

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: ADV JOHN HOLLAND-MÜTER SC

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

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

1.1. The candidate has the following qualifications:

1.1.1. B.Iuris University of Pretoria (1978); and

1.1.2. LL.B. UNISA (1993).

1.2. The candidate is appropriately qualified.

1.3. The candidate has also held the following positions:

1.3.1. From 1975 to 1978, he was employed as a clerk in the Department of Justice;

1.3.2. From 1981 to 1982, he was employed first as a prosecutor and then a senior prosecutor;

1.3.3. From 1982 to 1988, he served as a magistrate;

1.3.4. From 1988 to 1998, he lectured in law at, variously, the Justice College, government departments, Technicon South Africa, and UNISA; and

- 1.4. He joined the Pretoria Bar at the beginning of 1998 and was conferred senior status (Silk) on 31 July 2019. He has acted as the convenor of a number of committees.

2. The candidate's integrity and ethics:

- 2.1. There is nothing in the candidate's application or judgments to suggest that he is not a fit and proper candidate.

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

- 3.1. There are currently 81 full time judges on the Gauteng Division bench, comprising (as far as could be ascertained):

3.1.1. 20 black women;

3.1.2. 31 black men;

3.1.3. 13 white women; and

3.1.4. 17 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 61 years old.
- 4.5. If appointed, the candidate could serve up to 14 years actively in office.

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

- 5.1. The candidate refers to his involvement in:
- 5.1.1. transforming Laerskool Rietfontein-Noord from an Afrikaans medium school to a parallel medium school offering classes in Afrikaans and English, paving the way for children from Eersterust and Mamelodi townships to enter school;
 - 5.1.2. engaging the parents from the Eersterust and Mamelodi communities in the school;
 - 5.1.3. procuring travelling for the children from these communities;
 - 5.1.4. assisting other School Governing Boards in training on the South African Schools Act and school governance;

- 5.1.5. upliftment of housing and caring for abandoned children and orphans of all races;
- 5.1.6. mentoring and assisting junior women advocates to develop their practices; and
- 5.1.7. the activities and subcommittees of the Pretoria Bar and his initiatives in regard thereto.

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

- 6.1. The candidate is well versed in the law and its underlying principles, having lectured and practiced in different fields of the law and given judicially sound judgments as an acting judge.
- 6.2. While the candidate's practice consists of only 5% constitutional law, his judgments show that he has a good grasp of constitutional law and is capable of applying it where necessary.

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

- 7.1. The reviewers considered the following judgments that have been upheld, commented on, or overturned on appeal:

- 7.1.1. *Jenni Button (Pty) Ltd v Hyprop Investments Ltd* (Case no 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 a holding company) was contested. The finding on the merits was not challenged, only the issue of *locus standi*.

7.1.2. *Leon St Leger Boutell v Road Accident Fund* (Case no 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.

7.1.3. *Cloete Murray N.O. v VI Moureau* (Case no 13366/2013)

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.

7.1.4. *M Kenosi v L Mofokeng* (Case no 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.

7.1.5. *R Leathern N.O. v Reserve Bank* (Case no 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.

7.2. 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 four were subsequently petitioned unsuccessfully.

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

8.1. The candidate has in excess of 30 years' professional experience in law, which include the following:

8.1.1. a clerk at the Department of Justice (1975 to 1978);

8.1.2. 9 years as prosecutor, senior prosecutor and magistrate (1981 – 1988);

8.1.3. 10 years as law lecturer at the Justice College, part time lecturer at Technikon South Africa and UNISA, and examiner at Technikon South Africa;

8.1.4. 24 years as a practicing advocate; and

8.1.5. acting as a judge for (in excess of) 78 weeks between 2015 and 2022.

9. The candidate's linguistic and communication skills:

9.1. The candidate is proficient in English, his judgments are well written and well reasoned.

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

10.1. The candidate demonstrates the ability to produce judgments promptly. He has delivered all but three of his judgments within three months.

10.2. He took longer than 3 months to hand down judgments in the following matters:

10.2.1. *Minister of Safety and Security v Dino Peterson* (full court appeal): appeal was heard on 4 December 2019 and judgment delivered on 6 March 2020;

10.2.2. *T Motau and Other v HPCSA and Others*: matter was heard on 25 October 2017, both counsel supplied further heads of argument at the end of November 2017 and judgment was delivered on 23 February 2018; and

10.2.3. *Etresia van der Walt v Marie E Stoop*: 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 on 30 October 2018.

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

11.1. The candidate appears to be able to conduct court proceedings, having regard to his judgments.

12. The candidate's independent mindedness:

12.1. The candidate appears appropriately independent-minded.

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

13.1. The candidate is administratively proficient. His career record and practice of more than 30 years, his involvement in Bar Council activities (including training and mentorship of pupils), his academic work (lecturing and publications) and in his activities in his Church illustrate his administrative ability.

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

14.1. The candidate has actively participated in the committees and projects of the Pretoria Bar, and in community related activities.

14.2. The candidate has extensive experience in criminal law.

14.3. The candidate's judgments illustrate that he is unbiased.

14.4. The candidate demonstrates potential to contribute to the judiciary, having regard to his judgments, experience, capabilities and demeanour.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

- 1.1. *Manwood Underwriters (Pty) Ltd and others v Old Mutual Life Assurance Company (South Africa) Limited* [2013] 1 All SA 701 (WCC)
- 1.2. *Retnil Financial Services (Pty) Ltd v Sanlam Life Insurance Company Ltd and others* [2013] 3 All SA 337 (WCC)

2. Unreported judgments:

- 2.1. *S v Philander* (CC 53/2012) WCC
- 2.2. *Macsteel Service Centre SA (Pty) Ltd v Heavy Feather Trading 50 CC* 2021 JDR 1319 (GP)
- 2.3. *LD Rensburg and 3 others v South African Legal Practice Council* (Case no 69359/2019) ZACPPHC
- 2.4. *Solidarity and Afriforum v Minister of Tourism* (Case no 14128/2021) ZACPPHC

3. Judgments upheld on appeal:

- 3.1. *Konsult One CC v Strategy Partners (Pty) Ltd* (2607/10) [2013] ZAWCHC 55 (19 March 2013)

4. Judgments overturned on appeal:

- 4.1. *S v Salie* (CC072013) WCC (appeal case no. 116/2017)