

APPLICANT: ADVOCATE JOHANNES HENDRICKUS ROELOFSE

**COURT FOR WHICH APPLICANT APPLIES: MPUMALANGA
DIVISION OF THE HIGH COURT, MBOMBELA & MIDDELBURG**

1. The candidate's appropriate qualifications

1.1 The candidate is duly qualified, having obtained:

1.1.1 BCom (Law) at the University of Pretoria during 1987;

1.1.2 Dip Juris at UNISA during 1991;

1.1.3 BProc at the University of Pretoria during 1993;

1.1.4 LLB at UNISA during 2003.

1.2 The candidate is experienced, because:

1.2.1 He acted as a prosecutor in the Department of Correctional Services during the period 1988 to 1989.

1.2.2 He was a public prosecutor in the District and the Regional Court during the period 1989 to 1993.

1.2.3 He was admitted as an advocate on 5 August 2003 and has practised as an advocate ever since.

1.2.4 He has acted as a judge in the Mpumalanga High Court for 51 weeks in total or 3 full terms and several weeks since 2018, including the first term of 2020 (p.34 of the application).

1.2.5 He has attended a course for aspiring acting judges as well as an advanced aspirant judges' course.

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

2.1 The applicant is a fit and proper person, because:

2.1.1 The director of the Mpumalanga Office of the Legal Practice Council issued a Certificate of Good Standing in support of his application (p.22 of the application).

2.1.2 According to his application he has never been found guilty of unprofessional or disgraceful conduct.

2.1.3 According to his application there are no circumstances, financial or otherwise, known to him which may cause him embarrassment in undertaking the office of a judge.

2.1.4 He was a member of the Pretoria Society of Advocates from 2008 until 2017, after having concluded his pupillage during 2007. It is stated that he has been a member of the Mpumalanga Society of Advocates from 2016 until the present, although according to the GCB's records he is not currently a member of that Society. Furthermore, he has been a member of the Mpumalanga Bar Council from 2017 to 2019 and a member of the Mpumalanga Provincial Legal Practice Council from 2018 until the present.

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 man and his appointment will not contribute to reflect the racial and gender composition of South Africa *per se*.

3.2 This fact does not disqualify the candidate as eligible for appointment, especially in view of the factors mentioned under the

heading “*The Candidate’s Commitment to the Values of the Constitution*”.

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

4.1 The candidate is well-versed in the law, having experience as a prosecutor, a practising advocate and an acting judge. He practises in different fields of the law and gave judicially sound judgments as an acting judge on a wide variety of topics, including estates, practice and procedure, delict, contract, company law, agency, administrative law and criminal law.

4.2 There is no pertinent indication that the candidate is experienced in Constitutional law save to state that his judgments reflect his awareness of constitutional rights and principles.

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

5.1 The candidate is committed to the values of the Constitution, which fact appears, amongst others from the following:

5.1.1 During his stint with Correctional Services, he motivated officers to hear cases.

5.1.2 During his pupillage he defended a rural community against a big mining house.

5.1.3 He has been involved in various land claims.

5.1.4 He assists the Mpumalanga Human Rights’ Commission on a *pro bono* basis.

5.1.5 He has been involved in the training of pupils, both in Pretoria and in Mbombela.

6. **Whether any judgments have been overturned or upheld on appeal**

6.1 According to his application only one judgment was overturned on appeal, namely the one in *Neil Malherbe v The State*. The Supreme Court of Appeal overturned the candidate's dismissal of an appeal pertaining to a conviction and sentence which stemmed from a case involving the possession of child pornography.

6.2 This must be considered against the fact that another one of his judgments was upheld on appeal, namely the one of *Ebundu (Pty) Ltd v Willem Konstantyn Janson & Another*.

6.3 He refused leave to appeal in the matter of *Flaming Silver Trading 373 (Pty) Ltd v Vantage Goldfields (Pty) Ltd* (case no: 858/2019). The applicant petitioned the SCA but the outcome is not known.

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

7.1 The candidate is a proficient lawyer, as may be garnered from:

7.1.1 Approximately 24 years of experience in the law comprising:

7.1.1.1 Approximately 5 years as prosecutor, firstly in the Department of Correctional Service and thereafter in the Department of Justice where he worked both in the District and Regional Courts;

7.1.1.2 His practice as an advocate, first independently and thereafter at the Pretoria and Mpumalanga Bars for the past 18 years;

7.1.1.3 The long periods during which he acted as a judge in the Mpumalanga High Court since 2018 (three full terms).

7.1.2 The various fields of law in which he practises, including contracts, delicts, trust law, company law, administrative law, property law and land reform.

7.1.3 The wide variety of topics covered by his judgments.

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

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

8.1.1 His eloquent and accessible judgments.

8.1.2 The manner in which he drafted his submission in support of his nomination.

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

9.1 The candidate is able to produce judgments promptly.

9.2 That much is evident from the fact that he has no outstanding judgments despite recently having acted for three full terms. According to his application, he takes on average six days to finalise a judgment which is highly impressive.

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

10.1 The judgments considered do not give rise to any concerns regarding his impartiality and fairness.

11. The candidate's independent mindedness

11.1 It is submitted that the candidate is independently minded, e.g., he has on occasion deprived a successful applicant from costs due to the manner in which the litigation was pursued by such party. He appears to be hardworking, having regard to the fact that he continued with an application where the replying affidavit was only delivered on the date of the hearing and does not appear to shy away from hearing urgent matters.

12. The candidate's ability to conduct court proceedings

12.1 Question omitted from review.

13. The candidate's administrative ability

13.1 The candidate appears to be administratively proficient as may be gleaned from his career record, involvement in the Mpumalanga Bar Council as treasurer and his impressive turnaround time in producing judgments.

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

14.1 The candidate's integrity and ethical behaviour appear to be beyond reproach.

15. The candidate's judicial temperament

15.1 The candidate's integrity is undisputable if regard is had to the fact that he performed work as a prosecutor and has acted as a judge for long periods without any complaints having surfaced.

16. The candidate's commitment to human rights, and experience regarding 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 him having acted for a rural community during his pupillage; his assistance to the Mpumalanga Human Rights' Commission on a *pro bono* basis, as well as his involvement with pupil training.

17. The candidate's potential

17.1 The candidate demonstrates the necessary potential to contribute to the judiciary, having regard to his experience, wide range of eloquent judgments, diligence and the short period during which he generally produces judgments.

17.2 The candidate is relatively young (55).

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

18.1 If the candidate is appointed, it will convey to the community at large that the judiciary:

18.1.1 Consists of judges that are competent, experienced, proficient, fair and just and hardworking;

18.1.2 Is involved in and understand the needs of the community.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED:**Reported decisions**

The candidate attached an impressive list of 29 judgments, but omitted to indicate whether any of those judgments have been reported.

Unreported decisions

Pavoncelli v Jansen van Vuuren NO (case number 3502/16) in the Mpumalanga Circuit Court at Mbombela

Arqomanzi (Pty) Ltd v Vantage Gold Fields (Pty) Ltd & Others (case number 3651/2019) in the Mpumalanga Division, Mbombela

Judgments upheld on appeal

Ebundu (Pty) Ltd v Janson & Another (case number: 2194/2017) in the Mpumalanga Division court, Mbombela.

Judgments overturned on appeal

Neil Malherbe v The State (case number: A12/17) in Mpumalanga Circuit Court, Mbombela.