

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: JUDGE GLENN GRAHAM GOOSEN

COURT FOR WHICH CANDIDATE APPLIES: SUPREME COURT OF APPEAL

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

1.1. The candidate holds the following qualifications:

1.1.1. BA (Law) (University of Cape Town) (1984); and

1.1.2. LLB (University of Cape Town) (1988).

1.2. The candidate was appointed to the Eastern Cape High Court in January 2012.

1.3. Prior thereto the candidate served as an Acting Judge in the Eastern Cape High Court for periods during 2005, 2006, 2008, 2009, 2010 and 2011.

1.4. The candidate commenced practice as a member of the Eastern Cape Society of Advocates on 1 December 1990 and was appointed as Senior Counsel on 18 December 2004.

1.5. From 1996 to 1997 the candidate was appointed National Director: Investigations Unit, Truth and Reconciliation Commission.

1.6. The candidate is appropriately qualified as is apparent from his *curriculum vitae*.

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 21 full time judges in the Supreme Court of Appeal, comprising (as far as could be ascertained):

3.1.1. 10 black women (7 African, 2 Indian, 1 Coloured);

3.1.2. 6 black men (5 African, 1 Indian);

3.1.3. 1 white woman; and

3.1.4. 4 white men.

3.2. The candidate is a white man.

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 currently 60 years old and has completed a period of 10 years of active service as a judge.
- 4.5. If appointed, the candidate could serve another 10 years.
5. **The candidate's personal commitment to the values of the constitution:**
 - 5.1. During his tenure at the Bar, the candidate was actively involved in transformation initiatives at Bar level.
 - 5.2. The applicant has displayed a thorough commitment to the values of the Constitution and upholding its provisions.
 - 5.3. The applicant holds a nomination for his appointment by Advocates for Transformation.
 - 5.4. The candidate is well-known to the Eastern Cape Society of Advocates and is known to be committed to the values of the Constitution.
 - 5.5. The applicant's firm commitment to the values of the Constitution and to the rule of law appears from his judgments as referred to below.

5.6. As is apparent from his *curriculum vitae* he has dedicated himself to the training and mentoring of young practitioners and continues to assist the Bar with the training of advocates both locally and nationally.

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

6.1. From the judgments and the *curriculum vitae* that the candidate has submitted, it appears that the candidate has an excellent understanding of the law. The candidate has also been appointed as an adjunct professor of the Nelson Mandela University since 2008 and has a good understanding of various branches of the law. The candidate has an excellent broad and diverse knowledge and understanding of the law.

6.2. From his publications it appears the candidate has extensive experience in human rights law and aspects relating to transformative jurisprudence.

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

7.1. *Madzodzo v Minister of Basic Education 2014 (3) SA 441 (ECM):*

7.1.1. This matter concerned the failure by the Department of Education to provide school furniture for pupils in a rural school in Transkei. It was held to infringe the right to basic education. The remedy required the Department to deliver appropriate school furniture to schools in the Province within 90 days of the order.

- 7.1.2. This judgment has been cited in subsequent judgments in the division and also cited in different contexts by the Constitutional Court (see *Black Sash Trust v Minister of Social Development and Others* 2017 (3) SA 335 (CC); *Mvelase and Others v Director General of Department of Rural Development and Land Reform* 2019 (6) SA 597 (CC); and *Moko v Acting Principal, Malusi Secondary School and Others* 2021 (3) SA 323 (CC).
- 7.2. *Fritz v Fundsatwork Umbrella Pension Fund and Others* 2013 (4) SA 492 (ECP).
- 7.2.1. The matter involved the question as to whether, after a divorce order has been granted, a subsequent order may be made in terms of s 7(7) of the Divorce Act dividing pension interests. It was held that unless the estate had in fact been divided the deeming provision could apply. The matter was considered by the SCA in *Ndaba v Ndaba* [2017] 1 All SA 33 (SCA).
- 7.3. *Nedbank Limited v Norris* 2016 (3) SA 568 (ECP).
- 7.3.1. Two questions arose in this matter. The first concerned the interpretation of the Superior Courts Act 10 of 2013 in relation to the jurisdictional scheme for local seats of the Court. It was held that a “local seat” exercises the jurisdiction of the division within its area of jurisdiction.
- 7.3.2. The second, more substantive issue, concerned the effect of a debt rearrangement order made in terms of the National Credit Act upon the underlying contractual relationship. It was held that

a rearrangement order does not and cannot extinguish the underlying contractual obligations. The issue came before the SCA in *Firststrand Bank Limited v Mclachlan and Others* 2020 (6) SA 46 (SCA) and the SCA specifically endorsed the finding in *Norris*.

7.4. *S v Wana and Others* 2015 (1) SACR 374 (ECP).

7.4.1. This was a criminal matter involving multiple accused who were involved in a conspiracy to rob an armed vehicle carrying liquid platinum. In relation to one of the accused (Nube) who was a co-conspirator, the question arose whether he had, prior to the commission of the robbery, dissociated himself from the criminal conspiracy. The judgment concluded that a co-conspirator who has been intimately involved in bringing about the conspiracy is required to do more than merely withdraw from the conspiracy. The matter went on appeal and the SCA dismissed the appeal in *Nube v The State* (091/15) [2015] ZASCA 136 (30 September 2015).

7.5. *Twende Africa Group (Pty) t/a Tag Marine v MV Qavak: In re fisherman Fresh CC v Twende Africa Group (Pty) Ltd t/a Tag Marine* [2018] 2 All SA 576 (ECP).

7.5.1. This was an application to set aside the arrest of a vessel. The maritime claim upon which the arrest was founded relied upon a tacit or implied term entitling the claimant to payment of commission upon the purchase of the vessel. It was held that no prima facie case was made out for the existence of such tacit or

implied term and the arrest was set aside. This was upheld on appeal in *Twende Africa Group (Pty) Ltd t/a Tag Marine v MV Qavak* [2019] ZASCA 9.

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

8.1. The candidate has extensive experience as a practising advocate (21 years, 7 of which are as a senior advocate), and as Judge of the Eastern Cape Division for approximately 10 years, and as Acting Judge of Appeal in the Supreme Court of Appeal from 1 June 2020 to 31 May 2021 and again 1 June 2022 to 30 September 2022.

8.2. The judgments of the candidate reflect extensive and broad professional legal experience.

9. The candidate's linguistic and communication skills:

9.1. The candidate has excellent linguistic and communication skills as appears from his judgments. The candidate referred to several publications which demonstrate the candidate's ability to write academic works.

9.2. His clearly crafted judgments are easy to follow, from the exposition of the facts, to the reasoning and conclusion in a matter.

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

10.1. The candidate is known to produce well-written judgments within a reasonable period of time and currently has no outstanding judgments in either the Eastern Cape or in the Supreme Court of Appeal where he is currently acting.

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

11.1. The candidate is well-known in the Eastern Cape Division to be well prepared and committed to dispensing justice in a manner that is fair and transparent. He is known for being hard-working, often setting matters down and dealing with it during recess times so that matters can be disposed of, displaying optimal use of court time and resources.

11.2. The candidate was instrumental in the implementation of caseload management in the division ensuring effective management of matters prior to trial.

11.3. The candidate engages with counsel appearing before him in a manner that is fair and he is courteous at all times.

12. The candidate's independent mindedness:

12.1. The candidate is confident to express his view in a clear and concise manner. He has an acute sense of social justice which he brings into his judgments where relevant.

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

13.1. There is no reason to believe that the candidate does not have the appropriate administrative ability required for appointment to the Supreme Court of Appeal.

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

- 14.1. The candidate's credentials are beyond reproach and his judgments reflect a commitment to constitutional values and principles. His appointment would send a positive message to the community at large.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

- 1.1. *Madzodzo v Minister of Basic Education* 2014 (3) SA 441 (ECM)
- 1.2. *Borbet South Africa (Pty) Ltd and Others v Nelson Mandela Bay Municipality and Others* 2014 (5) SA 256 (ECP)
- 1.3. *Fritz v Fundsatwork Umbrella Pension Fund and Others* 2013 (4) SA 492 (ECP)
- 1.4. *Nedbank Limited v Norris* 2016 (3) SA 568 (ECP)
- 1.5. *Mtshabe v Law Society of the Cape of Good Hope* 2014 (5) SA 376 (ECM)
- 1.6. *S v Wana and Others* 2015 (1) SACR 374 (ECP)
- 1.7. *Tekalign v Minister of Home Affairs* [2018] 3 All SA 291 (ECP)
- 1.8. *Williams NO v Taxing Mistress of the High Court, Port Elizabeth* [2019] 3 All SA 658 (ECP)
- 1.9. *Twende Africa Group (Pty) t/a Tag Marine v MV Qavak: In re Fisherman Fresh CC v Twende Africa Group (Pty) Ltd t/a Tag Marine* [2018] 2 All SA 576 (ECP)
- 1.10. *Blignault v Director General Department of Labour* 2015 JDR 0852 (ECP)

2. SCA judgments written:

- 2.1. *Martrade Shipping and Transport GmbH v United Enterprises Corporation and MV Unity* [2020] ZASCA 120 (2 October 2020)
- 2.2. *Former Way Trade & Investment (Pty) Ltd v Bright Idea Projects 66 (Pty) Ltd* [2020]. Upheld on appeal to Constitutional Court: 2021 (12) BCLR 1388 (CC) (28 September 2021)
- 2.3. *Essop v the State* [2021] ZASCA 66 (1 June 2021) (Minority judgment)
- 2.4. *The Minister of Police v Underwriters of Lloyds of London* [2021] ZASCA 72 (8 June 2021)
- 2.5. *Grobler v Phillips* [2021] ZASCA 100 (14 July 2021)
- 2.6. *Impact Financial Services CC v Bam NO* [2021] 3 All SA 83 (SCA)
- 2.7. *Monteiro and Another v Diedericks* 2021 (3) SA 482 (SCA)
- 2.8. *National Union of Metal Workers of South Africa and Others v Dunlop Mixing & Technical Services* 2021 (4) SA 115 (SCA)
- 2.9. *Esorfranki Pipelines (Pty) Ltd v Mopani District Municipality* 2022 (2) SA 335 (SCA) (Minority judgment; the judgment is currently on appeal in Constitutional Court)

3. Judgments overturned on appeal:

- 3.1. *Andrade v Andrade & Others v Botha* (ECD CA 157/2006) – reversed in *Botha Andrade & Others* 2009 (1) SA 259 (SCA)

- 3.2. *Sarrhawitz v Maritz NO and another* [2016] JOL 36537 (ECP) – reversed in *Sarrahwitz v Maritz NO* 2016 (8) BCLR 925 (CC)
- 3.3. *Du Plessis v Road Accident Fund* [208] JOL 40295 (ECP) – reversed in *Du Plessis v Road Accident Fund*