

APPLICANT: MR SELWYN HOCKEY

COURT FOR WHICH CANDIDATE APPLIES: WESTERN CAPE HIGH COURT

1. The candidate's appropriate qualifications

1.1. BA (Soc Sc)

1.2. BA (Law)

1.3. LLB

1.4. The candidate is appropriately qualified.

2. Whether the candidate is a fit and proper person

2.1. From 1991 to 2020 the candidate practised as an attorney in Cape Town. The candidate served as acting judge in the Western Cape High Court during the second term of 2004 and since 14 April 2020 to date in the same Division.

2.2. We are not aware of any professional complaint being made against the candidate in any of these capacities.

2.3. The candidate is known to members of the profession as a person of integrity.

2.4. There is accordingly no reason to find that the candidate is not fit and proper.

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

3.1. The candidate is a black male.

- 3.2. His appointment would therefore enhance the representation of black persons on the bench.

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

- 4.1. The candidate has very limited experience in criminal law. He has limited experience, as an acting judge, in matters concerning administrative law and constitutional law. As a practitioner he gained a fair degree of experience in general commercial civil law.
- 4.2. The candidate has one (1) reported High Court judgment and twelve (12) unreported judgments.
- 4.3. The range of matters dealt with in his unreported judgments is fairly confined and is focused mostly on motion court work. We were able to find only one (1) unreported judgment of the candidate wherein a civil trial was conducted before him (see: *Bester N.O and Others vs Target Brand Orchards (Pty) Ltd and Others* (22592/2019) [2020] ZAWCHC 183 (21 December 2020). As far as we could establish, the candidate sat in one criminal appeal with Binns-Ward, J (see: *Lottering vs S* 2020 (2) SA CR 629 (WC) (31 August 2020)).
- 4.4. An unreported judgment written by the candidate with Veldhuizen, J, was on appeal confirmed by the Supreme Court of Appeal (See: *Trustees for the Time Being of the Two Oceans Aquarium Trust vs Kantey & Templer (Pty) Ltd* [2007] 1 ALL SA 240 (SCA)).
- 4.5. The candidate rarely considered principles of constitutional law in his judgments.
- 4.6. In the twelve (12) judgments delivered by the candidate he dealt with questions relating to insolvency in general (4 judgments), criminal

law (1 judgment), interdicts (2 judgments) and opposed civil motions (5 judgments).

- 4.7. It appears from the candidate's own statement in his application that he has limited experience in criminal matters in that he sat in one (1) lengthy criminal trial during 2004, presided over various criminal appeals and otherwise presided in most of the cases that he heard in civil matters. As noted, we were only able to find one (1) judgment wherein the candidate presided with Binns-Ward, J in a criminal appeal.

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

- 5.1. To our knowledge, there is no reason to doubt the candidate's commitment to the values of the Constitution. We were unable to find any judgments by the candidate wherein Constitutional considerations were central to the issues.

6. Whether any judgments have been overturned on appeal

- 6.1. To our knowledge none of the candidate's judgments was overturned on appeal.

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

- 7.1. The candidate worked as an article clerk and attorney in Cape Town since 1989 to 2020.
- 7.2. The candidate listed eleven (11) reported cases in which he appeared as instructing attorney. These cases listed by the candidate concerned, inter alia, questions of land reform and land restitution, the interpretation of section 139(4) of the Constitution of the Republic of South Africa regarding the provincial executive powers

to intervene in a Municipality's affairs. Although the candidate appears to have been exposed on a limited basis to Constitutional Law while acting as a judge, he appeared to have been involved substantially in constitutional matters while practising as an attorney.

7.3. As noted, the candidate has one (1) reported judgment.

7.4. The candidate held various executive positions, including that of regional chairman in the Western Cape branch of the Azanian Students Organisation (AZASO) (1992 – 1998), various executive positions in Silvertown Youth Movement (SYM), including as acting chairperson (1992 – 1997), as a board member of a child rights organisation, MOLO Songololo (2003– 2006) and as committee member of the University of Cape Town Law Faculty Development Committee (2009 – 2012). The candidate held various positions in the National Association of Democratic Lawyers (NADEL), including as chairperson for approximately six (6) years during the period 2002 - 2008.

8. The candidates linguistic and communication skills

8.1. The candidate's written judgments portray a good profession of, and communication skills in English.

8.2. It is not known what the candidate's degree of proficiency is in any other language.

9. The candidate's ability to produce judgments promptly

9.1. The candidate's application portrays outstanding judgments of short periods only.

10. The candidate's fairness and impartiality

- 10.1. We are not aware of any complaints that have been made pertaining to the candidate's fairness and impartiality and have no reason to question these aspects.

11. The candidate's independent-mindedness

- 11.1. We are not aware of any complaints that have been made pertaining to the candidate's independent-mindedness.

12. The candidate's ability to conduct court proceedings

- 12.1. We are not aware of any complaints that have been made pertaining to the candidate's ability to conduct court proceedings.

13. The candidate's administrative ability

- 13.1. The profession cannot comment on the candidate's administrative abilities in his capacity as practising attorney or acting judge.
- 13.2. However, it appears from the written support for his application filed by NADEL, that he was well organised and acted as a leader in his profession.

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

- 14.1. No complaints or queries about the candidate's ethical standards or integrity have been received.

15. The candidate's judicial temperament

- 15.1. We have no information to doubt whether the candidate has an even temperament and that he is not inclined to irascibility.

15.2. We have no information to indicate that the candidate does not have a sound judicial temperament.

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 involvement during his years of practice as an attorney in matters listed by him wherein, he was the instructing attorney, demonstrate his commitment to human rights and to the enhancement of the values and needs of the community. The candidate's commitment to human rights and our Constitution is reflected in his membership of, and service to, the Human Rights and Constitutional Law Committee of the Cape Law Society (now the Provincial Council of the Legal Practice Council).

17. The candidate's potential

17.1. The candidate's career as a practising attorney and also his stints as an acting judge in this Division of the High Court demonstrate his commitment to continue to contribute to transformation both inside and outside the legal profession.

17.2. The candidate's potential insofar as the quality and diversity of his judgments are concerned, ought to be weighed up objectively with those of other applicants.

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

18.1. The candidate is black. He is supported by the National Association of Democratic Lawyers (NADEL) in which he held leadership positions over a number of years.

- 18.2. The candidate's appointment would signal to especially the Western Cape community at large that duly qualified and experienced members from their ranks are eligible and fairly considered for elevation to the Bench.