

VACANCY: JUDGE OF THE WESTERN CAPE DIVISION OF THE HIGH COURT

Candidate: Fareed Moosa

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:

- B.Proc (1993) (UWC)
- LLB (1995) (UWC)
- LLM (1997) (UCT)
- LLD (2017) (UWC)

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

- admitted as an advocate attorney in 2000

1.3. The candidate has acted in the following roles:

- Acting Judge of the High Court (approximately 23 weeks)
- Pro bono magistrate (one day per week) total time served is recorded in the candidate's questionnaire as "456 days (i.e., 91 weeks)".

2. The candidate's integrity and ethics
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2.1. The candidate's application discloses two matters that require closer scrutiny.

2.2. First in paragraph 13 of the questionnaire, the candidate records that in *KT v AT and Others* 2020 (2) SA 516 (WCC) "*Sher J made adverse comments about me. This led the LPC, mero motu, to investigate whether conduct identified by Sher J merited disciplinary action. On 18 December 2020, the LPC answered this question in the negative.*"

2.3. The candidate does not disclose the nature of the adverse comments made about him.

2.4. It is also not explicitly disclosed that the court ordered him to pay costs *de bonis*

propriis on the attorney-and-client scale and that he could not recover any fees in the matter.

2.5. Sher J made the following findings and comments:

- *“The applicant’s attorney [i.e. the candidate] even annexed copies of complaints which were lodged against him by the respondents, with the newly established Legal Practice Council. In this regard it appears that he previously assisted first respondent’s parents with their estate planning and the drafting of their will, and also provided legal advice in relation to the very same trust of which they have been cited as trustees, and in addition it is alleged that he advised first respondent in regard to the purchase or sale of one of his properties. As a result, the respondents complained that he was in possession of confidential and privileged information which he obtained from them on an attorney-client basis, and they contended that he was in a position where he could not legitimately act against them, on behalf of the applicant. Once again, the material which has been annexed in this regard is of no relevance whatsoever to the issues which require determination in the rule 43 application. If anything, the inclusion of such material only serves to raise troubling questions about the conduct of the applicant’s attorney.” (para 27)*
- *“The impression which one has from the papers is that the application was deliberately inflated. This is a matter of great concern to the Court. I note that on 20 February this year applicant’s attorneys rendered her an account for R 132 850 in lieu of fees and disbursements which were incurred in the short two month period between 2 December 2018 (when the applicant first consulted them in relation to instituting divorce proceedings) and 31 January 2019 when the summons was issued, and at the end of June 2019 they rendered a further account in the amount of R 73 725 in respect of fees and disbursements for the period between February and June 2019. Thus, as at end June this year the applicant already owed her attorneys just over R 200 000, and this no doubt explains the extraordinary amount of R 400 000 which was claimed as a contribution to the applicant’s costs. I note with further concern that in a detailed costs’ estimate which they provided to her on 5 December 2018 her attorneys indicated that the divorce would cost her a minimum of R 946 000 in lieu of legal fees. By any standard this seems to be an excessive amount for a divorce of the kind which is before me, notwithstanding the parties’ societal standing, first respondent’s alleged means and the scale of the litigation thus*

far.” (para 32)

- *“As far as costs are concerned I am of the view that this is a matter where fairness and justice dictates not only that the respondents should not be required to bear any share of the costs of either application, but neither should the applicant, and in addition, as a mark of the Court’s displeasure, a special costs order is warranted against the applicant’s attorneys, given that very loud and clear warnings were issued by this Court in July and August this year in the two reported matters I have referred to, whereby practitioners were warned what would happen in the event of continued flagrant disregard for what is required by the rule.” (para 33)*
- *“Given that they were responsible for preparing and drafting the papers as they did, in flagrant breach of the rule, and given further that they were afforded an opportunity in terms of the notice which was filed in terms of rule 30 to remove the cause of complaint within 10 days (which they could have done by withdrawing the application and filing a fresh application which complied with the rule), which they elected not to do, thereby resulting in the matter having to be heard at unnecessary additional cost both to the applicant as well as to first respondent, I am of the view that the applicant’s attorneys should be directed to bear the costs, de bonis propriis.” (para 34)*

2.6. In relation to the Legal Practice Council, the candidate discloses:

- an email addressed to him by the Legal Practice Council dated 6 November 2019 (annexure E1), calling on the candidate to address (a) the criticisms against him; and (b) the allegation of overreaching;
- a letter addressed to the candidate by the Legal Practice Council dated 18 December 2020 recording the following:

“On 22 October 2020, the Investigating Committee directed that the complaint against you be dismissed on the basis that the court had already imposed a de bonis propriis sanction against you in respect of the same conduct which the Western Cape LPC had investigated. Ms Kelly [redated] had also accepted your fee structure and furthermore, gave permission for full disclosure of private information.”

2.7. The candidate has not disclosed in his application for judicial appointment his response to the Legal Practice Council’s email.

2.8. It is worth noting that the Legal Practice Council took no action because “*the court had already imposed a de bonis propriis sanction*” against the candidate; the Legal Practice Council did not exonerate the candidate.

2.9. The second matter is the following:

“The 'relevant matter' pertains to the fact that in 2024/2025, acting in my representative capacity as an Executor of a deceased estate, I was an applicant before the Western Cape High Court seeking interim and final judicial relief. The respondent was the Master of the High Court ("the Master"). During August 2024, and after the Master filed a Notice to Abide my application for interim relief, I obtained an order granting interim relief pending the outcome of the litigation. A rule nisi was issued with a return date in November 2024. On that date, the case was postponed for hearing in May 2025, with an extended timetable for the filing of answering papers by the respondent. In May 2025, the case was postponed for a second time, together with an order providing for a further extended timeline for the filing of answering papers by the respondent. The case was postponed for hearing in February 2026. In mid-July 2025, the case was settled out of court. In accordance with the terms of settlement, my application was withdrawn and each party paid their own costs.”

2.10. The candidate does not provide any further detail regarding this matter.

2.11. It has nonetheless come to the reviewers’ attention that this matter has a protracted history. It pertains to the candidate’s appointment as the executor of the Estate late: T L Manuel (Master’s reference 1203/2008).

2.12. As long ago as 2010, In *Moosa N.O. v Manuel* (24852/09) [2010] ZAWCHC 664 (18 March 2010), Riley AJ made the following findings (where the candidate was the applicant):

“[32] It is common cause that applicant responded to the respondent's objections by stating that he would deal specifically with the rental income, the Brain Wave Projects CC account and the Old Mutual policies in a subsequent liquidation and distribution account.

[33] As at the date of the hearing no further liquidation account has been lodged and neither has the applicant provided the respondent with a proper detailed explanation in regard to her concerns or objections.

[34] Applicant conceded during argument that he had not opened a separate estate late banking account to deal with any monies or proceeds due to the deceased estate. On his own admission, he stated that he had been paying the rental and all other monies accruing to the deceased's estate into his trust account. **He was unable to give a reasonable explanation as to why he had not opened a separate estate account, and he was more importantly unable to give a reasonable explanation as to why he had not attached to his founding or supplementary papers an extract of the relevant transactions and/or entries in his trust account records.**

[35] Section 28 of the Act provides that:

"28 Banking accounts

(1) An executor -

(a) Shall unless the Master otherwise directs, as soon as he or she has in hand monies in the estate in excess of R1000.00, open a cheque account in the name of the estate with a bank in the Republic and shall deposit therein the monies which he or she has in hand and such other monies as he or she may from time to time receive for the estate;"

[36] In my view the use of the words "shall" in the section makes it clear that the provisions of the section are peremptory.

[37] The practice of utilising an attorney's trust account instead of opening a separate estate account in terms of section 28 is unhealthy and is to be frowned upon.

[38] Even though respondent clearly raised the issue of substantial amounts of money being paid in respect of the estate and which accrued to the estate it is surprising that the Master, fails to question the existence of such payments, where the payments are being held and whether they can be accounted for. I express my concern in this regard with reference to section 28(2), and section 28(5) of the Act.

[39] Section 28(2) of the Act provides that:

"(2) Every executor shall, whenever required by the Master to do so, notify the Master in writing of the bank and the office or branch of the bank which he or she has opened an account referred to in subsection (1) and furnish the Master with a bank statement or other sufficient evidence of the position of the account"

[40] Section 28(5) provides that:

" The Master and any surety of the executor shall have the same right to information in regard to any such account as the executor himself or herself possesses, and may examine all vouchers in relation thereto, whether in the hands of the bank or of the executor."

[41] Notwithstanding respondent's concerns and objections the Master has failed and neglected to request the relevant information as is provided for in section 28(2) and section 28(5).

[42] Applicant could not explain why he further in the alternative, did not prepare a detailed schedule of income and expenses in respect of the deceased's estate.

[43] I find that the detail he provides in his founding affidavit of and about the income and expenses in respect of the deceased estates financial affairs is seriously lacking in particularity and detail, particularly since he wishes this court to make an order based on the financial status of the deceased's estate and or its abilities to settle its debts.

[44] Even though the respondent raised valid concerns and objections to the first liquidation and distribution account, the Master has failed, refused and neglected to provide respondent with a proper response to her concerns and objections. This notwithstanding several letters addressed to the Master by respondent's attorneys

[49] On considering the provisions of the Act relating to objections and based on the facts of this case, I am accordingly satisfied that applicant is not in a position to liquidate the assets as there has not been proper compliance with section 35 of the Act.

[50] It is further most unfortunate that applicant has failed to take the court into his confidence by not presenting to the court a clear and detailed picture of the status of the financial affairs of the deceased's estate.

[51] Instead applicant has accused the respondent of being obstructive and being wilfully unco-operative towards him in the time that he has administered the estate. There is no merit in this allegation.

[54] In my view the applicant could have addressed all the respondent's concerns by providing her with a detailed schedule of income and expenditure in respect of

the deceased's estate. At the least he could have provided the respondent with an extract of the account of the deceased held in his attorney trust account.

[55] He failed on both counts.

[56] In my view the matter could easily have been resolved if he had done a proper accounting to the respondent and or the Master at the time that respondent raised her concerns and or objections.

[57] I accordingly find that applicant's decision to bring the application at the time that he did was misguided.

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[59] In conclusion I order that, even though respondent has not asked for any cost order against applicant, that applicant shall not be entitled to claim any fees or disbursements from the deceased's estate in his capacity as either executor and or attorney in relation to this application. In the event that applicant has already debited fees on account of this application he is ordered to rectify the position immediately.

[60] I further direct that a copy of this judgment be provided to The Master who must ensure that the objections of the respondent be dealt with in accordance with the law."

2.13. The JSC may wish to probe these matters with the candidate.

3. The racial and gender composition of the bench
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3.1. As far as could be ascertained, there are currently 32 permanent judges of the Western Cape Division of the High Court, Cape Town:

- 12 black women (6 African, 6 Coloured)
- 14 black men (6 African, 6 Coloured, 2 Indian)
- 4 white women
- 2 white men

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

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 5 months of active service. If appointed, the candidate would be eligible to complete a further period of up to 14 years and 6 months of active service if his acting stints are taken into account, otherwise 15 years.

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

- 5.1. The candidate has demonstrated a commitment to the values of the Constitution.

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

- 6.1. The candidate is knowledgeable about the law and in most of the judgments considered by the reviewers, he referred to the Constitution as part of his reasons (see *Goliath and Another v S* (Sentence Appeal) (A99/2025) [2025] ZAWCHC 527; 2026 (1) SACR 261 (WCC), *Tobi v Passenger Rail Agency of South Africa* (9055/2014) [2026] ZAWCHC 20; [2026] 1 All SA 600 (WCC), *De Saude Sadat Darbandi Immigration Attorneys Inc v Acting Provincial Manager: Western Cape Department of Home Affairs and Others* (17216/2023) [2025] ZAWCHC 572; 2026 (3) SA 202 (WCC), *Astron Energy (Pty) Ltd v Commissioner for the South African Revenue Service* (20306/2022) [2025] ZAWCHC 245; [2025] 3 All SA 696 (WCC), *Van Wyk v Venter N.O and Others* (21072/2019) [2025] ZAWCHC 197; [2025] 3 All SA 572 (WCC), *Le Bonheur Wine Estate (Pty) Ltd v Stellenbosch Vineyards (Pty) Ltd* (17111/2021) [2025] ZAWCHC 260; [2025] 3 All SA 768 (WCC); 2025 (5) SA 458 (WCC)).
- 6.2. One of the candidate's judgments has come under some criticism: *Le Bonheur Wine Estate (Pty) Ltd v Stellenbosch Vineyards (Pty) Ltd* 2025 (5) SA 458 (WCC). The judgment dealt with the nature of the principle of subrogation in South African insurance law – i.e. where an insurer who indemnifies an insured party for loss they have suffered pursuant to an insurance policy is entitled to litigate in the name of the insured party against the wrongdoer to recover the damages.
- 6.3. Two controversial aspects of the judgment, which are arguably out of step with the legal position, have been noted.
- First, the judgment holds that the insurer is required to disclose and plead that it is pursuing a subrogated claim and be cited as a party. This is novel: other than this

judgment, insurers have not been required to disclose their control over the litigation.

- Second, the judgment holds that subrogation does not transfer any procedural rights from the insured party to the insurer. Thus, the insured party could take steps in the litigation with which the insurer is not satisfied.

6.4. These issues have been raised in a number of different articles (see <https://www.derebus.org.za/when-procedure-oversteps-principle-rethinking-subrogation/>, <https://www.webberwentzel.com/News/Pages/how-the-western-cape-high-court-got-subrogation-wrong.aspx> , <https://www.deneys.co.za/thinking/getting-subrogation-wrong>).

6.5. The JSC may wish to invite the candidate to comment on this question.

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

7.1. The candidate has disclosed that one judgment has been taken on appeal and the appeal remains pending.

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

8.1. The candidate has a mixture of academic and practice experience.

8.2. Academically, he is clearly an expert in tax law and has contributed widely through publications cited by courts and other academics.

8.3. In practice, the reported judgments he has appeared in span many different areas of law, including constitutional law.

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
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10.1. The candidate indicated that one judgment was outstanding at the time of completing the questionnaire.

10.2. The judgment was handed down on 13 July 2026 (*A.M v Road Accident Fund* (16112/2022) [2026] ZAWCHC 352 (13 July 2026))

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. There is nothing reported in the candidate's questionnaire to suggest that he is not a competent administrator.

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

14.1. The candidate's appointment may send a message that utmost integrity and ethics are not requirements for judges, unless the outstanding issues in relation to the complaints made against him are suitably addressed.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Goliath and Another v S* (Sentence Appeal) (A99/2025) [2025] ZAWCHC 527; 2026 (1) SACR 261 (WCC)
2. *Tobi v Passenger Rail Agency of South Africa* (9055/2014) [2026] ZAWCHC 20; [2026] 1 All SA 600 (WCC)
3. *De Saude Sadat Darbandi Immigration Attorneys Inc v Acting Provincial Manager: Western Cape Department of Home Affairs and Others* (17216/2023) [2025] ZAWCHC 572; 2026 (3) SA 202 (WCC)
4. *Astron Energy (Pty) Ltd v Commissioner for the South African Revenue Service* (20306/2022) [2025] ZAWCHC 245; [2025] 3 All SA 696 (WCC),
5. *Van Wyk v Venter N.O and Others* (21072/2019) [2025] ZAWCHC 197; [2025] 3 All SA 572 (WCC),
6. *Le Bonheur Wine Estate (Pty) Ltd v Stellenbosch Vineyards (Pty) Ltd* (17111/2021) [2025] ZAWCHC 260; [2025] 3 All SA 768 (WCC); 2025 (5) SA 458 (WCC)

Unreported judgments

7. *De Wit NO and Another v Smit and Others* (19076/2024) [2025] ZA WCHC 481 (21 October 2025);

Judgments upheld on appeal

8. N/A

Judgments overturned on appeal

9. N/A

Academic writings

10. The candidate lists 39 peer-reviewed articles which predominantly focus on tax administrative and public law.