

JSC INTERVIEW ROUND: APRIL 2022

**CANDIDATE: ADVOCATE JOSEPHUS JOHANNES FRANCOIS HEFER
SC**

**COURT FOR WHICH CANDIDATE APPLIES: FREE STATE HIGH
COURT, BLOEMFONTEIN**

1. The candidate's tertiary qualifications, professional admissions and honours:

- 1.1. 1980 – Senior Certificate
- 1.2. 1985 – BA degree
- 1.3. 1989 – Baccalaureus Legum (LLB)
- 1.4. 1991 – Successfully completes Attorneys Admission Examination
- 1.5. 19 March 2018 – Senior Consultus status conferred by the President of the Republic of South Africa

2. The candidate's integrity and ethics

- 2.1. No circumstances are known that would suggest that the candidate is not a person of integrity with a reputation for ethical behaviour or is not a fit and proper person for appointment.
- 2.2. No complaints or disciplinary proceedings have ever been received or instituted against the candidate.

2.3. The candidate is known within the Society as a person whose ethics and integrity are beyond reproach.

2.4. The candidate has been involved with vocational training in the Society for almost two decades and is well known for his high ethical standards.

3. Whether the candidate's appointment would help to achieve an appropriate racial and gender composition on the bench:

3.1. There are currently 14 full time judges on the Free State bench, comprising (as far as could be ascertained):

3.1.1. 4 black women (3 African, 1 Indian);

3.1.2. 5 black men (4 African, 1 Coloured);

3.1.3. 3 white women; and

3.1.4. 2 white men.

3.2. The candidate is a white man.

3.3. The candidate's appointment as white male will in light of the composition of the bench not detract from reflecting the gender and race demographics of the bench.

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

4.1. The candidate has established his commitment to the values of the Constitution in practice; his contribution to the vocational training of advocates over a period of 17 years from 2004-2021; his participation

in the management of the Society and contributions during meetings; in his conduct as acting judge and in his judgments.

- 4.2. The candidate's judgments depict an understanding and commitment to the values of the Constitution.
- 4.3. The candidate has been involved in vocational training of aspirant advocates for almost two decades, first as member of the Committee and later as Chairperson of the committee.
- 4.4. The candidate is highly respected and valued for his commitment to the training of aspirant counsel/pupils and his willingness and ability to assist pupils with professional and personal challenges to ensure that it does not interfere with the successful completion of the vocational training.
- 4.5. The candidate has demonstrated a commitment to human rights and the values and needs of the community.
- 4.6. Apart from the candidate's involvement with vocational and advocacy training, he presents Legal Writing lectures of the Pupils.
- 4.7. The candidate also served as mentor for two pupils.
- 4.8. The candidate was the Chairperson of the Kovsie Alumni Trust: (2008-2011) and served as NICRO board member from 2011 to 2013.
- 4.9. The candidate's commitment for the values of the Constitution is clear from his daily conduct and his commitment to the enhancement of advocacy.

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

- 5.1. The candidate served as Judge's Registrar from 1986 until 1988.
- 5.2. The candidate served as candidate attorney from 1989-1990 whereafter started his practice in 1991 as an advocate.
- 5.3. The candidate served as acting judge on numerous occasions in this division.
- 5.4. The candidate has vast experience in both civil and criminal law and senior *consultus* status was bestowed on him during 2018.
- 5.5. The candidate's judgments demonstrate that the candidate has a broad and sound knowledge of the law, including constitutional law, of the Republic.
- 5.6. The candidate's exposure to all facets of South African Law, his experience and the fact that he has acted as a judge of this division on numerous occasions makes him ideally suited for appointment to the Free State bench.
- 5.7. The cases referred to in the candidate's application touch on both civil and criminal matters and the Constitution and constitutional values are infused and plays a vital role in his judgments.
- 5.8. One of the candidate's judgments was reported in the South African Criminal Law Reports.
- 5.9. In *Kopanong Local Municipality and Municipal Workers Retirement Fund and Five Others IN RE: Municipal Workers Retirement Fund and*

Kopanong Local Municipality (case number: 2231/2021, 19 August 2021) the applicant was a local sphere of government and organ of state seeking an order interdicting the Fund from proceeding with execution of the two orders of the court and that the attachment of funds, effected subsequently to such order held in the Municipality`s bank account, be set aside and rescinded. The candidate, after carefully considering all the factors, held that an injustice will be done towards the Fund and the employee-members of the Fund if the execution process be stayed any longer.

- 5.10. The matter of *Maritz Johan (Felix) Kramer and Jacobus Johannes (Beukes) Westraad, Ettienne Visser, and Ursispace (Pty) Ltd* (case number 5602/2016, 19 October 2017) presented a unique and extraordinary set of facts in which the applicant sought the joinder of two additional parties as respondents, to enable the applicant to obtain an order to the effect that such additional parties would pay the costs of the liquidation proceedings instituted by the applicant against an existing respondent party and the setting aside of the liquidation order. The application involved insolvency law and allegations that the applicant was not properly advised by the attorney who actually promoted another client`s interests in using the applicant to institute liquidation proceedings.
- 5.11. The candidate established his independent mindedness and ability to deal decisively with complicated issues in a voluminous application.
- 5.12. In *S v Sibeko and Others* 2017 (2) SACR 457 (FB) (29 June 2017) the candidate wrote on behalf of the Court of Review. The matter involved

a part-heard criminal case that was referred for review by a Magistrate after the Magistrate became aware that the advocate who had represented the accused had been struck from the Roll of Advocates as he did not have, from the outset, the qualifications to practice as an advocate and an interdict was granted by the High Court prohibiting the person from acting as an advocate. The candidate examined the applicable provisions of the Magistrates Court governing referrals to the High Court and case law in respect thereof and the exercise of the High Court's inherent jurisdiction. The candidate held that sections governing referrals of criminal cases for review by the High Court could not find application as the requirements for referral in terms thereof was not satisfied. The candidate, after evaluating the law, held that the Court had the inherent jurisdiction to hear the review in terms of section 173 of the Constitution and that it was in the interest of justice to do so with consideration of the accused rights entrenched in section 35(3)(f) of the Constitution. The representation by an unqualified advocate who could and should never have been admitted as an advocate constituted a gross irregularity and infringement of the accused's rights to a fair trial. The proceedings were set aside and remitted to be heard *de novo* before another Magistrate.

- 5.13. In *Botha t/a Johnny's Construction and Another v Kabelo Investments (Pty) Ltd t/a Central Timer and Truss* (case number, 5512/2016, [2018] ZAFSHC 8 (8 February 2018)), the candidate considered an application for leave to appeal against the judgment of an acting judge that was not available to hear the application. The judgment against which the application for leave lay had declared certain immovable properties

specially executable. The candidate lucidly dealt with the judgment and after applying constitutional values came to the conclusion that considering the provisions of section 26 of the Constitution dealing with the right to adequate housing where a person's primary residence is at stake, that there were reasonable prospects that an appeal would have prospects and that such a person should be allowed the benefit of the doubt. Leave to appeal was granted.

6. Judgments of the candidate that have been overturned, upheld or commented on, on appeal:

6.1. None of the candidate's judgments have been taken on appeal.

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

7.1. The candidate has vast professional experience.

7.2. The candidate served as judge's registrar from 1986 until 1988, whereafter the candidate was a candidate attorney at Jan S de Villiers & Son Attorneys from 1989-1990.

7.3. The candidate commenced his practice as advocate in 1991 as advocate and senior *consultus* status was conferred on the candidate on 19 March 2018.

7.4. The candidate acted as judge of the High Court, Bloemfontein, Free State Division on several occasions, being September 2016 (2 weeks), May 2017- September 2017 (one term), November 2018 (one month) July 2021 (2 weeks)

7.5. The candidate has also been involved with the following organizations:

- 7.5.1. Chairperson of the Free State Appeal Valuation Court (2003-2005), 2006.
- 7.5.2. For the period 2004-2021 he was involved in the training of pupils at the Free State Society of Advocates, during this period he served amongst others as member of the pupillage committee, Pupillage Coordinator and Chairperson of the Pupillage Committee at the Free State Society of Advocates.
- 7.5.3. The candidate served numerous terms on the Bar Council of the Free State Society of Advocates.
- 7.5.4. The candidate was the Chairperson of the Koviese Alumni Trust (2008-2011).
- 7.5.5. The candidate is also a Member of the Disciplinary Committee, Clay Target Association of SA: 2007 to date.
- 7.5.6. The candidate was a NICRO board member from 2011 to 2013.
- 7.6. The candidate attended the Advocacy Training Course at Keble College, Oxford, United Kingdom.

8. The candidate's linguistic and communication skills:

- 8.1. The candidate displayed excellent linguistic skills and proficiency in writing judgments in English.
- 8.2. The candidate's judgments are well written, lucid and follow a logical extraction of the important facts and the application of the law thereto.
- 8.3. The candidate is proficient in communicating and writing in English.

8.4. The candidate is encountered as very approachable in chambers and installs a sense of calmness.

8.5. The applicant is also proficient in Afrikaans.

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

9.1. The candidate's judgments have always been delivered with promptness, and never exceeded the time limits.

10. **The candidate's ability to conduct court proceedings fairly, efficiently and effectively:**

10.1. The candidate has demonstrated his ability to conduct court proceedings fairly, efficiently and effectively during his acting stints.

10.2. The candidate is always thoroughly prepared and is able to direct the parties to the specific issues upon which he requires further deliberation whilst allowing counsel to make their argument.

10.3. The candidate treats all legal practitioners that appear before him with utmost courtesy and equally.

10.4. The candidate is engaging in court but also ensures the efficient utilisation of court time and infrastructure.

10.5. The candidate has an accommodating and engaging disposition, regardless of the length of the proceedings.

10.6. The candidate is able to deal with the logistic challenges.

- 10.7. The candidate is independent minded and this is clearly established by his conduct in court and in his judgments.
- 10.8. The candidate`s performance as judge evidences that the candidate has always appeared fair and impartial and his judgments reflect same. No adverse comments have been received in that regard.
- 10.9. The judgments delivered by the candidate display an adequate degree of fairness, efficiency and effectiveness.
11. **The candidate`s independent mindedness:**
- 11.1. The candidate is independent minded and this is evidenced clearly from his conduct in court and in his judgments.
12. **The candidate`s administrative ability (other than in relation to court proceedings):**
- 12.1. The candidate has excellent administrative ability as evidenced from the positions he has filled and served on.
- 12.2. The candidate was involved in vocational training for 17 years, *inter alia* as chairperson responsible for the logistics and proper functioning of the committee.
- 12.3. The candidate served in various capacities as stated above, including:
- 12.3.1. Serving numerous terms on the Bar Council of the Free State Society of Advocates.
- 12.3.2. Serving as Chairperson of the Kowsie Allumni Trust: (2008-2011).

12.3.3. Serving as member of the Disciplinary Committee, Clay Target Association of SA: 2007 to date.

12.4. Serving as NICRO board member from 2011 to 2013.

13. **The message that the candidate's appointment would send to the public at large:**

13.1. The candidate's appointment will confirm appointment of experienced legal practitioners who are committed to the constitutional norms and service of the public.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Arnold Properties (Pty) Ltd v ZPC Joinery (Pty) Ltd and Others (2310/2016) [2017]
ZAFSHC 191 (14 September 2017)

Botha v Botha (2406/2017) [2017] ZAFSHC 143 (15 June 2017)

*Botha t/a Johnny's Construction and Another v Kabelo Investments (Pty) Ltd t/a
Central Timer and Truss* (5512/2016) [2018] ZAFSHC 8 (8 February 2018)

Corrigan Investments (Pty) Ltd t/a Kevcor v BMI Driving (Pty) Ltd (3939/2017)
[2017] ZAFSHC 204 (9 November 2017)

Du Toit N.O. and Others v Coenoe 90 CC and Others (1584/2017) [2017] ZAFSHC
126 (2 August 2017)

Herselman and Another v Matsepe N.O. and Others (4973/2014) [2017] ZAFSHC
209 (2 November 2017)

Johan Burger (Pty) Ltd v Broodryk (5473/2017) [2018] ZAFSHC 171 (1 November
2018)

*Kopanong Local Municipality and Municipal Workers Retirement Fund and Five
Others IN RE: Municipal Workers Retirement Fund and Kopanong Local
Municipality* Case number: 2231/2021 [19 August 2021]

Louw v Grobler and Another (3074/2016) [2017] ZAFSHC 109 (1 June 2017)

*Maritz Johan (Felix) Kramer and Jacobus Johannes (Beukes) Westraad, Ettienne
Visser, and Ursispace (Pty) Ltd*, 5602/2016 [19 OCTOBER 2017]

Motlatsi v Director-General of the Free State Province and Others (2960/2016)
[2017] ZAFSHC 144 (31 August 2017)

Oosthuizen and Another v Road Accident Fund (68/2015) [2018] ZAFSHC 167 (25
October 2018)

Rand Building Hydraulics (Pty) Ltd v Gilfillan (4164/2016) [2017] ZAFSHC 205
(26 October 2017)

The State v V Sibeko and Three Others, Case Number: No.: R84/2017