

**CANDIDATE: TANYA DESIREE BRENNER**

**POSITION FOR WHICH CANDIDATE APPLIES: Gauteng Division**

**1. The candidate's appropriate qualifications**

1.1. Bachelor of Arts (BA): 1980-1982 (University of Natal, Durban)

1.2. Bachelor of Laws (LLB): 1985-1987 (University of Cape Town)

1.3. These are appropriate formal qualifications.

**2. Whether the candidate is a fit and proper person**

2.1. There is nothing in the application that would suggest that the candidate is not a fit and proper person.

2.2. The candidate has also been a member (as a practicing attorney) of the Law Society of the Northern Provinces from 1998 until present. She obtained a certificate of good standing from the Law Society on 7 June 2017. There have to date been no disciplinary proceedings in respect of the candidate.

**3. Whether the candidate's appointment would help to reflect the racial and gender composition of South Africa**

3.1. The candidate is a white female; her appointment would therefore assist in reflecting the gender demographics of the Republic, but not its racial demographics.

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

4.1. The candidate states in her application that her experience extends primarily to the following areas of law: general commercial litigation (including on issues relating to contract, intellectual property, insolvency, labour and media law). The candidate has expertise in conveyancing, deceased estates and matrimonial law.

4.2. The judgments reviewed (all of which are unreported) demonstrate that the candidate has a broad knowledge of the law.

4.3. Her experience as practitioner and judicial officer, as set out in her application, relates mostly to civil work, but in her criminal judgments she has shown an understanding of criminal law, has narrated and evaluated the evidence in detail, and set out and applied the applicable law coherently and succinctly. (See, for example, *S v Vaughan Errol Hylton*

*van Schalkwyk* WLD Case No 261/2004 (available in the candidate's application pages 38-63); *S v Rosele and Another* [2012] ZANWHC 9; and *Malatjie and Another v S* [2017] ZAGPPHC 131).

- 4.4. The candidate does not appear to have direct experience in constitutional law, if regard is had to the judgments reviewed and matters in which she was involved as an attorney.
- 4.5. The candidate attended the Constitutional Law Programme at the University of the Witwatersrand in 1995.

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

- 5.1. The candidate's judgment in *Ekurhuleni Metropolitan Municipality v Rosenkrantz* [2016] ZAGPPHC 462 demonstrates a commitment to the values and rights in the Constitution, specifically the right to adequate housing in section 26 of the Constitution. In this case the Ekurhuleni municipality sought an order directing the owner of land to demolish certain structures on his property in which tenants were residing.
- 5.2. In the candidate's judgment she emphasises that the constitutional rights of the tenants should not be

compromised. She adds that the municipality cannot “disabuse” her mind of the tenants’ constitutional rights.

5.3. This judgment also illustrates that the candidate is aware of a municipality’s constitutional duty to provide emergency alternative accommodation to tenants who would be rendered homeless by an eviction.

5.4. The candidate concluded that to grant the order which the municipality sought would in effect lead to the unlawful eviction of tenants from the property.

5.5. The candidate sets out in her application that she has, over the course of her 28 years in practice, assisted with many *pro bono* cases for indigent individuals. Other than this information, the reviewers cannot comment on the candidate’s extra-judicial commitment to the values of the Constitution.

## **6. Whether any judgments have been overturned on appeal**

6.1. In *Rosenkrantz* (above) the candidate dismissed an application for leave to appeal by the Municipality. A further application was made to the SCA. On 23 January 2017, the appeal court ordered that leave to appeal be granted to the

Full Court of the Gauteng Division of the High Court, Pretoria.

6.2. At the time of the candidate submitting her application, and at the time of conducting this review, the outcome of the aforesaid appeal was not available.

6.3. Of the seven judgments we reviewed where leave to appeal was then sought, the candidate dismissed all such applications for leave to appeal. Leave to appeal was granted in one case but the appeal was dismissed. In one, *Rosenkrantz*, the SCA granted leave to the full bench of the High Court after the candidate refused. The other six applications were dismissed. The candidate's judgment in respect of their treatment or outcome in or by the appeal courts is thus to date unblemished.

## **7. The extent and breadth of the candidate's judicial experience**

7.1. The candidate has regularly sat as an acting judge in the years 2004 to 2017.

7.2. In total, the candidate has sat in the Mahikeng, Johannesburg and Pretoria High Courts for 71 weeks (approximately 16 months).

- 7.3. The candidate did her articles from 1987 to 1989. From 1989 to 1991 she occupied the position of Professional Assistant at two law firms.
- 7.4. The candidate was admitted as an attorney on 20 June 1989, as a Conveyancer in 1990 and as a Notary in 1995.
- 7.5. In September 1991, the candidate was appointed as a Director at a law firm in Johannesburg. She occupied this position until February 2002. Between 2002 and 2004, the candidate was as an Associate at another law firm in Johannesburg.
- 7.6. The candidate sat regularly as a Commissioner of the Small Claims Court in Hillbrow from 2000 to 2003,
- 7.7. Since September 2004 to date the candidate has been the sole proprietor of her own law firm, which specialises in High Court litigation.
- 7.8. In February 2016, the candidate was seconded as a member of the Broadcasting Complaints Commission.

## **8. The candidate's linguistic and communication skills**

- 8.1. Whilst the candidate has not written any legal publications, a review of her judgments, which are written in English,

demonstrates that she is a proficient and able communicator in that language.

- 8.2. There is nothing contained in the candidate's application, or the judgments reviewed, that would suggest that the candidate is not able to communicate effectively in the English language. It would perhaps have been useful to know what grasp the candidate has of any other of the official languages and of any efforts the candidate has made to acquire some knowledge thereof.

## **9. The candidate's ability to produce judgments promptly**

- 9.1. There is nothing to indicate that the candidate is not able to produce judgments promptly. Most judgments reviewed show that the candidate takes a few weeks to deliver a written judgment. In relatively straightforward cases she hands down judgment in a matter of days.
- 9.2. Of the judgments reviewed, the longest the candidate has taken to hand down a written judgment is nine weeks: this was a trial and the preparation of the judgment involved an extensive assessment of oral evidence.
- 9.3. The general impression from the candidate's judgments is

that she hands down judgments promptly.

## **10. The candidate's fairness and impartiality**

10.1. No adverse comments were received.

10.2. The candidate, as a general theme in her judgments, favours substance over form in order to reach a just and equitable result.

10.3. In *Nedbank Limited v Principle Education and Marketing CC and Another* [2016] ZAGPPHC 430 the candidate dealt comprehensively and fairly with the papers (which were not compliant with the uniform rules of court) of an unrepresented litigant. The judgment illustrates that the candidate is cognisant of her duty to the court as well as her duty to assist unrepresented parties appearing in court.

10.4. The candidate also assisted lay litigants in *Nedbank Limited v Chiura and Another* [2016] ZAGPPHC 1197 by considering and evaluating a multiplicity of cases that had been brought by lay litigants.

## **11. The candidate's independent mindedness**

11.1. No adverse comments were received.

- 11.2. *Absa Bank Ltd v Botha NO and Others* 2013 (5) SA 563 (GNP) concerned an application for summary judgment. In that case, Kathree Setiloane J inferred that the deponent did not sign the verifying affidavit in support of summary judgment in the presence of a commissioner of oaths because, whilst the deponent declared that she was female, the commissioner certified her to be male. The learned judge in that case (Kathree Setiloane J) held that the document did not comply with the requirements for the making an affidavit and thus could not support the application for summary judgment.
- 11.3. However, in *Goncalves and Another v Franchising to Africa (Pty) Ltd t/a Gold Brands* [2016] ZAGPPHC 960, the candidate disagreed with this previous judgment (albeit without detailed justification) and displayed her independence when holding (at para 28) –

*“In practice, the "he/she" reference in the oath section of affidavits is a frequent occurrence, as is an incorrect reference to gender. These are innocuous and inadvertent errors in the main. I am of the respectful view that judicial notice may be taken of*

*this established fact, and that one should subordinate form to substance. It is plain from the body of Evy's affidavit that she is female and from the body of Pedro's affidavit that he is male. The affidavits in casu substantially complied with the formalities prescribed by the Justice of the Peace and Commissioner of Oaths Act 16 of 1963”*

11.4. We refer to our comments in paragraph above re: judgments of the candidate taken on appeal. In the majority of her decisions appealed against, the candidate dismissed the application for leave to appeal. This reflects well on her independent mindedness and her confidence in standing by her decisions.

## **12. The candidate's ability to conduct court proceedings**

No adverse comments were received. Several positive comments to the effect that the candidate is fair, courteous yet firm, treats both parties with respect and invariably well prepared were received from members of the Bar, both senior and junior about the candidate.

**13. The candidate's administrative ability**

The candidate's experience as a practising attorney (especially in having her own law firm) and as an acting judge, would suggest that she is an experienced administrator.

**14. The candidate's reputation for integrity and ethical behaviour**

No adverse comments were received. As mentioned above, there have been no disciplinary processes against the candidate in her 28 years of practice as an attorney. We have noted that we received a number of complimentary submissions from members of the Bar about the candidate's fairness and independent mindedness

**15. The candidate's judicial temperament**

No adverse comments were received.

**16. The candidate's commitment to human rights, and experience with regard to the values and needs of the community**

16.1. Reference is made to what is stated above about the candidate's judgment in *Rosenkrantz*.

16.2. We note that the candidate records that she acted for the Legal Aid Board (as it then was) in both criminal and civil matters.

16.3. Since 1991, the candidate has mentored and trained several candidate attorneys and junior attorneys, to whom she subsequently referred work in order to support their practices.

**17. The candidate's potential**

17.1. The impression created after reviewing the candidate's judgments is that she is a hard worker and reliable. Her judgments are well written and researched. Her judgments are generally succinct, but when necessary it is clear that the candidate is capable of producing comprehensive if this is required.

17.2. The candidate has the potential to be a good High Court judge, and is a good candidate for elevation to the bench.

**18. The message that the candidate's appointment would send to the community at large**

The appointment of the candidate would contribute to the transformation of the judiciary as regards gender.

## LIST OF JUDGMENTS CONSIDERED

1. *The State v Vaughan Errol Hylton van Schalkwyk* WLD Case no 261/2004
2. *Vincent Olebogeng Magano v The State* NWHC (case no: 1163/2011)
3. *Isimangaliso Wetland Park Authority v Electronic Media Networks (Pty) Ltd* (case no:02/2016)
4. *Primo Negotium Holdings (Pty) Ltd v South Point Management Services (Pty) Ltd* (Case no: 18646/2013)
5. *Darier v Firstrand Bank Limited* (32115/2015) [2017] ZAGPJHC 40 (20 February 2017)
6. *Musina Local Municipality v Van der Merwe* (A447/2015, 211/2014) [2017] ZAGPPHC 126 (5 April 2017)
7. *Malatjie and Another v S* (A191/2016, CC360/2010) [2017] ZAGPPHC 131 (5 April 2017)
8. *S v Rosele and Another* (CA 100/2008) [2012] ZANWHC 9 (3 April 2012)
9. *Minister of Police v Grootboom* (34218/2014) [2016] ZAGPPHC 303 (3 May 2016)

10. *Murray N.O. and Another v Rayman and Others* (25888/2015)  
[2016] ZAGPPHC 459 (3 May 2016)
11. *Prawde and Others v Williams NO and Another* (39808/2013)  
[2016] ZAGPPHC 267 (3 May 2016)
12. *Gani and Another v Autumn Leaf Trading CC and Another*  
(24270/2014) [2016] ZAGPPHC 336 (3 May 2016)
13. *SA Taxi Securitisation (Pty) Ltd v Netshidzivhe and Another*  
(64614/2013) [2016] ZAGPPHC 265 (3 May 2016)
14. *Phungula v S* (A309/2016) [2016] ZAGPPHC 369 (23 May 2016)
15. *Ekurhuleni Metropolitan Municipality v Rosenkrantz* (82075/2014)  
[2016] ZAGPPHC 462 (6 June 2016)
16. *Nedbank Limited v Principle Education and Marketing CC and  
Another* (11810/2016) [2016] ZAGPPHC 430 (13 June 2016)
17. *Hugo v Road Accident Fund* 2016 JDR 1914 (GP) (17 October  
2016)
18. *S v Road Accident Fund* (26227/2015) [2016] ZAGPPHC 1141 (18  
October 2016)
19. *Citha v Road Accident Fund* (82352/2014) [2016] ZAGPPHC 920  
(20 October 2016)
20. *Maffa v Minister of Safety and Security and Another* (17532/2013)  
[2016] ZAGPPHC 1103 (1 November 2016)

21. *Goncalves and Another v Franchising to Africa (Pty) Ltd t/a Gold Brands* (72639/16) [2016] ZAGPPHC 960 (2 November 2016)
22. *Nedbank Limited v Chiura and Another* (74492/2016) [2016] ZAGPPHC 1197 (3 November 2016)
23. *Sheriff of the Supreme Court, Pretoria East v Pierre Pienaar NO Janare Trust and Others, In re: Silverlakes Home Owners Association v Pienaar* (80178/15; 76672/2014) [2016] ZAGPPHC 1011 (7 November 2016)
24. *P v Road Accident Fund* (68868/2012) [2016] ZAGPPHC 1131 (11 November 2016)
25. *Mkonza v Western Crown Properties (Pty) Ltd* 2016 JDR 2167 (GP) (16 November 2016)
26. *Mabunda v Road Accident Fund* 2016 JDR 2169 (GP) (16 November 2016)
27. *Maharaj v New African Alliance Investments (Pty) Ltd* (81348/2014) [2016] ZAGPPHC 1002 (16 November 2016)
28. *M v Road Accident Fund* (29906/2014) [2017] ZAGPPHC 79 (7 March 2017)
29. *Firststrand Bank Limited v Van Coller* (80706/2016) [2017] ZAGPPHC 85 (8 March 2017)

30. *Ratshikombo v Road Accident Fund* (91771/2015) [2017] ZAGPPHC 129 (23 March 2017)
31. *Mpondo v Road Accident Fund* (63732/2015) [2017] ZAGPPHC 361 (25 April 2017)
32. *Silvasale Events and Catering CC v Ideal Drive Pre-owned Cars CC* (2015/21192) [2017] ZAGPPHC 145 (25 April 2017)
33. *R v S* (A502/2016, 14/4145/2006) [2017] ZAGPPHC 279 (2 June 2017)
34. *S v Du Plessis* 2017 JDR 1004 (GP) (7 June 2017)
35. *Moolman v Lijani Boerdery (Pty) Ltd and Another* (2845/2017) [2017] ZAGPPHC 333 (12 June 2017)
36. *Tyindyi v Minister of Police* (03170/2016) [2017] ZAGPJHC 191 (30 June 2017)
37. *Anderson Insurance Underwriting Managers (Pty) Ltd and Others v Constantia Insurance Company Limited and Another* (31466/2015) [2017] ZAGPJHC 195 (30 June 2017)