

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: JUDGE PIETER ANDRIES MEYER

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 academic qualifications:

1.1.1. BA (University of Stellenbosch) (1981); and

1.1.2. LLB (University of Stellenbosch) (1983).

1.2. The candidate is appropriately qualified.

1.3. The candidate was appointed as a permanent Judge on 12 November 2007.

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 61 years old and has completed a period of 14 years of active service as a judge.

4.5. If appointed, the candidate could serve up to 9 years actively in office.

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

5.1. During his tenure at the Johannesburg Bar, the candidate was actively involved in transformation initiatives in his group as well as at the bar level. He was involved in the devising and implementation of a financial support strategy for the benefit of pupils as well as newly qualified advocates in the group aimed at redressing racial and gender imbalance and correcting skewed briefing patterns.

5.2. As a judge he has been actively involved in the training of aspirant judges as well as magistrates by acting as a facilitator and also as an author of course material.

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

6.1. The candidate has a wide knowledge of the law and has produced judgments on a wide range of areas of law.

6.2. His judgments are clear, well-reasoned and comprehensively researched.

- 6.3. He displays sensitivity towards vulnerable groups and issues. He has developed the law pertaining to the rights of children in terms of The Hague Convention on the Civil Aspects of International Child Abduction. He has also developed the law pertaining to the maximum period of detention of illegal immigrants pending deportation.
- 6.4. During an acting appointment in the SCA, the candidate wrote an important judgment in *Harmony Gold Mining Company Ltd v Regional Director; Free State Department of Water Affairs and Others* 2014 (3) SA 149 (SCA). The judgment recognises the ongoing obligation of a mining company to prevent pollution by pumping subterranean water, despite the company no longer owning or being in control of the land. Harmony had been unsuccessful in an application before the Gauteng Provincial Division to set aside directives issued by the Department of Water Affairs in terms of section 19 of the National Water Act 36 of 1998. The directives required a number of mining companies operating mines in the North West Province, including Harmony, to extract underground water from a number of shafts, and on properties not owned by those mining companies. Harmony argued that whilst it had operated mines on behalf of ARMGold at the time the directive was issued, this relationship had terminated once ARMGold sold its mining business and the land to Pamodzi Gold Orkney (Pty) Ltd. Thus, said Harmony, it no longer owned, operated or controlled the land in question, as contemplated in section 19(1) of the National Water Act, and was no longer bound by the directives to contribute to the costs of pumping.

6.5. On appeal before the SCA, Judge Meyer interpreted section 19 of the National Water Act with reference to section 24 of the Constitution, which confers on everyone the right to an environment which is not harmful to their life or well-being and to have the environment protected for the benefit of present and future generations. The interpretation was also guided by the National Environment Management Act 107 of 1998 which requires that the cost of remedying must be paid for by those responsible. The process of interpretation led Judge Meyer to conclude that section 19 of the National Water Act should not be limited in the manner contended for by Harmony, and that Harmony remained liable to contribute to the costs of preventing and remedying pollution, as required by the directives.

6.6. This judgment demonstrates a welcome, purposive approach to the interpretation of environmental legislation, which promotes the rights concerning the environment, reflecting the values of the Constitution. The judgment recognises the ongoing obligation of mining companies to manage the risk of pollution caused by the commercial exploitation of mineral resources.

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

7.1. Apart from the judgments listed by the candidate at paragraph 16.4 of his application, only one other judgment overturned on appeal could be identified. The judgments are considered below.

7.2. *Dorbyl Light & General Engineering (Pty) Ltd v Insamcor (WLD Case No 04/19272) 2006 JDR 0029 (W)*, overturned in *Insamcor (Pty) Ltd v*

Dorbyl Light & General Engineering (Pty) Ltd; Dorbyl Light & General Engineering (Pty) Ltd v Insamcor (Pty) Ltd 2007 (4) SA 467 (SCA).

- 7.3. This judgment was delivered by the candidate during September 2005 when he was an acting judge.
- 7.4. The applicant had been deregistered and then restored by an order of court. The applicant brought an application for the respondent to pay it royalties for a period of time during which it had been deregistered. The respondent brought an application to stay the application before the candidate, pending determination of a separate application brought by the respondent to set aside the restoration of the applicant's registration.
- 7.5. The candidate dismissed the application to stay on the basis that the respondent had no locus standi to oppose the grant of a restoration order and granted the application.
- 7.6. The SCA considered the appeal of both the application determined by the candidate and the respondent's application to set aside the restoration which had been successful. The SCA found that a third party may be prejudiced by a restoration order and had the standing to oppose it. The candidate's judgment was therefore given in favour of a claimant that did not exist and had to be set aside.
- 7.7. *Lombard Insurance Company Ltd v Firstrand Bank Ltd and Others* (09/35913) [2011] ZAGPJHC 211 (8 February 2011), was set aside in *ABSA v Lombard Insurance; Firstrand v Lombard Insurance* 2012 (6) SA 569 (SCA).

- 7.8. The judgment dealt with a claim for the payment of funds held by FNB and ABSA which had been paid by the applicant into accounts held by an employee of the applicant as a result of the employee's fraud. The candidate found that Lombard had established the *condictio ob turpem vel iniustam causam* and that the banks' defences that they had not been enriched because they had applied the funds to the employee's debt to them was rejected.
- 7.9. The SCA granted leave to appeal the candidate's judgment. The SCA found that the funds used to discharge the employee's debt with the two banks could not be repaid. The applicant was only entitled to repayment of the amount standing to the employee's credit. The SCA found that the candidate had failed to consider "*the question whether any debt owed by the thief to the bank, such as an amount on overdraft, was discharged by the bank's crediting the account*".
- 7.10. In *Els v Memorable Order of Tin Hats (M.O.T.H.)* (241/2017) [2019] ZAGPJHC 77 (7 March 2019) the plaintiff was injured when he fell at a building belonging to the defendant. The issues of quantum and merits were separated and the trial proceeded only on the merits. The plaintiff's case was that his delictual claim arose from the unlawful and wrongful failure or omission of the defendant to take reasonable measures to avoid a foreseeable incident that resulted in the damages the plaintiff suffered as a result of his injuries. The court a quo (Twala J) found 90% in favour of the plaintiff and refused an application for leave to appeal. The defendant petitioned the Supreme Court of Appeal and was granted leave to appeal to the full court of the Gauteng Division, Johannesburg. The full court, per Lamont J, Meyer J and

Harrison AJ concurring, dismissed the defendant's appeal. Dissatisfied, the defendant applied for special leave to appeal, which leave was granted by the Supreme Court of Appeal. The appeal was upheld in *Memorable Order of Tin Hats v Kenneth Paul Els* (488/2021) [2022] ZASCA 99 (22 June 2022). The order of the trial court was set aside and replaced with an order dismissing the plaintiff's claim with costs.

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

- 8.1. The candidate practised as an advocate of the Johannesburg Bar for a period of approximately 20 years, 3 years of which were as senior counsel (SC).
- 8.2. He acted for a cumulative period of approximately 6 months as a judge in the Johannesburg High Court before his appointment as a permanent judge on 12 November 2007.
- 8.3. In 2013 he acted in the Supreme Court of Appeal for a period of 8 months. In 2014 and 2015 he acted in the Supreme Court of Appeal for a period of 8 months. In 2017 he acted in the Supreme Court of Appeal for a period of 2 months. The candidate most recently acted in the Supreme Court of Appeal for a period of 8 months from 1 October 2021 to 31 May 2022.
- 8.4. The candidate had a large practice whilst at the Johannesburg Bar and acted in cases covering a broad spectrum of the law.
- 8.5. His judgments (as a judge of the Johannesburg High Court and as an acting judge of the Supreme Court of Appeal) cover a wide area of the law and serve as an indication that the candidate has a creative legal

mind and is not inhibited in finding innovative solutions to legal problems.

9. The candidate's linguistic and communication skills:

9.1. The candidate has an appropriate command of the English language and expresses himself clearly and succinctly.

9.2. His judgments are well-structured and are a model of linguistic excellence and clarity.

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

10.1. The candidate produces judgments efficiently and generally within one month after the finalisation of the matter.

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

11.1. The candidate engages with practitioners who appear before him, and his court demeanor is calm and dignified.

11.2. No adverse comments have been received.

12. The candidate's independent mindedness:

12.1. The judgments written by the candidate indicate that he is able to apply himself independently in arriving at his decisions.

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

13.1. The candidate's administrative ability is borne out by his prompt and efficient delivery of judgments.

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

14.1. In general, the candidate is suited to fulfil his role as a judge of the Supreme Court of Appeal.

14.2. The candidate is a competent jurist and experienced senior judge. In the previous comments regarding Judge Meyer's application it was highlighted that he had a relative paucity of reported judgments of substantial legal significance, but the fact that he has only two judgments overturned on appeal tells in his favour.

14.3. Since the previous application, the candidate has delivered several legally significant judgments, such as *Standard Bank of South Africa Ltd v Sibanda* 2021 (5) SA 276 (GJ), and those of a high profile nature such as *Old Mutual Limited and Others v Moyo* [2020] 2 All SA 261 (GJ).

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

- 1.1. The review team considered the judgments listed in the comprehensive list contained at pages 18 to 32 of Judge Meyer's application.

2. Unreported judgments:

- 2.1. The review team considered the judgments listed in the comprehensive list contained at pages 18 to 32 of Judge Meyer's application.

3. Judgments upheld on appeal:

- 3.1. *Mogale City Municipality v Fidelity Security Services (Pty) Ltd* 2015 (5) SA 590 (SCA)
- 3.2. *United Manganese of Kalahari (Pty) Ltd v Commissioner for the South African Revenue Service* 2018 (2) SA 275 (GP)
- 3.3. *Democratic Alliance v President of the Republic of South Africa and Others; Economic Freedom Fighters v State Attorney and Others* [2019] 1 All SA 681 (GP)
- 3.4. *Samancor Chrome Holdings (Pty) Ltd and Another v Samancor Holdings (Pty) Ltd and Others* [2019] 4 All SA 906 (GJ)

4. Judgments overturned on appeal:

- 4.1. *Dorbyl Light & General Engineering (Pty) Ltd v Insamcor* (WLD Case No 04/19272) 2006 JDR 0029 (W), overturned in *Insamcor (Pty) Ltd v Dorbyl Light & General Engineering (Pty) Ltd; Dorbyl Light &*

General Engineering (Pty) Ltd v Insamcor (Pty) Ltd 2007 (4) SA 467 (SCA)

- 4.2. *Lombard Insurance Company Ltd v Firstrand Bank Ltd and Others* (09/35913) [2011] ZAGPJHC 211 (8 February 2011), *was set aside in ABSA v Lombard Insurance; Firstrand v Lombard Insurance* 2012 (6) SA 569 (SCA)