

JSC INTERVIEW ROUND: APRIL 2022

CANDIDATE: ADVOCATE JOHN HOLLAND-MÚTER SC

COURT FOR WHICH CANDIDATE APPLIES: LIMPOPO DIVISION OF THE HIGH COURT

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

The candidate's tertiary qualifications and experience are as follows.

- 1.1. He Matriculated in 1973 at the Hoërskool Generaal Hertzog in Emalahleni, Mpumalanga.
- 1.2. On 6 January 1975 he joined the Department of Justice and enrolled for a B Iuris degree.
- 1.3. The B Iuris degree was obtained at the end of 1978 from the University of Pretoria.
- 1.4. He did his compulsory military service during 1979 to 1980 and was transferred to Witbank Magistrates' Court as a Prosecutor at the beginning of 1981.
- 1.5. He served as additional Magistrate from 1982 to 1987 at Witbank Magistrates' Court, and was then transferred to the Pretoria Magistrates' Court.

- 1.6. At the beginning of 1988 he was transferred to the Justice College as a Lecturer in law. He was a lecturer for a period of 10 years.
- 1.7. He obtained his LLB degree during 1993 from the University of South Africa (UNISA).
- 1.8. He joined the Pretoria Bar at the beginning of 1998.
- 1.9. He did his pupillage at the Pretoria Bar from 1 February 1998 to 30 June 1998 and joined the Pretoria Society of Advocates after completing his pupillage.
- 1.10. Senior status (Silk) was conferred upon the candidate on 31 July 2019.
- 1.11. At all times during the period 1998 to date he has been practicing as an Advocate.

2. The candidate's integrity and ethics:

- 2.1. No facts or circumstances are known that would suggest that the candidate is not:
 - 2.1.1. a person of integrity;
 - 2.1.2. a fit and proper person for appointment.

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

- 3.1. There are currently 8 full time judges on the Limpopo Division bench, comprising (as far as could be ascertained from the latest law reports):
 - 3.1.1. 2 black women.

3.1.2. 5 black men.

3.1.3. 1 white man.

3.2. The candidate is a white man.

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

4.1. The candidate has been a member of the parish council at the Dutch Reformed Church for the past 8 years. The evening services are held in English by the Echo Youth Development non-profit company, which was formed years ago by the church to accommodate all people in the Moot area. The Echo group is primarily focussed on abandoned children in need of shelter. At present there are 5 private houses in the parish housing approximately 80 children from all races. The candidate's family is involved in donating food and other needs where necessary.

4.2. The candidate and a Pastor are involved in the reintegration of a woman into the community after the latter had served a 10-year term of imprisonment. She completed her LLB degree in prison and is currently busy with her LLM degree. She was released on parole after serving 5 years imprisonment. She is doing her research through UNISA and according to the candidate, he assists her in her assignments and with advice where possible.

4.3. The candidate's parish is also involved in the Jacaranda Children's home in Derdepoort, Pretoria. There are 20 houses at this institution, each assisted by the Dutch Reform parish. The candidate's personal

involvement is at house number 15, where 12 minor boys (7 white and 5 black) are housed.

- 4.4. The candidate is a member of the Pretoria Society of Advocates Transformation Committee. The Pretoria Bar restructured its transformation policy to enhance the upliftment of previously disadvantaged juniors by senior counsel, to transfer skills to these juniors. The aim is in particular to enhance the position of young women advocates.
- 4.5. According to the candidate's Curriculum Vitae, he has assisted several young women advocates by involving them in matters, with the consent of his instructing attorneys, to expose them to more complicated matters in which juniors of their standing would usually not be briefed. He has also requested some of his instructing attorneys to brief these juniors in more junior matters, in his stead. He did so to introduce them to his attorneys.
- 4.6. The candidate's investment in the aforementioned projects/initiatives demonstrates a personal commitment to the values of the constitution.

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

- 5.1. According to the candidate's Curriculum Vitae, he currently practices in personal injury matters (RAF claims and medical negligence), family law, commercial matters (insolvency and company law), prevention of organised crime (POCO), contractual and delictual claims such as damages arising from unlawful arrests, unlawful competition and passing of claims and administrative law.

- 5.2. He is also involved on an ad-hoc basis in ongoing training of school management bodies, in respect of disciplinary matters and procedures.
- 5.3. He is experienced in criminal matters as a prosecutor, magistrate and acting judge.
- 5.4. His proportion of litigation work in the respective fields are as follows:
 - 5.4.1. Criminal law: 15%.
 - 5.4.2. Administrative law: 10%.
 - 5.4.3. Constitutional law: 5% (however constitutional law is also indirectly referred to in other fields).
 - 5.4.4. Other areas of civil law: - Personal injury law: 25%, family law: 20%, law of contract 15%, Arbitrations: 10%.

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

- 6.1. The reviewer considered the following judgments that have been upheld, commented on, or overturned on appeal:
 - 6.1.1. *Jenni Button (Pty) Ltd v Hyprop Investments Limited* (Case number 65643/2015)

This was an opposed spoliation application. The Full Court set the candidate's judgment aside. The locus standi of the applicant (as a sub-division of the holding company) was contested. The finding on the merits was not challenged, only the issue of locus standi.

- 6.1.2. *Leon St Leger Boutell v Road Accident Fund* (Case number 55458/2014)

The candidate granted leave to appeal to the Supreme Court of Appeal because, in his view, there was no existing case law on the position of “private” annuities compared with employees’ compulsory retirement funds that may amount to unfair discrimination. The appeal was heard on 14 May 2018 and the Supreme Court of Appeal upheld the candidate’s judgment.

- 6.1.3. *Cloete Murray N.O. v VI Moureau* (Case number 13377/2013)

The Supreme Court of Appeal upheld the candidate’s judgment during June 2020. This was an insolvency matter where the dispute was whether certain monies received by an insolvent from a provident fund constituted an asset in his estate. Monies received before insolvency, as a result of commixtio, became part of the insolvent’s estate and therefore vested in his later insolvent estate.

- 6.1.4. *M Kenosi v L Mofokeng* (Case number 50196/2016)

The Supreme Court of Appeal dismissed the petition after the candidate refused to grant leave to appeal against his judgment referring the matter to trial for oral evidence. The question which served before court was whether it was possible to determine on affidavit if certain signatures were falsified or not.

- 6.1.5. *R Leathern N.O. v Reserve Bank* (Case number 41306/2019)

The Supreme Court of Appeal set the candidate's judgment aside. The matter was about "tainted monies" and whether these monies were protected by the Insolvency Act or could be attached by a "blocking order" issued by an employee of the Reserve Bank. The candidate held that the Insolvency Act superseded the blocking order by an employee but the Supreme Court of Appeal found the opposite.

- 6.2. To date only two appeals against the candidate's judgments have been successful. According to the candidate he has granted at least ten applications for leave to appeal against his judgments and refused approximately ten of which 4 were petitioned unsuccessfully.

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

- 7.1. With reference to the candidate's undermentioned history and professional experience, the candidate over a long professional career gained many years of practical experience, as a magistrate, advocate and acting judge:

- 7.1.1. The candidate was appointed as an additional magistrate at Witbank Magistrates' Court on 1 October 1981.
- 7.1.2. On 31 May 1987 the candidate was transferred to Pretoria Magistrates' Court.
- 7.1.3. The candidate was promoted to the rank of senior magistrate during 1990, whilst he was a law lecturer at the Justice College.

- 7.1.4. He resigned on 31 January 1998 to join the Pretoria Society of Advocates where he still practices.
- 7.1.5. He presided as an acting judge during the following periods in the Gauteng Division of the High Court, Pretoria and Johannesburg.
- 7.1.5.1.
- 7.1.5.2. 13 April 2015 to 24 April 2015 (Pretoria).
- 7.1.5.3. 7 September 2015 to 25 September 2015 (Pretoria).
- 7.1.5.4. 19 October 2015 to 6 November 2015 (Pretoria).
- 7.1.5.5. 25 April 2016 to 29 April 2016 - *pro bono* RAF initiative (Pretoria).
- 7.1.5.6. 14 November 2016 to 25 November 2016 (Pretoria).
- 7.1.5.7. 15 May 2017 to 2 June 2017 (Pretoria).
- 7.1.5.8. 12 June 2017 to 23 June 2017 (Pretoria).
- 7.1.5.9. 10 July 2017 to 14 July 2017 (Pretoria).
- 7.1.5.10. 17 July 2017 to 21 July 2017 - *pro bono* RAF initiative (Pretoria).
- 7.1.5.11. 4 September 2017 to 20 September 2017 (Pretoria).
- 7.1.5.12. 23 October 2017 to 3 November 2017 (Pretoria).
- 7.1.5.13. 22 January 2018 to 26 January 2018 (Pretoria).

- 7.1.5.14. 19 February 2018 to 9 March 2018 (Pretoria).
- 7.1.5.15. 4 June 2018 to 29 June 2018 (Pretoria).
- 7.1.5.16. 16 July 2018 to 20 July 2018 - *pro bono* initiative during recess (Pretoria).
- 7.1.5.17. 10 September 2018 to 21 September 2018 (Pretoria).
- 7.1.5.18. 22 October 2018 to 2 November 2018 (Johannesburg).
- 7.1.5.19. 4 March 2019 to 22 March 2019 (Pretoria).
- 7.1.5.20. 8 April 2019 to 12 April 2019 (Pretoria).
- 7.1.5.21. 27 May 2019 to 28 June 2019 (Johannesburg – criminal court).
- 7.1.5.22. 8 July 2019 to 12 July 2019 (Johannesburg).
- 7.1.5.23. 19 August 2019 to 20 September 2019 (Pretoria).
- 7.1.5.24. 10 January 2020 to 17 January 2020 (Pretoria).
- 7.1.5.25. 19 February 2020 to 27 March 2020 (Pretoria).
- 7.1.5.26. 20 April 2020 to 1 May 2020 (Pretoria).
- 7.1.5.27. 1 June 2020 to 26 June 2020 (Pretoria).
- 7.1.5.28. 21 September 2020 to 23 September 2020 (Pretoria).
- 7.1.5.29. 9 April 2021 to 30 April 2021 (Pretoria).
- 7.1.5.30. 27 September 2021 to 1 October 2021 (Pretoria).

7.1.5.31. 8 November 2021 to 3 December 2021 (Pretoria).

(Total weeks acted = 78)

7.2. The candidate demonstrates concomitant knowledge of the law, communication skills, ability to manage court proceedings, lifelong learning and community involvement.

8. The candidate's linguistic and communication skills:

8.1. The candidate's judgments are well-written and well-reasoned and he is proficient in English.

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

9.1. The candidate has the ability to produce judgments promptly.

9.2. To date, he has delivered 58 judgments of which 32 were delivered within 1 month and 23 delivered within 1 to 3 months.

9.3. The candidate took longer than 3 months to hand down judgments in the following 3 matters after their last hearing:

9.3.1. *Minister of Safety and Security vs Dino Peterson:*

This was a full court appeal against the judgment of Bam J. The candidate presided with Molefe J and Van der Westhuizen J. The appeal was heard on 4 December 2019 and the judgment was delivered on 6 March 2020. According to the candidate, the presiding judges encountered difficulties to meet to discuss the judgment.

9.3.2. *T Motau and Other vs HPCSA and Others:*

The matter was heard on 25 October 2017. However both counsel supplied further heads of argument at the end of November 2017. The candidate's judgment was delivered on 23 February 2018, after the December recess period.

9.3.3. *Etresia van der Walt vs Maria E Stoop:*

The matter was heard from 6 to 8 June 2018. Oral arguments were presented on 27 July 2018. Certain recalculations had to be done after the evidence was finalised. The recalculations were submitted to the candidate during September 2018. After receipt of the recalculations, the candidate delivered his judgment within 3 months on 30 October 2018.

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

10.1. From the comments received, the general consensus is that the candidate is always punctual, well prepared, courteous and his style of judicial engagement is commendable. The candidate furthermore displays adherence to procedural rules.

11. The candidate's independent mindedness:

11.1. The reviewer was placed in possession of various written judgments which the candidate delivered.

11.2. These judgments all display the candidate's independent mindedness.

11.3. According to the candidate, he never enrolled as a member of any political party, as he deemed it necessary to stay impartial at all times.

12. **The candidate's administrative ability (other than in relation to court proceedings):**

12.1. The candidate is proficient in the performance of administrative abilities, as demonstrated by the following:

12.1.1. he has been interviewing pupils who apply for the GCB bursary during pupillage for the last 12 years. There was no written policy which delineated the aspects to be considered when interviewing the pupils when the candidate became involved. The candidate developed a policy which set out the factors to be considered, with the emphasis on transformation. Factors such as previously disadvantaged pupils, gender (the focus on black women pupils), family and other siblings to support were given consideration.

12.1.2. The candidate has been involved in the training of pupils since 2004. This included lecturing, practical training during workshops and mentorship for new pupils.

12.1.3. The candidate served on the Northern Transvaal Magistrate's Committee. There was a quarterly publication, the Magistrate. The candidate frequently published comments on case law and articles of interest.

12.1.4. At the Justice College, the candidate compiled notes as a lecturer on various subjects to be used during training. Amongst others, he compiled notes on administrative law, motor vehicle collisions

and capita selecta in the law of delict. These notes, which are the intellectual property of the Justice College, were used for training purposes.

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

- 13.1. It is apparent from the candidate's application that he has actively participated in community related activities. He has also been actively involved in social projects of the Pretoria Bar.
- 13.2. Colleagues at the Pretoria Society of Advocates have respect for and faith in the candidate. This is borne out of the fact that he has been elected as a member of the Bar Council shortly after he joined the Bar. The candidate has been one of the longest serving members of the Bar Council.
- 13.3. The candidate has the ability to write well balanced judgments and his judgments furthermore confirm that he is unbiased.