judgments upheld on appeal

39. *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)

Judgments dismissed on appeal

40. *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)

Academic writings

41. 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)
42. Impact of Cultural Values on Maintenance Orders (Civil Court Newsletter, May 2008)