

VACANCY: JUDGE OF THE LAND COURT

Candidate: Ms Diana Mabasa

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

- BA, University of the Witwatersrand (1989);
- LLB, University of the Witwatersrand (1998); and
- LLM, University of the Witwatersrand (2011).

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

- admitted as an attorney in 2000;
- admitted as a notary in 2005; and
- admitted as a conveyancer in 2006.

1.3. The candidate has acted in the following roles:

- Judge of the High Court (Gauteng Division, Johannesburg): six weeks starting on 1 May 2014;
- Judge of the High Court (Gauteng Division, Johannesburg): five weeks, starting on 20 January 2025; and
- Judge of the Land Court (Johannesburg): 91 weeks, from 20 June 2024 to 21 June 2026.

2. The candidate's integrity and ethics
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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 of the bench
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3.1. As far as could be ascertained, there are current four permanent judges of the Land Court:

- 2 black women (1 African, 1 Coloured)
- 1 black man (African)
- 1 white woman

3.2. 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 58 years and 11 months old. If appointed, the candidate would be eligible to complete a period of up to 15 years of active service as a judge.

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

- 5.1. The candidate's articles demonstrate a commitment to the values of the Constitution:
- In her article, *Ukuthwala: Is it all culturally relative?* [2015] *De Rebus* 136, the candidate engages the cultural practice of ukuthwala and its implications for women's rights.
 - In another article, *Women Judges: Are they doing justice to the cause?* [2016] *De Rebus* 20, the candidate engages the necessity of judicial diversity in light of the principle of transformational constitutionalism.

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

- 6.1. The candidate's judgments demonstrate clear knowledge of the following areas of law:
- Constitutional law;
 - Family law (quantum of maintenance payable to a spouse);
 - Criminal law (appeal concerning the conviction of a minor);
 - Delict (defamation, medical negligence, and RAF claims); and
 - Land law (Restitution of Land Rights Act, Extension of Security of Tenure Act)
- 6.2. The candidate consistently applies the Constitution and principles of constitutional law where these are relevant.
- 6.3. In *Nkgoeng v Regional Land Claims Commissioner, Limpopo Province* [2025] ZALCC 46, the candidate had to consider whether a land claim lodged by the applicant before

the 31 December 1998 deadline was an individual claim or a claim brought on behalf of the entire Ga-Matlala Committee. This was an issue because of a competing claim lodged by the Tribal Authority, whose position was at odds with that of the community. The candidate interpreted provisions of the Restitution of Land Rights Act 22 of 1994 in accordance with their purpose, which is to give effect to section 25(7) of the Constitution, focusing on “*restoring communal rights and delivering restorative justice*”. In emphasising a holistic and purposive interpretation of the claim form, she recognised the climate of fear and secrecy under which the claim had been filed. The candidate found in favour of the claimant: “*treating the claim as a purely individual claim appears to undermine the constitutional objective of restoring communal rights and delivering restorative justice.*”

- 6.4. In *Khiba v Van Niekerk* [2025] ZALCC 18, the candidate set aside an eviction order incorrectly granted by the magistrate’s court in terms of the Prevention of Illegal Evictions from and Unlawful Occupation of Land Act 19 of 1998 (“**PIE Act**”), when the Extension of Security of Tenure Act 62 of 1997 (“**ESTA**”) was applicable. The candidate affirmed the Land Court’s broad jurisdiction to adjudicate matters where the rights of occupiers are at stake. She found that the magistrates’ court did not have jurisdiction to grant an order under the PIE Act as this was rural land, and the applicants were not unlawful occupiers for the purposes of that statute; rather, they were there lawfully under ESTA. She based her approach on the constitutional rights of the occupiers that had been grossly infringed.
- 6.5. In *Jantjies and Others v Beukes NO and Others* [2026] ZALCC 18 (revised as [2026] ZALCC 29), the candidate sat on a full court hearing an appeal against an ESTA eviction order granted by the Grabouw Magistrate’s Court against a family who had lived on the farm for more than twenty years. Montzinger AJ would have dismissed the appeal. The candidate wrote a separate judgment, in which Yacoob J concurred, upholding the appeal and dismissing the eviction application, and hers is the order of the court. She found that the magistrate had failed to conduct an individualised occupier enquiry for each family member as required by *Klaase v Van der Merwe NO* 2016 (6) SA 131 (CC), had found compliance with section 8(1)(e) of ESTA without any record of representations having been considered, had treated a resolution authorising eviction as authority to terminate rights of residence when termination is a prior and distinct jurisdictional fact under section 9(2)(a) of ESTA, had placed undue weight on joint

household income in the section 11(3) enquiry, and had resolved disputes of fact against the occupiers contrary to *Plascon-Evans*. She held that the cumulative effect of these misdirection's was decisive because ESTA is remedial legislation “*umbilically linked to the Constitution*” that must be interpreted in favour of security of tenure.

- 6.6. In *Valoyi and Others v Minister of Land Reform and Rural Development and Others* [2026] ZALCC 34, the candidate (Jacobs AJ concurring) dealt with verified restitution beneficiaries whose compensation had been held up by an interdict pending investigation. The state conceded eligibility but opposed any payment deadline and any payment into the applicants' attorneys' trust account, relying on the Public Finance Management Act 1 of 1999 and the *functus officio* doctrine. The candidate held that the State had identified no provision prohibiting payment under a court order into a regulated trust account, that the *functus officio* objection was too formalistic where the interdict had been conditional on an investigation now completed, and that on the authority of *Mwelase* and *LAMOSA* the Land Court could impose a structured implementation regime. She ordered the state to file an affidavit within 15 days identifying the amounts due and any outstanding statutory steps, to finalise the payment process within 60 days, and to pay within 90 days into the attorneys' trust account subject to conditions on distribution, with a supervisory return date. She refused punitive costs for want of evidence of bad faith and made no order as to costs.
- 6.7. In *Baloyi v S* [2014] ZAGPJHC 446, the candidate, as part of a full bench, considered an automatic appeal from the regional magistrates' court concerning a conviction on three counts of rape of a minor. The minor, who was 12 years old at the time of her testimony, was the sole witness. In this judgment, the candidate demonstrated her ability to evaluate and weigh evidence in light of the relevant legal principles, upholding both the conviction and the sentence of life imprisonment.
- 6.8. In *Piketberg Sunrise Farm (Pty) Ltd v Menas and Others* [2024] ZALCC 34, the candidate acknowledged vulnerable citizens by reinforcing the substantive and procedural protections of ESTA. She ensured that the eviction of a family following job termination did not result in immediate homelessness, directing the parties to consider mediation or further settlement discussions. Her judgment underscored that, even when there is a legal basis for eviction, the court has a constitutional duty to consider the cumulative hardship on the family, particularly where they have lived on the land for a significant period.

- 6.9. In her article, *Ukuthwala: Is it all culturally relative?* [2015] *De Rebus* 136, the candidate engages the cultural practice of ukuthwala and its implications for women's rights.
- 6.10. In another article, *Women Judges: Are they doing justice to the cause?* [2016] *De Rebus* 20, the candidate engages the necessity of judicial diversity in light of the principle of transformational constitutionalism.

7. Judgments of the candidate that have been overturned, upheld, or commented on, on appeal:
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- 7.1. The candidate has disclosed that three of her judgments have been taken on appeal. One appeal was partly upheld and referred back to the trial court. Two appeals remain to be decided.
- 7.2. The judgment of the candidate, partly upheld on appeal, is *Dreyer NO and Others v Witbooi and Others* (Appeal) [2026] ZALCC 23, which was decided by a full court of the Land Court (Ncube J, Du Plessis J, and Pullinger AJ) on 15 May 2026.
- On automatic review, the candidate set aside a magistrate's eviction order and dismissed the eviction application because the disputes of fact about the first respondent's occupation could not be resolved on the papers. The appeal court agreed, holding at paragraph 48 that “*Mabasa AJ correctly held that these disputes of fact could not be resolved in favour of the appellants under the Plascon Evans rule*”, and at paragraph 49 that, had that been the end of the matter, her order would have been upheld.
 - The appeal succeeded in part because both parties adduced further evidence on appeal about events after her judgment. The appeal court confirmed the eviction against the second respondent, who had since left the farm, and remitted the first respondent's case for oral evidence, recording at paragraph 53 that this was “*not because the court a quo erred on the record before it, but because the factual matrix has evolved*”.
 - The appeal court was critical of one procedural ruling of the candidate. On 7 May 2025, when granting leave to appeal, she also admitted the appellants' further evidence, purporting to act under section 19(b) of the Superior Courts Act 10 of 2013. The appeal court held at paragraphs 17 to 25 that the parties' reliance on that

section was misplaced, that under section 17(2)(a) of the Land Court Act 6 of 2023 the power to receive further evidence lies with the court hearing the appeal and not the court granting leave, and that “*the court below was not empowered by law to receive further evidence for purposes of a future appeal*”. It admitted the evidence itself and did not decide whether her order was a nullity.

- 7.3. The appeal judgments in *KMVW obo CCVW v MEC for Health, Gauteng* [2025] ZAGJPHC 610 (13 June 2025) and *Jantjies and Others v Beukes NO and Others* (A2025/138009) [2026] ZALCC 18 (23 April 2026) remain pending.

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

- 8.1. The candidate has more than 24 years’ experience as an attorney. During this period, she was a director in a partnership for ten years, and a director of her own firm for six years.
- 8.2. The candidate records that 75% of her practice as an attorney was in personal injury law, land matters, conveyancing, and notarial practice. She has also worked on criminal matters (5%), and constitutional and administrative law (10% each).
- 8.3. The candidate was employed as a Deputy Director in the Office of the Legal Services Ombud for two years.
- 8.4. The candidate has acted as a judge in the Land Court and the High Court, for a total of 102 weeks, with the overwhelming majority of that time spent in the Land Court. The reviewers suggest that the JSC probes the circumstances in which the candidate has been able to be away from her practice as an attorney for such a lengthy period(s).

9. The candidate’s linguistic and communication skills

- 9.1. The candidate’s judgments are written in English.
- 9.2. The candidate’s judgments are well-written.
- 9.3. 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 has disclosed one reserved judgment outstanding at the time of completing the questionnaire: *Mbatha NO v Minister of Agriculture, Land Reform and Rural Development* (LCC 80/2020), reserved on 7 May 2026.

- 10.2. As far as could be ascertained at the time of completing this review, no other judgments of the candidate were outstanding.
- 10.3. Of the 17 judgments of the candidate considered by the reviewers, 14 were issued within three months of the hearing. *Khiba* was delivered nine days outside of the three-month period. Valoyi was delivered three months after supplementary heads were filed and just under four months after the hearing. *Jantjies*, a full court appeal, was delivered seven months after the receipt of further submissions.

11. The candidate's ability to conduct court proceedings fairly, efficiently, and effectively
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- 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. There is no reason to believe that the candidate, if appointed, would not bring an independent mind to bear on issues presented for judicial determination, nor that the candidate would be unduly influenced in any way, including by the executive or legislative branches of government.

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

- 13.1. The candidate has served as a council member and as a member of the disciplinary committee of the former Law Society of the Northern Provinces. She has also served as a member of the Law Society of South Africa.
- 13.2. This is indicative of the candidate's ability and experience in administrative matters.

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

- 14.1. The candidate's appointment would send a message that a long-term commitment to the legal profession and public service are key factors in determining whether a legal practitioner should be elevated to the bench.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. None disclosed or identified.

Unreported judgments (in chronological order)

2. *Baloyi v S* [2014] ZAGPJHC 446 (20 May 2014)
3. *Ruele v Matlhole* [2014] ZAGPJHC 246 (6 June 2014)
4. *C v C* [2014] ZAGPJHC 447 (12 June 2014)
5. *Da Luz v Faim* [2014] ZAGPJHC 243 (12 June 2014)
6. *Matakata v Road Accident Fund* [2014] ZAGPJHC 233 (12 June 2014)
7. *Lukhele v Mitchell* [2024] ZALCC 27 (2 September 2024)
8. *Piketberd Sunrise Farm (Pty) Ltd and Another v Menas and Others* [2024] ZALCC 34 (7 October 2024)
9. *Leopont 484 Properties (Pty) Ltd and Another v Hendriks and Others* [2024] ZALCC 37 (25 October 2024)
10. *Atkatrading 266 (Pty) Ltd and Others v Williams and Others* [2024] ZALCC 46 (27 November 2024)
11. *Dreyer NO and Others v Witbooi and Others* [2024] ZALCC 45 (9 December 2024)
12. *Gidigidi obo MB v Road Accident Fund* [2025] ZAGPJHC 190 (14 February 2025)
13. *Khiba and Others v Van Niekerk and Others* [2025] ZALCC 18 (22 April 2025)
14. *Tedstone Flats CC and Others v Maple View Investments (Pty) Ltd and Others* [2025] ZALCC 28 (11 June 2025)
15. *KMVW obo CCVW v MEC for Health Gauteng Province* [2025] ZAGPJHC 610 (13 June 2025)
16. *Nkgoeng and Others v Regional Land Claims Commissioner Limpopo Province and Others* [2025] ZALCC 46 (6 November 2025)
17. *Jantjies and Others v Beukes NO and Others* [2026] ZALCC 18 (23 April 2026), revised as [2026] ZALCC 29 (3 June 2026)

18. Valoyi and Others v Minister of Land Reform and Rural Development and Others [2026] ZALCC 34 (18 May 2026)

Judgments upheld on appeal

19. *Dreyer NO and Others v Witbooi and Others* [2024] ZALCC 45, appeal upheld in part on further evidence; the candidate's reasoning endorsed: *Dreyer NO and Others v Witbooi and Others* (Appeal) [2026] ZALCC 23 (15 May 2026)

Judgments overturned on appeal

20. None disclosed or identified.

Academic writings

21. Chapter 25: “*In Pursuit of the Hopeless Case*” in *Trial Advocacy: the Art of Persuasion* (2022)
22. *ChatGPT: Exploring the risks of unregulated AI in South Africa* (2023) *De Rebus*
23. *Women Judges: Are they doing justice to the cause?* (2016) *De Rebus* 20
24. *Ukuthwala: Is it Culturally Relevant?* (2015) *De Rebus* 136