

CANDIDATE: ADVOCATE ILSE VAN RHYN

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COURT FOR WHICH CANDIDATE APPLIES: FREE STATE DIVISION

1. The candidate's appropriate qualifications:

1.1. The candidate holds the following degrees:

1.1.1. B Iuris (obtained in 1984, University of the Free State);

1.1.2. LLB (obtained in 1987, University of the Free State);

1.1.3. Advanced Diploma in Labour Law (obtained in 1997, University of Johannesburg (previously RAU));

1.2. The candidate is appropriately qualified.

1.3. The candidate served articles of clerkship from January 1986 – November 1989.

1.4. The candidate practised as an attorney from January 1990 – 1993.

1.5. The candidate practiced as an advocate from 1993 – presently.

1.6. The candidate has acted as Magistrate at the Domestic Violence Centre Court at Tshepong Centre from March – April 2003.

1.7. The candidate served as Family Advocate at the office of the Family Advocate, Bloemfontein from 2004 – 2005.

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1.8. The candidate has acted as Judge in the Free State Division on four separate occasions, being:

1.8.1. 16 April 2018 – 27 May 2018 (6 Weeks);

1.8.2. 13 August 2018 – 2 September 2018 (3 Weeks);

1.8.3. 8 October 2018 – 14 December 2018 (Term);

1.8.4. 28 January 2019 – 29 March 2019 (Term).

1.9. The candidate attended the Advanced Aspirant Judges Program from 21 – 23 January 2019.

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

2.1. The Free State Society of Advocates has certified that the candidate is in good standing with the society, there are no disciplinary actions pending against the candidate, nor has she ever been found guilty of or been investigated for dishonest, disgraceful or unprofessional conduct.

2.2. There is no information at hand to suggest that the candidate is not a fit and proper person.

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 woman.

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3.2. While her appointment will contribute to gender representivity, it will not contribute to the racial transformation of the judiciary.

4. The candidate's commitment to the values of the constitution:

4.1. It is notable that the candidate has acted as amicus curiae in a matter concerning the rights of minors/children (including the provisions thereon in the Constitution).

4.2. The judgments appended to the candidate's application evidenced the candidate's commitment to the values that underlie a democratic and open society. In our opinion, the candidate is willing and able to give expression to the values of the Constitution and to actively partake in the protection and development of the core values that underlie the Constitutional disposition.

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

5.1. The candidate is an experienced legal practitioner, who has worked in various professional capacities since 1986, and has approximately 33 years' experience in the legal profession.

5.2. The candidate has a passion for the law and is a strong believer in the rule of law and that the Constitution must be upheld, applied and developed to the benefit of the people.

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5.3. The candidate's judgments show that her legal knowledge is sound; however none of the judgments considered invoked issues pertaining directly to the constitution and/or constitutional law.

5.4. A brief synopsis of judgments:

5.4.1. *Gysbert Johannes Botes N.O. v Van Niekerk and Another* (High Court Free State Division, Case number A117/2018). The candidate sat with Musi AJP as Court of Appeal.

5.4.1.1. After considering the facts, and hearing argument, the appeal was dismissed. Musi AJP concurred.

5.4.2. *Majingo v Road Accident Fund* (2019) JOL 41827 (FB) (High Court Free State Division, Case number: 833/2017). This was a trial and the cause of action was based on a Delict as a result of motor vehicle collision.

5.4.2.1. After hearing evidence relating to the determination of quantum, the candidate correctly found, having considered all the circumstances, that a contingency factor of 12,5% should be considered.

5.4.3. *MS v S* (2018) JOL 39869 (FB) (High Court Free State Division, Case number A23/2018). The candidate sat with Mathebula J on this criminal appeal.

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- 5.4.3.1. The appellant was convicted of rape of a 5 year old girl and sentenced to 18 years' imprisonment.
- 5.4.3.2. Based on numerous contradictions in the evidence of the witnesses, it was found that the prosecution failed to prove its case beyond a reasonable doubt. Mathebula J concurred.
- 5.4.4. *VKB Landbou (Pty) Ltd v Van Deventer* (2018) JOL 40095 (FB) (High Court Free State Division, Case number: 6115/2017). This was an opposed motion regarding a claim for payment of money.
- 5.4.4.1. The respondent raised several defences, namely reckless credit, alternatively over-indebtedness.
- 5.4.4.2. The candidate correctly found that the applicant was entitled to the relief claimed, and that the defences raised by the Respondent should not succeed, because proper assessments were conducted in respect of the respondent's financial position, and consequently could it not be said that the Applicant was guilty of granting credit recklessly. The Respondent failed to discharge the onus of proving over-indebtedness.
- 5.4.5. *Labuschagne DM and Another v Du Plessis T and Others* (High Court Free State Division). The candidate sat with Lekale ADJP and Loubser J as Full Bench on this appeal.

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- 5.4.5.1. The appeal was against the finding and order of the Court a quo in terms of which the appellants were interdicted and restraint from conducting a business on a residential property.
- 5.4.5.2. The candidate correctly summarised the legal position, and more specifically her findings are sound in law, namely that an application for consent to use property as a home industry does not legitimate the use of the property, and, while the appellants are in contravention of the zoning provisions applicable, including the restrictions in terms of the title deed, they are acting unlawfully. Lekale ADJP and Loubser J concurred.
- 5.4.6. *Morapeli MC v Minister of Police* (High Court Free State Division, Case number: A295/2017). The candidate sat with Mathebula J and Opperman J as Full Bench on this appeal.
- 5.4.6.1. The appeal turned on the Court a quo's dismissal of the appellant's application for condonation for his failure to comply with the provisions of Section 3 of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002.
- 5.4.6.2. The candidate's application of the applicable legal principles is sound, and consequently was it found that

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good cause did not favour the appellant, and was the appeal dismissed. Mathebula J and Opperman J concurred.

5.4.7. *Tsiu Vincent Matsepe N.O and Others v The Master of the High Court, Bloemfontein and Others* (High Court Free State Division, Case number: 5081/2017). The candidate sat with Van Zyl J in this review.

5.4.7.1. The review turned on the decision of the first respondent to remove the first and second applicants as liquidators of a company in liquidation.

5.4.7.2. The application for review is dismissed based thereon that the first respondent is entitled to do so in terms of section 379 of the Companies Act 61 of 1973. The conclusion reached, namely that the animosity that developed between the intervening parties and the loss of trust in the remaining liquidator to preform his duties and functions as reasons for the decision made by the first respondent, seemed to be sound in law. Van Zyl J concurred.

5.4.8. *Van Heerden CJ v Scoin Trading (Pty) Ltd* (High Court Free State Division, Case number: 5964/2017). This is an opposed application for summary judgment.

5.4.8.1. The candidate's application of the legal principles relating to condonation of the late filling of an opposing affidavit

and what constitutes a bona fide defence in opposition of an application for summary judgment seemed to be sound.

5.4.8.2. The candidate's concluded, after the requirements of Rule 32(2) of the Uniform Rules of Court were considered, that the Plaintiff failed to comply with the said requirements, and it would be an injustice to grant judgment in favour of the Plaintiff where the requirements have not been complied with.

6. Whether any judgments have been overturned on appeal:

6.1. Only one judgment is subject to an appeal. Leave to appeal was granted by the candidate, but the matter was not yet enrolled upon submission of the application.

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

7.1. The candidate has a vast scope of experience in various fields of the law.

7.2. The candidate's experience stems from both as a practitioner and on the bench.

7.3. While acting in the Free State Division the candidate was held in high regard by members of this Society.

8. The candidate's linguistic and communication skills:

- 8.1. The candidate has produced well-structured and clearly written judgments.
- 8.2. In Court, as an Acting Judge, the candidate is well spoken, and she communicates clearly.
- 8.3. The judgments evidence not only the research that has been conducted, but the candidate's ability to consider, apply or justify a different finding. Such is conveyed coherently and logically

9. The candidate's ability to produce judgments promptly:

- 9.1. The candidate has demonstrated this ability well.
- 9.2. Normally the candidate's judgments are delivered within 4-8 weeks after hearing.
- 9.3. There is no indication that the candidate has failed to deliver her judgments timeously, promptly and without undue delay.

10. The candidate's fairness and impartiality:

- 10.1. It appears that the candidate is fair and impartial and applies the Law without fear and favour.
- 10.2. No adverse comments have been received.

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11. The candidate's independent mindedness:

11.1. The candidate appears to be independent minded.

11.2. No adverse comments have been received.

12. The candidate's ability to conduct court proceedings:

12.1. The candidate is always well prepared and she always conducted court proceedings professionally, structured and with the necessary insight in the legal principles applicable on the facts at hand.

12.2. No adverse comments have been received

13. The candidate's administrative ability:

13.1. The candidate appears to have excellent administrative skills, especially considering the candidate's ability to produce judgments promptly and her role as secretary of the FS Bar Society (2017-2018).

13.2. No adverse comments have been received.

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

14.1. The candidate's reputation for integrity and ethical behaviour is beyond reproach, and was held in high regard on the occasions that she acted in the Free State Division.

14.2. No adverse comments have been received.

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15. The candidate's judicial temperament:

- 15.1. The candidate's judgments are diplomatically worded and objectively written.
- 15.2. The candidate's manner in court is cordial and impartial.
- 15.3. No adverse comments have been received.

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

- 16.1. The candidate's service as family advocate and practice as defence counsel demonstrates a commitment to human rights.
- 16.2. The candidate served on the sexual harassment committee of the FS Society of Advocates, which shows her commitment to the values of basic human rights.
- 16.3. The candidate also served as a magistrate and as an acting Judge, thereby demonstrating a commitment to serve the community.

17. The candidate's potential:

- 17.1. The candidate's satisfactory performance in her various stints as an acting Judge, shows that there is definitive scope for her to grow and develop further as a Judge in future.
- 17.2. The candidate has vast experience in various fields of the Law, and showed a commitment to further learning by attending the Advanced

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Aspirant Judges Program presented by the South African Judicial Education Institute (January 2019).

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

18.1. The candidate is a woman and her appointment will send a positive message to the community at large.

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ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

None.

Unreported Decision

Van Heerden v Scion Trading (Pty) Ltd Case no 5964/2017

VKB Landbou (Pty) Ltd v Van Deventer 2019 JDR 0035 (FB)

*Matsepe NO. v The Master of the High Court Bloemfontein (Venter and Wessels
Intervening Parties)* 2019 JDR 1151 (FB)

Lotz v Knipe 2019 JDR 1412 (FB)

Knipe v Stewart 2019 JDR 1413 (FB)

*Cooper NO v The Master of the High Court Bloemfontein (Knipe, Knipe, Vigne and
Knipe Intervening Parties)* 2019 JDR 1416 (FB)

Labuschagne v Du Plessis 2018 JDR 1123 (FB)

S v Lesige 2018 JDR 1960 (FB)

Majingo v Road Accident Fund [2019] JOL 41827 (FB)

MS v S [2018] JOL 39869 (FB)

Morapeli v Minister of Police Case no: A295/2017

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Botes NO v Van Niekerk & Kotze Case no: A117/2018

Pretorius v RAF (4743/2018) [2019] ZAFSHC 29 (18 April 2019)

LM v FM (4410/2016) [2018] ZAFSHC 194 (8 November 2018)

Shibane v S (A23/2018) [2018] ZAFSHC 56 (10 May 2018)

Mabaso v S (A21/2018) [2018] ZAFSHC 54 (10 May 2018)

Wealth 4 All Solutions v Ntoaleng (4425/2018) [2018] ZAFSHC 195 (30 November 2018)

Nkuna and Others v Ekurhuleni Metropolitan Municipality and Others (5039/2018) [2019] ZAFSHC 128 (26 July 2019)

Judgments upheld on appeal:

None.

Judgments overturned on appeal:

None.