

**JSC INTERVIEW ROUND: OCTOBER 2022**

**CANDIDATE: ADV ELSJE-MARIÉ BEZUIDENHOUT SC**

**COURT FOR WHICH CANDIDATE APPLIES: KWAZULU-NATAL  
DIVISION OF THE HIGH COURT**

**1. The candidate's tertiary qualifications, professional admissions, honours,  
and permanent judicial appointments:**

1.1. The candidate holds the following qualifications:

1.1.1. B.Juris (1991) University of Pretoria; and

1.1.2. LLB degree (1999) University of South Africa.

1.2. The candidate is appropriately qualified.

**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.

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

3.1. There are currently 26 full time judges on the KwaZulu- Natal Bench comprising (as far as could be ascertained):

3.1.1. 10 black women: (5 African, 4 Indian, 1 Coloured);

3.1.2. 10 black men (4 African, 3 Indian, 3 Coloured);

3.1.3. 1 white woman; and

3.1.4. 5 white men.

3.2. The candidate is a white woman.

4. **The maximum time period the candidate could serve if appointed:**

4.1. Section 176(2) of the Constitution provides that all judges other than Constitutional Court judges “hold office until they are discharged from active service in terms of an Act of Parliament.” The Act in question is the Judges Remuneration and Conditions of Employment Act 47 of 2001.

4.2. Section 3(2)(a) of the Act provides that, subject to section 4(4), a judge will ordinarily be discharged from active service upon reaching the age of 70 if, by that date, they have completed a period of active service of not less than ten years. If not, they will be discharged from active service after having completed ten years of active service.

4.3. Section 4(4) allows for a judge who reaches the age of 70 to continue serving until the age of 75 if, at the time of turning 70, they have not yet served 15 years’ active service.

4.4. The candidate is 53 years old.

4.5. If appointed, the candidate could serve up to 17 years actively in office.

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

5.1. The candidate is committed to the values of the Constitution, the achievement of dignity, equality and freedom for all, and human rights generally. This is evident from the following:

5.1.1. She has been a member of the Society of Advocates of KwaZulu-Natal since July 1999 to date and has an unblemished record. She has been a member of the Pietermaritzburg Bar Committee from August 2008 until 27 January 2017 and had served on the KwaZulu- Natal Bar Council for two years in 2008 and 2009;

5.1.2. The candidate has been a member of the Pupillage Committee in Pietermaritzburg from 2016 to date. As part of the selection panel, she made a conscious effort to ensure that female pupils of colour are selected to undertake pupillage at the Pietermaritzburg Bar;

5.1.3. She lectured pupils in civil trials during 2018, 2019 and 2020;

5.1.4. She seeks to transfer her skills and expertise in the field of law to pupils and junior counsel and is supportive of transformation of the legal profession so that it represents the true demographics of the country;

5.1.5. Over the years she has built a strong relationship with pupils, advised and guided them along their careers. This is apparent from her nominator's nomination, Mr VG Sibeko where he states in paragraph 3 of his letter of nomination as follows:

*“Whilst I was her pupil, Ms Bezuidenhout made an intentional effort in ensuring that I and my fellow pupils develop and obtain the requisite skills required for our future as successful advocates at the bar. She kept an open-door policy, without looking at colour, race and she gave us access to her resources and assisted us as pupils. I digress to mention that she still keeps that policy towards all junior members of the Bar to date.”*

- 5.1.6. She has frequently assisted indigent litigants who did not have the financial resources to pursue their lawful claims and only charged these litigants after they were successful with their claims and only received what her attorneys could obtain on taxation of her bills from the other party;
- 5.1.7. She did pro bono work when called upon to do so.

**6. The candidate’s knowledge of the law, including constitutional law:**

- 6.1. The candidate has a good grasp and knowledge of the law. This is apparent from the many judgments which she has delivered which have been listed and attached to her questionnaire.
- 6.2. Both in the civil and criminal cases upon which she adjudicated, she advanced sound and rational reasons for coming to the decision which she did. Moreover, in the listed cases, she thoroughly analysed the facts of each case and her findings were supported with legal and case authorities.

6.3. In many of the listed cases the candidate dealt with constitutional principles and applied those principles where appropriate.

6.4. Having regard to her vast experience from a practical level in prosecuting criminal cases whilst she was a prosecutor and in her practice as an advocate as well as her frequent acting stints as a judge, we are of view that her knowledge and understanding of the different facets of the law, both in the civil and criminal spheres including constitutional law, are good.

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

7.1. The candidate listed two judgments which have been taken on appeal, the outcomes of which are still pending. The cases are the following:

7.1.1. *Omeda Trading CC v Golden Dice Investment CC and Others*, (4147/27) [2020] ZAKZPHC 69 (13 November 2020);

7.1.2. *Shepstone & Wylie Attorneys v AJ De Witt N.O. and Others*, (5140/2019) [2021] ZAKZPHC 38 (10 June 2021).

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

8.1. The candidate has 2 years' experience working for the Department of Trade and Industry in the Registrar of Companies' section.

8.2. She has 6 years' experience working as a public prosecutor.

8.3. She has 23 years' experience as a practising advocate as a member of the KwaZulu-Natal Society of Advocates.

- 8.4. She has acted as a judge in the KwaZulu-Natal Division of the High Court on 11 occasions, since 11 November 2019 for a total of 54 weeks.
- 8.5. Details of the candidate's experience as set out in her application can be summarised as follows:
- 8.6. The candidate has a general civil, trial practice which would necessitate her having to draft pleadings, conduct trials, lead evidence of her witnesses, cross-examine her opponent's witnesses and present argument in court. As far as her motion court practice is concerned, she would have formulated, if she were acting for an applicant, the relief which she seeks, draft application papers and if she were acting for the respondent, to draft opposing papers to resist the relief which the applicant seeks. The candidate has been in practice since July 1999 up to the present time which is a period in excess of twenty years. As such, her practical experience in performing these tasks is vast.
- 8.7. In the criminal sphere she acted as a prosecutor for approximately six years before joining the bar. She records in the questionnaire that in her first few years of practice as an advocate, she did a few trials in the High Court as *pro deo* counsel and a few on brief. She was junior to Advocate Van Schalkwyk SC and was entrusted to cross-examine a number of witnesses. In that case the accused were ultimately acquitted on appeal. She was also briefed in a trial before McLaren J defending four members of the SANDF and after three weeks of trial, secured a Section 174 discharge for her clients. She has also argued a number of criminal appeals over the years.

- 8.8. Although she has not appeared in the Constitutional Court, in many of her judgments she refers to and applies constitutional principles.
- 8.9. She has appeared in the CCMA, disciplinary hearings and the Labour Court very early in her career as an advocate, but not in recent years.
- 8.10. Her experience in law is quite diverse and she was involved in family law matters such as divorces involving large estates with complicated issues, personal injury matters, delictual claims involving wrongful arrests and malicious prosecutions, fire cases, cattle leases, disputes over ownership of mine dumps and issues relating to mineral rights of such dumps, eviction matters, commercial matters and insolvency cases.

**9. The candidate's linguistic and communication skills:**

- 9.1. As mentioned above, the candidate's judgments are well-written and well-reasoned. She properly analyses the facts of her case, advances rational reasons for her findings and supports those findings with legal and case authorities. She has an excellent command of both the English and Afrikaans languages.

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

- 10.1. The candidate listed two reserved judgements:

- 10.1.1. *The Governing body of Thuthukani special school and Another v The MEC for the Department of Education KZN*, Case no. 2550/21. Date Reserved: 16 May 2022;

10.1.2. *Venator Africa (Pty) Ltd v Martin Bekker and Another*. Case no. 8800/21. Date Reserved: 19 May 2022.

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

11.1. From our experience and comments from counsel who have appeared before the candidate whilst she acted as a judge, she met all the attributes of fairness, punctuality, preparedness, courtesy, good temperament, good judicial management, and adherence to procedural rules, optimal use of court time and resources as well as meaningful engagement with counsel with appropriate responsiveness.

**12. The candidate's independent mindedness:**

12.1. The candidate's independent mindedness is revealed in her judgments as well as her interaction with her colleagues while practising as an advocate over the last twenty-three years.

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

13.1. The candidate's administrative ability is good. She discharged her administrative duties as a member of the Pietermaritzburg Bar Committee, as a tutor and lecturer of the pupils who served pupillage at the Pietermaritzburg Bar, with diligence.



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

- 14.1. We are of the respectful view that the candidate's appointment would send a good and positive message to the public at large.

**ANNEXURE: LIST OF JUDGMENTS CONSIDERED**1. Judgments taken on appeal:

- 1.1. *Shepstone and Wylie Attorneys v Abraham Johannes De Witt N.O and Others* (5140/2019) [2021] ZAKZPHC 38 (10 June 2021). (The applicant claimed over R2.5 million in legal fee based on a deed of suretyship signed by two persons in their capacities as trustees of the Trust in favour of the applicant. The court found that the deed was not duly authorized. The point *in limine* was accordingly upheld.)
- 1.2. *Omeda Trading CC v Goldendice Investments CC and Others* (4147/2017) [2020] ZAKZPHC 69 (13 November 2020). (The court dealt with the requirements for provisional sentence summons and found that they were not met on the facts.)