

APPLICANT: ADVOCATE JOHN HOLLAND-MÜTER SC

**COURT FOR WHICH CANDIDATE APPLIES: GAUTENG DIVISION OF
THE HIGH COURT**

1 The candidate's appropriate qualifications

1.1 The candidate is duly qualified, having obtained:

1.1.1 B Iuris (University of Pretoria) during 1978;

1.1.2 LLB (Unisa) during 1993.

2 Whether the candidate is a fit and proper person

2.1 There is nothing in the candidate's application or judgments to suggest he 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 There are currently 73 full time judges on the Gauteng bench, comprising (as far as could be ascertained):

3.1.1 22 black women (17 African, 3 Indian, 2 Coloured);

3.1.2 25 black men (18 African, 5 Indian, 2 Coloured);

3.1.3 13 white women; and

3.1.4 13 White men.

3.2 The candidate is a white man.

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

4.1 The candidate refers to his involvement in:

4.1.1 Transforming Laerskool Rietfontein-Noord from an Afrikaans medium school to a parallel medium school offering classes in Afrikaans and English, paving the way for children from Eersterust and Mamelodi townships to enter school;

4.1.2 Engaging the parents from the Eersterust and Mamelodi communities in the school;

4.1.3 Procuring travelling for the children from these communities;

4.1.4 Assisting other School Governing Boards in the training on the South African Schools Act and governance;

4.1.5 Upliftment of, housing and caring for abandoned children and orphans of all races;

4.1.6 Mentoring and assisting junior woman advocates to develop their practices;

4.1.7 The activities and subcommittees of the Pretoria Bar and his initiatives in regard thereto.

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

5.1 The candidate is well-versed in the law and its underlying principles, having lectured, practiced in different fields of the law and given judicially sound judgments as an acting judge.

5.2 While the candidate's practice consists of only 5% constitutional law, his judgments show that he has a good grasp of constitutional law and is capable of applying it where necessary.

6 Whether any judgments have been overturned on appeal

6.1 The candidate's judgments in two cases were overturned on appeal, which must be considered against the candidate's three judgments that were upheld on appeal.

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

7.1.1 The candidate is a proficient lawyer, as may be garnered from his 30-year experience in the law, including as:

7.1.2 a clerk at the Department of Justice (1975 to 1978);

7.1.3 nine years as prosecutor, senior prosecutor, and magistrate (1981–1988);

7.1.4 10 years as law lecturer at the Justice College, part time lecturer at Technikon South Africa and UNISA, and examiner at Technikon RSA;

7.1.5 21 years as practising advocate;

7.1.6 acting as a judge for 73 weeks between 2015 and 2021;

7.2 The various fields of law in which he lectured and practised, to wit mercantile law, private law, criminal law and civil litigation pertaining to professional negligence of attorneys, third party claims, contractual

matters, insolvency, misconduct inquiries, unlawful arrests by the SAPS, arbitrations, construction law and family matters.

8 The candidate's linguistic and communication skills

8.1 The candidate is proficient in the English language and communication skills, as is apparent from:

8.1.1 the fact that he was a lecturer;

8.1.2 his well-defined and accessible judgments.

9 The candidate's ability to produce judgments promptly

9.1 The candidate is able to produce judgments promptly.

9.2 The candidate has held acting appointments for 72 weeks between 2015 and 2021, and there is not a single judgment outstanding.

10 The candidate's fairness and impartiality

10.1 There are no reservations or concerns regarding the candidate's impartiality and fairness.

11 The candidate's independent mindedness

11.1 There are no reservations or concerns regarding the candidate's independent mindedness.

12 The candidate's ability to conduct court proceedings

12.1 Given his judgments, the candidate is clearly able to conduct court proceedings.

13 The candidate's administrative ability

13.1 The candidate is administratively proficient, as may be gleaned from his career record, involvement in Bar Council matters and his parish's personnel management.

14 The candidate's reputation for integrity and ethical behaviour

14.1 The candidate's integrity and ethical behaviour are incontrovertible.

15 The candidate's judicial temperament

15.1 The candidate is courteous to litigants appearing before him

15.2 His interaction with counsel appearing before him and approach to cases is mostly regarded in a positive light.

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 commitment to human rights, and experience regarding the values and needs of the community, appear from his involvement in the activities and subcommittees previously mentioned.

16.2 Although the candidate's legal experience prior to joining the Bar was gained working for the state in the pre-transition era criminal justice system, the candidate does not appear to have attempted in his application to engage in detail with this involvement in the apartheid criminal justice system, and how it may have influenced his outlook as a judicial officer.

17 The candidate's potential

17.1 The candidate demonstrates potential to contribute to the judiciary, having regard to his sound judgments handed down, experience, capabilities, and demeanour.

17.2 However, the candidate is 65 years old, which will give him limited years to serve as a judge.

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

18.1 Extensive experience in criminal law, even in the pre-apartheid era, is valued in candidates who are suitably qualified and committed to serving their communities.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Manwood Underwriters (Pty) Ltd and others v Old Mutual Life Assurance Company (South Africa) Limited [2013] 1 All SA 701 (WCC)

Retmil Financial Services (Pty) Ltd v Sanlam Life Insurance Company Ltd and others [2013] 3 All SA 337 (WCC)

Unreported Decision

S v Philander (CC 53/2012) WCC

Judgments upheld on appeal:

Konsult One CC v Strategy Partners (Pty) Limited [(2607/10) [2013] ZAWCHC 55 (19 March 2013)

Judgments overturned on appeal:

S v Salie (CC 07/2013) WCC (appeal case no. 116/2017)

None of the judgments handed down by the candidate since October 2017 have been overturned on appeal.