

APPLICANT: ADVOCATE JAN JACOBUS CLUTE SWANEPOEL

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

1 The candidate's appropriate qualifications

- 1.1 The candidate is appropriately qualified. He obtained an LLB from the University of Johannesburg (then Rand Afrikaans University) in 1984.

2 Whether the candidate is a fit and proper person

- 2.1 There is nothing in the candidate's application or judgments to suggest that 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 knowledge of the law, including constitutional law

4.1 The candidate's legal experience is varied. He has criminal law experience, including as a prosecutor. He has commercial law experience, including as a prosecutor of commercial crimes.

4.2 His experience in administrative and constitutional law is, by his own account, limited.

4.3 In addition to the eight judgments provided by the candidate in his application, 44 judgments handed down by a 'Swanepoel AJ' were found.

4.4 For twelve judgments by a "Swanepoel AJ" during 2017, 2018, and 2019, it is unclear whether the judgments were handed down by the candidate or a different acting judge, as no initials were included in the judgments or the available court rolls.

4.5 The judgments available for and known to be by the candidate show that he has a wide knowledge of the law.

4.6 Only two of the candidate's judgments dealt directly with constitutional law questions.

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

5.1 The candidate has not disclosed a particular professional interest in constitutional law, nor has this been the focus of his practice.

5.2 A review of judgments handed down by the candidate reveal that he is sensitive to the prevalence of violent crimes against women and

children. The candidate's judgments demonstrate sensitivity to circumstances which may render litigants particularly vulnerable. These are taken into account in arriving at an equitable outcome.

6 Whether any judgments have been overturned on appeal

6.1 No judgments overturning decisions by the candidate have been found. One decision is on appeal and another appeal against a judgment by the candidate was dismissed.

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

7.1 The candidate has extensive experience in criminal, commercial, and general civil litigation. The candidate's experience in administrative and constitutional law appears to be limited, by his own account.

8 The candidate's linguistic and communication skills

8.1 The candidate communicates well in English. His judgments are generally well-written and cogent.

8.2 The candidate records in his application that he also speaks Afrikaans and is currently learning Sesotho.

9 The candidate's ability to produce judgments promptly

9.1 The candidate appears to produce written judgments promptly. From the available data, the candidate delivers judgments in twelve days, on average.

10 The candidate's fairness and impartiality

10.1 The candidate appears to approach matters with a view to achieving an equitable outcome. His judgments appear measured and unbiased.

11 The candidate's independent mindedness

11.1 The candidate appears to make an effort to craft equitable orders in difficult matters. However, his judgments make careful and often extensive reference to case authorities, so that he appears to be mindful of binding precedent.

12 The candidate's ability to conduct court proceedings

12.1 No negative comments have been received in this regard.

13 The candidate's administrative ability

13.1 No negative comments have been received in this regard.

13.2 The candidate's judgments are generally well-structured and neatly presented.

14 The candidate's reputation for integrity and ethical behaviour

14.1 No negative comments have been received in this regard.

14.2 From several of the candidate's judgments, it is clear that he is keenly aware of the special duty of integrity resting on legal practitioners. The candidate is quick to remark on unethical or unprofessional conduct and appears consistent in bringing such behaviour to the attention of the relevant regulatory body.

14.3 Within his community, the candidate appears to be highly regarded for his ethics.

15 The candidate's judicial temperament

15.1 Comments were received that were positive about the candidate's judicial temperament. He is described as being cordial and engaged.

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

16.1 The candidate devotes a significant amount of his personal time to serving vulnerable members of his community.

16.2 He has an interest in promoting transformation, evidenced by his membership of the transformation committee of St Dominic's Catholic School for Girls. This shows especially that he is aware of the risk of ongoing structural discrimination on the basis of race.

16.3 The candidate's service to his community indicate that he is committed to the protection and promotion of human rights. His judgments all display that he is sensitive to the often difficult circumstances facing litigants. He appears to be fair-minded and progressive.

17 The candidate's potential

17.1 The candidate is 61 years old. He has about 34 years of experience as a legal practitioner.

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

18.1 It is worth noting that this is the candidate's first application to be appointed to the bench. His considerable investment of time into acting in various courts of the Gauteng Division over the past four years shows a commitment to gaining sufficient experience as an acting judge.

18.2 The candidate's application to be appointed permanently to the bench does not appear unconsidered, opportunistic, or premature. He is clearly a valued and respected member of his community.

18.3 The candidate's appointment would send a positive message to the community at large that judicial officers are required to be persons of experience, integrity, and commitment.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported Decisions

Pretorius and Others v Minister of Justice and Correctional Services and Others
2018 (2) SACR 501 (GP)

*Woodlands Dairy Proprietary Limited and Another v Minister of Agriculture,
Forestry and Fisheries in the Government of the Republic of South Africa and
Others* [2021] 3 All SA 619 (GP)

Unreported Decisions

Mkhwanazi v S (A863/2016) [2017] ZAGPPHC 1140 (8 August 2017)

Camm Transport v Guma Transport and Others (27337/2015) [2017] ZAGPPHC
562 (15 August 2017)

*South African Revenue Services v HR and Associates CC; In re: HR and Associates
CC v South African Revenue Services* (83546/2016) [2017] ZAGPPHC 559 (15
August 2017)

Hoer Volksskool Heildelberg v Safta Properties (Pty) Ltd (80658/2016) [2017]
ZAGPPHC 555 (17 August 2017)

Kuhne v Central Bridge Trading 333 CC and Others (64416/2016) [2017]
ZAGPPHC 1146 (18 August 2017)

S v Waajah (A3109/2016) [2017] ZAGPPHC 792 (24 August 2017)

Zwane v RAF (73517/2015) [2017] ZAGPPHC 1204 (24 August 2017)

De Lange and Another v Minister of Police (31026/2016, 31027/2016) [2017] ZAGPPHC 1062 (1 September 2017)

The Standard Bank of South Africa Ltd v Wilkenson (68566/2018) [2018] ZAGPPHC 855 (30 January 2018)

Kalumwaga v S (A589/16) [2018] ZAGPPHC 391 (16 April 2018)

CUF Properties (Pty) Ltd v Mthimkulu and Others (2011/53946) [2018] ZAGPPHC 491 (23 April 2018) [The reviewer could not ascertain whether this was a judgment of the candidate or a different Swanepoel AJ.]

Kgarebe v Health Professions Council of SA and Others (2015/63370) [2018] ZAGPPHC 498 (14 May 2018)

Zephan (Pty) Ltd and Others v Noormahomed (2017/26036) [2018] ZAGPPHC 346 (14 May 2018)

Tau v S (A624/2016) [2018] ZAGPPHC 357 (18 May 2018) [The reviewer could not ascertain whether this was a judgment of the candidate or a different Swanepoel AJ.]

**J v J* (A357/2018) [2018] ZAGPPHC 851 (10 December 2018)

**Kwalo Trading CC and Another v Amathole Forestry Company (Pty) Ltd*

**National Commissioner of The South African Police Services and Another v Forensic Data Analysts (Pty) Ltd and Another* (24570/2018) [2019] ZAGPPHC 6 (30 January 2019)

Ndlovu v S (456/2017) [2019] ZAGPPHC 40 (30 January 2019)

Bouwer NO and Another v Smit NO and Others (59423/2015) [2019] ZAGPPHC 264 (5 June 2019)

Bila and Another v S (A498/2017) [2019] ZAGPPHC 209 (12 June 2019)

Shikwambana v S (A274/2018) [2019] ZAGPPHC 207 (12 June 2019)

Standard Bank of South Africa Ltd v Companies and Intellectual Property Commission and Others (14056/2019) [2019] ZAGPPHC 203 (10 June 2019)

Investec Bank Ltd v Lombard Insurance Company Ltd and Another (69330/2018) [2019] ZAGPPHC 251 (26 June 2019)

Trustco Group International (Pty) Ltd and Others v Hahn & Hahn Inc (78757/2014) [2019] ZAGPPHC 242 (26 June 2019)

City of Tshwane Metropolitan Municipality and Another v Lesego Media t/a Y Media and Others (82834/2014) [2019] ZAGPPHC 252 (28 June 2019)

Leta v Bennet and Others (23639/2015) [2019] ZAGPPHC 329 (30 July 2019)

Blundell v Road Accident Fund (66132/2016) [2019] ZAGPPHC 389 (18 August 2019)

ABSA Bank Ltd v Sinthumule N.O and Another (22885/2015) [2019] ZAGPPHC 378 (19 August 2019)

Matsimela v Road Accident Fund (5852/2018) [2019] ZAGPPHC 398 (27 August 2019)

RLWA (Pty) Ltd v McDuling (56595/2019) [2019] ZAGPPHC 422 (11 September 2019)

Law Society of the Northern Provinces v Nkhwashu and Others (79331/2018) [2019] ZAGPPHC 560 (19 September 2019)

Mahlangu and Others v Mahlangu and Others (73302/2017) [2019] ZAGPPHC 491 (19 September 2019)

Sayed obo Zitha v Road Accident Fund (24434/2017) [2019] ZAGPPHC 488 (19 September 2019) [The reviewer could not ascertain whether this was a judgment of the candidate or a different Swanepoel AJ.]

Trustco Group International (Pty) Ltd and Others v Hahn & Hahn Inc (78757/2014) [2019] ZAGPPHC 499 (19 September 2019)

Khoza v Road Accident Fund (12297/2014) [2019] ZAGPPHC 648 (22 October 2019) [The reviewer could not ascertain whether this was a judgment of the candidate or a different Swanepoel AJ.]

***Law Society of the Free State v Grobler* (33208/2013) [2019] ZAGPPHC 558 (22 October 2019)

**Autumn Skies Resources and Logistics (Pty) Ltd v Genet Manganese (Pty) Ltd In re: Genet Manganese (Pty) Ltd v Minister of Mineral Resources and Others* (47060/2017) [2019] ZAGPPHC 559 (25 October 2019)

**Gerhard Potgieter Maintenance Cleaning Services (Witbank) CC t/a Mr Clean and Another v Gordon and Another* (A220/2016, A146/2016, 32665/2010) [2019] ZAGPPHC 548 (25 October 2019)

Mpulwane v Road Accident Fund (46661/2016) [2019] ZAGPPHC 563 (25 October 2019) [The reviewer could not ascertain whether this was a judgment of the candidate or a different Swanepoel AJ.]

Ogwang v Minister of Police (10305/2017) [2019] ZAGPPHC 625 (25 October 2019) [The reviewer could not ascertain whether this was a judgment of the candidate or a different Swanepoel AJ.]

Corin v Road Accident Fund (98614/2015) [2019] ZAGPPHC 543 (1 November 2019) [The reviewer could not ascertain whether this was a judgment of the candidate or a different Swanepoel AJ.]

Ditsela v Road Accident Fund (59582/18) [2019] ZAGPPHC 531 (1 November 2019) [The reviewer could not ascertain whether this was a judgment of the candidate or a different Swanepoel AJ.]

Ebersohn and Another v Golden Dividend 35 (Pty) Ltd (8886/2018) [2019] ZAGPPHC 555 (1 November 2019) [The reviewer could not ascertain whether this was a judgment of the candidate or a different Swanepoel AJ.]

M v Road Accident Fund (5172/2018) [2019] ZAGPPHC 1008 (1 November 2019) [The reviewer could not ascertain whether this was a judgment of the candidate or a different Swanepoel AJ.]

KBV Group (Pty) Ltd v Uninvest Mining Group (Pty) Ltd and Others (23648/2020) [2020] ZAGPPHC 244 (23 June 2020)

Mokaba and Another v Absa Bank Limited and Another (26719/2019) [2020] ZAGPPHC 666 (16 November 2020)

Tricks Wrought Iron Services (Pty) Ltd v Vhembe District Municipality (86475/2014) [2020] ZAGPPHC 696 (20 November 2020)

Mgaga v Stadlander N.O and Others (17104/2019) [2021] ZAGPPHC 142 (28 January 2021)

**Mamepe Capital (Pty) Ltd and Another v Financial Services Tribunal and Another* (93773/2019) [2021] ZAGPPHC 148 (29 January 2021)

**Swart N.O and Others v Lukhaimane N.O and Others* (54157/2019) [2021] ZAGPPHC 124 (12 February 2021)

**M obo M v Member of the Executive Council for Health of the Limpopo Provincial Government* (31261/2015) [2021] ZAGPPHC 139 (8 March 2021)

**Maphosa v MEC for Health, Limpopo* (29755/2011) [2021] ZAGPPHC 176 (15 March 2021)

Business Partners Ltd v Sophia Property Investments (Pty) Ltd (1307212019) [2021] ZAGPPHC 178 (29 March 2021)

**S v Monjane* (unreported)

**S v Monjane* (unreported: sentencing)

* denotes judgments provided by the candidate

** denotes a concurring judgment

Judgments upheld on appeal:

Zephan (Pty) Ltd and Others v Noormahomed (1303/18) [2019] ZASCA 162

Judgments overturned on appeal:

None.