

JSC INTERVIEW ROUND: APRIL 2022

CANDIDATE: ADVOCATE ILSE VAN RHYN

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

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

- 1.1. 1984 Baccalaureus Iuris
- 1.2. 1987 Baccalaureus Legum (LLB)
- 1.3. 1997 Advanced Diploma in Labour Law
- 1.4. 1989 Admitted as an attorney and practiced as such until December 1993
- 1.5. 1994 Admitted as an advocate and practices as such until present
- 1.6. 2017 Member of the Harassment Committee of the Free State Bar which prepared a policy in this regard.
- 1.7. 2019 to present – Member of the Legal Practice Council (Free State) Investigative Committee

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.

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 woman.

3.3. The candidate's appointment will improve the gender composition on the bench,

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

4.1. The candidate has demonstrated her commitment to the values of the Constitution in her daily interaction with members during her membership of the Society, her conduct as judge and in her judgments.

4.2. The candidate served a stint as a Magistrate in the Domestic Violence Court during 2003 and was later appointed to the Office of

the Family Advocate to assist with a backlog experienced in the Free State Office; she was thus willing to put her career as a practising advocate aside to assist some of the most vulnerable persons in the society, in the exercise of their constitutional rights.

- 4.3. The candidate has been appointed as an acting judge in the Free State Division on numerous occasions since 2018 until present.
- 4.4. In her practice, the candidate spends between 15% and 25% of her time engaged in Constitutional matters, with most of this experience being gained from her acting stints as a judge.
- 4.5. The candidate believes in the Rule of Law and applying the Constitution to the benefit of the community and to relieve hardship caused by discriminative legislation.
- 4.6. The candidate's commitment to continuously serve as an acting judge confirms her commitment to dispensing justice to all in society on all aspects of the law, whether criminal or civil, accentuating her commitment to serve the public with dignity and equality.

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

- 5.1. The candidate has been actively involved in various field of the law for more than 32 years.
- 5.2. She has been requested to act as judge in the Free State Division during eight terms since January 2018, apart from other periods during which she sat to conclude part-heard criminal and civil trials.
- 5.3. From an analysis of the judgments she wrote, it is evident that she was tasked to deliberate on numerous aspects of the law, including criminal law, family law, trust and company law, administrative law,

law of contract, all of which judgments required due cognisance to the Constitution.

- 5.4. The candidate's exposure to all facets of the South African Law and the fact that she has acted as a judge of this Division for nearly three years consecutively makes her ideally suited for appointment to the Free State bench.
- 5.5. The candidate was called to consider rectification of written contracts, evaluated the evidence and applied the law to the facts meticulously in the matter of *RZT Zelphy 4243 (Pty) Ltd v Olam South Africa (Pty) Ltd* (5462/2015) [2020] ZAFSHC 95 (15 May 2020).
- 5.6. In the *Lotz v Knipe* (quoted later), a matter which had been described by a previous court as a "*family-war*", the candidate showed proficiency in order to clearly and logically expose the relevant facts which were required to dispose of this matter. The candidate duly considered the application and counter-application in terms of Rule 45A, also referring to the Companies Act and coming to a judgment which was fair and equitable in the matter; referenced as *Caroll J Lotz v JDJ Knipe* (3864/2018) [2019] ZAFSHC 135 (1 August 2019).
- 5.7. In *Persons Whose Identities are Unknown: the Remainder of the Townlands Oranjeville 1124 v Metsimaholo Local Municipality* (A168/2020) [2022] ZAFSHC 12 (25 January 2022), the candidate wrote for the Full Court on Appeal and was called upon to deal with the constitutional right to housing and a persons' right not to be evicted from land. The candidate lucidly considered and applied applicable principles enunciated by the Constitutional Court.

5.8. In *Nala Municipality v Van Heerden* (4375/2021) [2021] ZAFSHC 318 (1 December 2021), the candidate considered and decisively dealt with the principles of jurisdiction.

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

6.1. The candidate's judgment in *BBT Electrical and Plumbing Construction and Maintenance CC t/a BBT Construction* (2690/2015) [2020] ZAFSHC 66 (24 February 2020) had been appealed against with her leave to the Full Court of the Free State Division. The Full Court dismissed the appeal and in its judgment held that the candidate correctly stated the legal position, including reliance on a Supreme Court of Appeal judgment, agreed with the candidate's detailed analysis and examination of the facts. The appellants petition to the Supreme Court of Appeal subsequently was dismissed by the Supreme Court of Appeal.

6.2. The candidate's judgment in *Mothupi v MEC: Health, Free State*, which judgment was included in her application, was upheld on appeal. The judgment is an attestation of the care that the candidate takes with a multitude of evidential matters placed before her to properly analyse expert and ordinary evidence.

6.3. Details of the other judgments could not be obtained, but the candidate disclosed that, according to her knowledge, only one appeal was upheld and the other two appeals were dismissed (the matter reflected in para 6.1 above and the matter of *Mothupi v MEC: Health, Free State* (unreported)).

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

- 7.1. The candidate has demonstrated a vast knowledge of the law spanning from her years of experience and a fine-tuning of those talents in her experience as an acting judge wherein she has shown the ability to grasp the issues before her, deal with them succinctly and pronounce herself in well-reasoned judgments.
- 7.2. The candidate has ample professional experience and will be able to fulfil the role of a judge of the High Court of South Africa with exemplary sufficiency.
- 7.3. The candidate is respected for treating legal practitioners that appear before her with respect and for her impartiality and fairness.

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, clear 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 is able to promptly produce judgments.

9.2. The candidate indicated in her application form that four judgments were still outstanding at the time of application (as at 3 December 2021).

9.3. The duration of the candidate's acting stints confirms that she acts with promptness and haste when preparing judgments.

9.4. No adverse comments have been received regarding the promptness with which the candidate delivers judgments.

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

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

10.2. Counsel reports that:

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

10.2.2. the candidate treats all legal practitioners that appear before her equally and with utmost courtesy. Then candidate is engaging in Court but also ensures the efficient utilisation of court time and infrastructure;

10.2.3. the candidate has a friendly and engaging disposition, regardless of the length of these proceedings;

10.2.4. the candidate is able to deal with the logistic challenges to ensure access to Court which was proven during the Covid pandemic where she, with proficiency, allowed matters to be presented in court and when required by audio visual means.

11. The candidate's independent mindedness:

11.1. The candidate is independent-minded and this is clearly established by her conduct in court and in her judgments.

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

12.1. The candidate has excellent administrative skills and abilities which was also recognised by the Legal Practice Council when it appointed her as part of the investigative team.

12.2. The judgments of the candidate reflects chronological, systematic and progressive lay-out, which is a product of the candidate's administrative skills.

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

13.1. The candidate's appointment will contribute to transformation recognising the demographics in the province and send a message to the public that the judiciary is committed to gender transformation and confirm appointment of experienced legal practitioners who are willing to serve the public.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Mabaso v S (A21/2018) [2018] ZAFSHC 54 (10 May 2018)

Shibane v S (A23/2018) [2018] ZAFSHC 56 (10 May 2018)

VKB Landbou (Pty) Ltd v Van Deventer (615/2017) [2018] ZAFSHC 116 (5 July 2018)

Van Heerden v Scoin Trading (Pty) Ltd (5964/2017) [2018] ZAFSHC 106 (21 June 2018)

RZT Zelphy 4243 (Pty) Ltd v Olam South Africa (Pty) Ltd (5462/2015) [2020] ZAFSHC 95 (15 May 2020).

Caroll J Lotz v JDJ Knipe (3864/2018) [2019] ZAFSHC 135 (1 August 2019).

Persons Whose Identities are Unknown v Metsimaholo Local Municipality (A168/2020) [2022] ZAFSHC 12 (25 January 2022)

Nala Municipality v Van Heerden (4375/2021) [2021] ZAFSHC 318 (1 December 2021).

BBT Electrical and Plumbing Construction and Maintenance CC t/a BBT Construction v Retmil Financial Services (2690/2015) [2020] ZAFSHC 66 (24 February 2020)

BBT Electrical and Plumbing Construction and Maintenance CC t/a BBT Construction v Retmil Financial (A120/2020) [2021] ZAFSHC199 (14 September 2021)

KJ Mothupi v MEC: Health FS (5059/2009) 18 December 2020

Motaung v S (A118/2020) [2021] ZAFSHC 274 (4 November 2021)