

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

Candidate: Sharon Mthimunye

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

1.1. The candidate holds the following tertiary qualifications:

- LLB, University of the Western Cape (2006)

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

- admitted as an attorney in August 2008

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

- Magistrate in November 2015

1.4. The candidate has acted in the following roles:

- Acting District Court Magistrate (April 2011 – November 2015)
- Acting Regional Court Magistrate (June 2022 – May 2023)
- Acting Judge of the Western Cape Division of the High Court (multiple terms and ad hoc sittings from 15 April 2024 to 7 May 2026, amounting to approximately 38 weeks in total)

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 of the bench

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 African woman.

4. The maximum period the candidate could serve if appointed

4.1. At the time of the interviews, the candidate will be approximately 53 years and 2 months old. If appointed, the candidate would be eligible to complete a period of up to 16 years and 9 months' of active service as a judge.

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

5.1. Comments in the nominations for the candidate, regarding the candidate's personal commitment to the values of the Constitution, include the following:

- *“During her 20 years in the legal profession, Ms. Mthimunye has also mentored numerous university final year law students, candidate attorneys and prosecutors, proving her commitment to the transformation of the legal and judicial space through education and guidance”* (Lubabafo Ntshofo nomination pack p 6)
- *“Ms Sharon Mthimunye has consistently demonstrated an unwavering commitment to fairness, equality, dignity, and access to justice. Her professional career and body of work reflect a profound respect for the Constitution and the pivotal role of the courts in realising its promises.”* (Adv D Piedt – secretary National Bar Council of South Africa (NBCSA) Western Cape Bar nomination pack p 21)
- *“With a strong moral character, sound ethics, integrity and compassion for the poor and marginalised communities, she is well suited to make a contribution in building a nation that is founded on justice, civility and respect. I have noted in particular her accountability to grassroot communities on the mandates entrusted to her and the high performance driven execution of her responsibilities, tasks and duties.”* (Rev Bongani Finca nomination pack p 23)

5.2. The candidate's commitment to the values of the Constitution is further evidenced through her involvement in, inter alia, the following areas:

- Her work through the Gender Desk of the Uniting Presbyterian Church of Southern

Africa, where she states that she helps to empower and educate woman congregants about rights relating to domestic violence, foster-care grants, the Older Persons Act, administration of estates, and protection orders, and gives back to women and children in Gugulethu (nomination pack p 41).

- Her long-running mentorship work through the South African Chapter of the International Association of Women Judges, including mentoring final-year woman law students since 2015 and acting District and Regional Court Magistrates, and her service as Provincial Co-Ordinator from 2020 to 2023 (nomination pack pp 28 and 38).
- Her community and voluntary service in the Uniting Presbyterian Church on the Church's Ethics Committee, and on the General Assembly Appeals and Review Panel, together with her membership of the Black Lawyers Association and the Judicial Officers Association of South Africa (nomination pack pp 28 and 46).

6. The candidate's knowledge of the law, including constitutional law
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- 6.1. The bundle contains twelve judgments. However, *Reggio and Another v Regional Magistrate, Bellville Specialised Commercial Crimes Court and Others* appears twice, leaving eleven.
- 6.2. The judgments span criminal law, civil procedure, family law, company and insolvency law, administrative and refugee law, eviction, delict, and Road Accident Fund matters. While the breadth of the fields of law dealt with is a clear strength, the samples do not, however, establish consistently advanced expertise in any single field. A number of the matters are also procedural or fact-specific, rather than jurisprudentially complex.
- 6.3. *S v Rajabu* (Review) (65/2025) is a concise and sound special review judgment. The candidate correctly treated the appearance of a legal practitioner, who lacked authority to represent the accused, as a fundamental irregularity and set the proceedings aside. The judgment accordingly reflects proper concern for legality and fair trial rights.
- 6.4. *Kabula and Another v Standing Committee for Refugee Affairs and Others* (23123/23) is the strongest judgment in the pack on constitutional and administrative law issues. The candidate engaged with the principle of non-refoulement. It applied relevant Constitutional Court and Supreme Court of Appeal authority and concluded that there was no adequate assurance of safety on return. Accordingly, the candidate reviewed

and set aside the withdrawal of refugee status and remitted the matter. The judgment demonstrates an ability to connect statutory review with constitutional and international law principles.

- 6.5. *Cooper N.O. and Others v VAB Sales and Distribution (Pty) Ltd* (1498/22) dealt with technically demanding insolvency issues under section 341(2) of the Companies Act 61 of 1973. The judgment demonstrates competence in working through a detailed commercial record and the effect of payments on creditors post-liquidation.
- 6.6. In *Reggio and Another v Regional Magistrate, Bellville Specialised Commercial Crimes Court and Others* (18554/2023), the candidate reviewed a magistrate's refusal to grant a further postponement under section 342A of the Criminal Procedure Act 51 of 1977. She upheld the magistrate's approach after considering the statutory factors relating to unreasonable delay. The matter once more demonstrates an appreciation of both fair trial interests and the efficient administration of criminal justice.
- 6.7. In *All Persons in Occupation of the Remainder of Portion 6 of Farm 451, Stellenbosch Road v Shoprite Checkers and City of Cape Town* (10404/2023), the candidate rescinded the eviction order and required the City to provide the report previously ordered by the court.
- 6.8. Taken as a whole, the sample judgments demonstrate sound knowledge across a wide range of disciplines.

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 two judgments have been taken on appeal, and the reviewers found one further judgment of the candidate that was taken on appeal.
- 7.2. The candidate stated that the judgment in *Van Embden v Van Embden* (Case 3828/2024) was still outstanding at the time the application was submitted. The reviewer ascertained that the judgment was subsequently handed down on 5 June 2026. Both the judgments disclosed were dismissed on appeal. The further judgment found was upheld on appeal.
- 7.3. The first judgment of the candidate upheld on appeal was *A.V.E v A.T.V.E* (Appeal) (A43/2025) [2026] ZAWCHC 290 (5 June 2026) (van Embden)
- 7.4. In the above matter, the full court upheld the candidate's judgment. On each of the main

complaints raised on appeal, Ralarala J (with Dolamo J and Adams AJ concurring) held that the court a quo had acted correctly. The court found that the candidate had comprehensively considered the Rule 6(5)(g) position, the available procedural options and the relevant considerations. Her decision to decide the application on the papers, despite the genuine dispute of fact, and then to dismiss it, was held to be a permissible exercise of her discretion.

- 7.5. The second judgment of the candidate upheld on appeal was *Road Accident Fund v Van Wyk* (Appeal) (1169/2020; A186/2025) [2026] ZAWCHC 39 (9 February 2026)
- 7.6. In the above matter, the full court was sharply critical of aspects of the candidate's procedure; however, it did not disturb the part of her order that was properly before it. The court criticised the candidate's refusal to allow RAF to call a witness virtually, stating as follows:

“[30] The Court a quo's decision not to permit the RAF's witness to present his evidence through the virtual platform in these circumstances was fundamentally flawed. Significantly, it was known that the witness was not available in South Africa and was in Zimbabwe. The witness was available and consented to testify virtually. The Court was made aware of this fact. From the record, the witness was waiting to be called to connect virtually so that his evidence could be heard. While I acknowledge that the RAF did not meticulously follow the Uniform Rules and Practice Directives of this Division in arranging for the presentation of its witnesses' evidence virtually, I firmly believe that the pursuit of justice and the cumulative factors placed before the Court a quo weighed heavily in favour of granting the order sought by the RAF as envisaged in Practice Directive 56 of this Division.

[31] Granting permission for the insured driver's evidence to be presented virtually would have ensured that all the relevant facts are placed before the court a quo to enable it to make an informed decision on the question of liability after hearing from both parties. Such an approach, in my view, was crucial to fostering a setting where fairness and justice prevail. Notably, it is now trite that video conferencing is an efficient and effective way of providing oral evidence both in chief and in cross-examination and that this is simply another tool for securing effective access to justice.

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[38] The main reason advanced by the trial court in refusing the RAF's application to

lead evidence of the insured driver virtually was that there was no substantive application made and that there was no compliance with the Practice Directives of this division. It must be stressed that court procedures and the rules that govern them are designed to administer justice, and not to hamper it.[6] Fairness and justice are ensured by allowing proper participation by the parties and the full ventilation of issues.[7] The Rules of Court facilitate the litigation process that invariably underpins the expression of the right of access to courts...

[40] In summary, the Court a quo, in my view, erred in rejecting the RAF's application to lead the evidence of the insured driver virtually. Furthermore, it could not be said that the subsequent application by the RAF for a postponement to secure the attendance of its witness was mala fide. It was for the first time that the RAF sought a remand. The insured driver was in Zimbabwe. Undoubtedly, the RAF was prejudiced by the Court a quo's order. Consistent with the principles of natural justice, fundamental fairness and justice demanded that the RAF be afforded the opportunity to present its evidence to counter the evidence of the respondent. On the other hand, any prejudice that the respondent could have suffered if the matter was postponed could have been compensated by an appropriate order of costs.

[41] Notwithstanding these findings, in my view, to set aside the proceedings before the Court a quo based on the above will be tantamount to unscrambling a scrambled egg, which, in my view, will have far-reaching consequences. The parties reached an agreement on various heads of damages even before the matter was finalised. I must also mention that from the record of proceedings of the Court a quo, at the beginning of the trial, the RAF's legal representative indicated to the trial Court that the RAF would soon make an offer on general damages and loss of earnings. The parties eventually reached an agreement on these heads of damages, which was subsequently made an order of the Court by agreement. What remained in dispute between the parties was the past medical expenses, which the RAF disputed, basing its refusal to pay on the full Court's decision in Discovery Health II."

7.7. The judgment found by the reviewers that was overturned on appeal is:

- *Recklies v Road Accident Fund (22457/2017) [2024] ZAWCHC 217 (21 August 2024)*

7.8. In *Recklies v Road Accident Fund (Appeal) (A167/2025) [2026] ZAWCHC 296 (4 June*

2026), the majority (Da Silva Salie J with Njokweni J concurring) concluded (at para 35) that the candidate had wrongly confined Recklies pre-accident earnings essentially to his salary and excluded the net profits generated through his closely held business, Trotex. Because of that misdirection, the actuarial calculation had to be redone. The majority accordingly upheld the appeal, set aside the relevant portion of the order and substituted a new order requiring the calculation to include both salary and Trotex profit.

- 7.9. Holderness J dissented and strongly defended the candidate's reasoning. In her dissent, Holderness J held that the candidate had carefully assessed the forensic accountant's evidence and that her factual findings were “*unassailable*”. Holderness J further held that the court a quo had correctly rejected the expert premise that the company’s profits accrued to Recklies, and stated that the candidate’s finding on remuneration “*cannot be faulted*.”

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

- 8.1. The candidate has a long legal career, beginning with articles at Legal Aid South Africa in May 2006, admission as an attorney in August 2008, private practice until April 2011, and judicial service from 2011.
- 8.2. The candidate acted as a District Court Magistrate from April 2011 and was permanently appointed in November 2015. She acted as a Regional Court Magistrate from June 2022 to May 2023 and has acted in the Western Cape High Court since April 2024 for approximately 38 weeks in total.
- 8.3. The candidate’s strongest experience is as a magistrate, where the questionnaire records broad criminal, civil, family and motion court work. Her High Court exposure is also broad, including appeals, reviews, insolvency, family matters, contracts, immigration/refugee matters, delict, RAF claims and interdicts.
- 8.4. The candidate further completed judicial skills training for aspiring Regional Court Magistrates, was appointed as a presiding officer in the Equality Court in 2019, and completed the 2023 Aspirant Women Judges Programme.

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 no judgments were outstanding when the questionnaire was completed.
- 10.2. As far as could be ascertained at the time of completing this review, no judgments were outstanding.
- 10.3. Of the 11 judgments of the candidate considered by the reviewers, three were delivered more than three months after the hearing. *These were Kabula and Another v Standing Committee for Refugee Affairs and Others* (heard 16 September 2024; delivered 16 January 2025), *All Persons in Occupation v Shoprite Checkers and City of Cape Town* (argument 21 October 2024; judgment 27 January 2025), and *Reggio and Another v Regional Magistrate* (heard 25 October 2024; delivered 14 February 2025).

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

- 11.1. The reviewers received no adverse comments from colleagues regarding the candidate's ability to conduct court proceedings fairly, efficiently, and effectively.
- 11.2. The nominations provide further detail. One nominator describes the candidate's courtroom management as exemplary, punctual, and efficient, and states that she treats litigants, court officials, and state and defence witnesses with respect and fairness. Another describes her as creating a conducive courtroom atmosphere while conducting proceedings firmly and fairly.

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 for judicial determination, nor that the candidate would be unduly influenced, including by the executive or legislative branches of government.
- 12.2. The judgments reviewed include examples in which the candidate granted relief affecting public bodies. In *Kabula*, she reviewed and set aside a decision of the Standing Committee for Refugee Affairs; in *All Persons in Occupation*, she required the City of Cape Town to file a report previously ordered by the court; and in *Ottery*

Service Station, she applied the legal consequences of an appeal against a decision of the Petroleum Products Controller. These matters are consistent with an independent application of the law to state and other institutional decision-makers.

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

- 13.1. The candidate has relevant administrative experience. While serving as an Acting Regional Court Magistrate in Stellenbosch, she states that she managed case flow, conducted pre-trials and oversaw the administration of justice at a one-person station. Her curriculum vitae also records her service as Acting Head of Office at the Wynberg Magistrates' Court in April 2024.
- 13.2. Beyond day-to-day court administration, the candidate served as Provincial Co-ordinator of the South African Chapter of the International Association of Women Judges from 2020 to 2023, during which she organised provincial meetings and programmes and monitored the mentorship programme. Her service on her church Ethics Committee and General Assembly Appeals and Review Panel, as well as her current involvement with the JOASA executive, also indicate experience in committee and organisational responsibilities.

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

- 14.1. The candidate's appointment would likely be understood by members of the public as recognising a career progression from attorney and long-serving magistrate to the High Court.
- 14.2. The candidate's multilingual background, mentorship of law students and acting magistrates, together with relatively broad experience in the areas of criminal, civil, and family law, may also signal that practical experience and community engagement are valued attributes in judges.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *S v Rajabu* (Review) (65/2025) [2025] ZAWCHC 160; 2025 (2) SACR 325 (1 April 2025)
2. *Cooper N.O. and Others v VAB Sales and Distribution (Pty) Ltd* (1498/22) [2024] ZAWCHC 379; [2025] 1 All SA 178 (WCC) (19 November 2024)
3. *Reggio and Another v Regional Magistrate, Bellville Specialised Commercial Crimes Court and Others* (18554/2023) 2025 JDR 0739 (WCC) (14 February 2025)
4. *L.C v J.C and Others* (17335/2022) 2024 JDR 3828 (WCC) (9 September 2024)
5. *Kabula and Another v Standing Committee for Refugee Affairs and Others* (23123/23) 2025 JDR 0779 (WCC) (16 January 2025)
6. *Gabriel N.O. obo Daniel Izokunda Nduwabandi v Road Accident Fund* (6298/2020) 2025 JDR 1228 (WCC) (20 March 2025)
7. *E.L.B v A.V.M* (7521/24) [2024] JOL 64618 (WCC) (14 May 2024)

Unreported judgments

8. *S.D.N. v Sunwest International (Pty) Ltd t/a GrandWest Casino & Entertainment World* (7659/2021) (12 March 2025)
9. *All Persons in Occupation of the Remainder of Portion 6 of Farm 451, Stellenbosch Road, Western Cape v Shoprite Checkers and City of Cape Town* (10404/2023) (27 January 2025)
10. *Solomons v S* (A57/24; A(R) 01/2024) (7 May 2024)
11. *Ottery Service Station (Pty) Ltd t/a Sasol Ottery and Another v Cold Stone Trading and Investment (Pty) Ltd t/a Sasol Ottery and Others* (22689/2024) (2 December 2024)

Judgments upheld on appeal

12. *Road Accident Fund v Van Wyk* (Appeal) (1169/2020; A186/2025) [2026] ZAWCHC 39 (9 February 2026)
13. *A.V.E v A.T.V.E* (Appeal) (A43/2025) [2026] ZAWCHC 290 (5 June 2026)

Judgments overturned on appeal

14. *Recklies v Road Accident Fund* (Appeal) (A167/2025) [2026] ZAWCHC 296 (4 June 2026)

Academic writings

15. N/A