

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: JUDGE SULET POTTERILL

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 B Proc obtained at the University of Pretoria in 1983;

1.1.2 LLB obtained at UNISA in 1991;

1.1.3 LLM obtained at the University of Pretoria in 1995;

1.2 The candidate is appropriately qualified.

1.3 The candidate has also held the following positions:

1.3.1 Santam Trust - Administrator of Estates – 1982 – 1983;

1.3.2 Department of Justice – Prosecutor – 1983 – 1984;

1.3.3 Department of Justice – Senior Prosecutor – 1988 – 1989;

1.3.4 Department of Justice – District Court Magistrate (Civil and Criminal) – 1984 – 1987 and 1990 – 1994;

1.3.5 Department of Justice – Lecturer: Magistrates Justice College – 1994 – 1998;

- 1.3.6 Self-employed as a Practising Advocate (1991) –1998 – 2008;
- 1.3.7 Department of Justice – Acting Judge: Gauteng Division and Gauteng Local Division – 8 May 2008 – 10 November 2009;
- 1.3.8 Department of Justice - Judge of the Gauteng Division and Gauteng Local Division – 24 November 2009 to present;
- 1.3.9 Office of the Chief Justice – Acting Judge, Constitutional Court of Lesotho –July 2013 to December 2013;
- 1.3.10 Office of the Chief Justice - Supreme Court of Appeal – 1 June 2016 to 30 November 2016; 1 April 2021 to 30 September 2021;
- 1.3.11 Office of the Chief Justice – Acting Deputy Judge-President, Gauteng Division – 27 January 2020 to 20 November 2020;
- 1.3.12 Office of the Chief Justice – Acting Judge, Land Claims Court - 2018; and 18 January 2021 to 26 March 2021;
- 1.3.13 Office of the Chief Justice – Acting Judge of Competition Appeal Court - 1 January 2022 to 31 December 2022;
- 1.3.14 Judicial Officers Association of South Africa – Member – 1984 – 1987 and 1990 – 1994;
- 1.3.15 Attorneys Association: Civil Courts Committee Member – 1984 – 1987;
- 1.3.16 Veterinary Council of South Africa – Chairperson – 1998 – 2006;

- 1.3.17 Appeals Authority of South African Police Services – Committee Member – 1998 – 2008;
- 1.3.18 Safety and Security Sectoral Bargaining Council, Public Service Co-ordinating Bargaining Council and General Public Service Sector Bargaining Council - Panel Member – 1998 – 2008;
- 1.3.19 Law Society of South Africa – Part-time instructor and Assessor – 1996 – 2008;
- 1.3.20 The International Association of Women Judges – Member – 2010 to present;
- 1.3.21 Nederduits Hervormde Kerk – Head of Women’s Organisation: Standerton, Vrede and Rooihuiskraal – 1985 – 2003;
- 1.3.22 Nederduits Hervormde Kerk - Member of Women’s Organisation: Erasmia – 2004 – 2009;
- 1.3.23 Nederduits Hervormde Kerk – Member of Women’s Organisation: Pretoria East – 2010 to present.

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. On the contrary, the candidate has demonstrated the required judicial integrity and strong ethical conduct. The candidate’s profile and

experience of a number of members is that she is a person with exemplary ethical standards who is not intimidated by complex cases.

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 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 currently 63 years old and has completed a period of 13 years of active service as a judge.

4.5. If appointed, the candidate could serve another 7 years.

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

5.1. The candidate demonstrates a passion for the provisions and values enshrined in the constitution. This is demonstrated in her sound reasoning in the judgments reviewed.

5.2. The candidate is passionate about teaching and giving back to the profession. The candidate is highly regarded as a Judge in the Gauteng Division, Pretoria.

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

6.1. The candidate's judgments illustrate her knowledge of the law in various fields. She has demonstrated that she is capable of adjudicating a wide variety of cases including cases involving constitutional issues. The candidate possesses a sound knowledge of the law and constitutional principles that are required for this post.

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

7.1. Cases that have been upheld on appeal:

- 7.1.1. *CMC Di Ravenna SC and others v Companies and Intellectual Property Commission* 2020 (2) SA 109 (GP);
- 7.1.2. *Oakbay Investments (Pty) Ltd v Tegeta Exploration & Resources (Pty) Ltd & others* 2019 JDR 1760 (GP);
- 7.1.3. *Fireblade Aviation (Pty) Ltd v Minister of home Affairs and 5 others* 2017 JDR 1719 (GP);
- 7.1.4. *Basson v Hugo and others* 2019 (5) SA 142 (GP);
- 7.1.5. *Centre for Child Law v Minister for Justice and Constitutional Development* 2008 JDR 1377 (T) – confirmed in *Centre for Child Law v Minister for Justice and Constitutional Development and others* (CCT98/08) [2009] ZACC 18; 2009 (2) SACR 477 (CC) (15 JULY 2009);
- 7.1.6. *Maringa and another v S* (A127/2013) [2013] ZAGPPHC 263 (17 September 2013);
- 7.1.7. *Distell Ltd v The Commissioner for the South African Revenue Service* 2015 JDR 2145 (GP) – the court followed her judgement, all her evidence and reasoning and dismissed the appeal (*Distell Ltd v Commissioner for the South African Revenue Services* 2012 (5) SA 450 (SCA));
- 7.1.8. *Gordhan v The Public Protector* 2019 JDR 1328 (GP); and
- 7.1.9. *Bytes Technology Group South Africa (Pty) Ltd and others v MY Michael* (73809/09) North Gauteng High Court (17 November 2011).

7.2. Cases where judgments on appeal were overturned or commented on:

7.2.1. *British American Tobacco Pension Fund v Howie NO and others* 2016 (1) SA 398 (GP); *The Registrar of Pension Funds v British American Tobacco Pension Fund* (664/2015) [2016] ZASCA 130 (28 September 2016) – The appeal concerned the interpretation of various provisions of the Pension Funds Act 24 of 1956 (the Act). The judgment appealed against emanated from Potterill J, sitting in the Gauteng Division of the High Court of South Africa (Pretoria). She granted an application by the first respondent (the Fund) to review and set aside a decision of the Financial Services Board’s Appeal Board. The Appeal Board had dismissed the Fund’s appeal against the registrar’s decision to reject a statutory actuarial valuation of the Fund as at 30 September 2007 on the ground that it did not correctly reflect the financial condition of the Fund. The court a quo accepted the Fund’s submissions and held that the Appeal Board had erred in dismissing the appeal. The registrar, who was the appellant in the proceedings, maintained that the court a quo was wrong to have set aside the Appeal Board’s decision, and seeks to reinstate it. The SCA held that the court a quo erred in the adoption of the Fund’s submissions and setting aside the Appeal Board’s decision. The case was rather complex and involved intricate interpretation of various provisions in the Act.

7.2.2. *Tasima (Pty) Ltd v Department of Transport and others* (44095/2012) [2017] ZAGPPHC 46 (9 February 2017); *Department of Transport and Others v Tasima (Pty) Limited;*

Tasima (Pty) Limited and Others v Road Traffic Management Corporation and Others [2018] ZACC 21 – the main thrust of the appeal in the Constitutional Court, after the Supreme Court of Appeal refused the petition for leave to appeal, involved whether a court may decide appeals even when the case is moot, if it is in the interests of justice to do so. Some of the relevant considerations in this regard are whether the order that the court may make will have any practical effect either as between the parties or others; whether it is in the interests of justice to nevertheless hear the matter; and whether the decision will be of benefit to the public at large.

7.2.3. *Magnus Reinier Heystek v SA Reserve Bank and others* (21961/2008) North Gauteng High Court (12 January 2010). *South African Reserve Bank v Heystek and Others* (A248/2010, 21961/08) [2012] ZAGPPHC 301 (7 November 2012) – The case involved complicated issues relating to Exchange Control Regulations. Judge Potterill was then an acting judge. There was some confusion whether certain communication was relayed to the respondents officially, and after constitutional aspects were disposed of between the parties, the appeal turned on whether the official of SARB was apprised or sufficiently apprised of all the relevant facts before he took the decision in issue. The decision to declare the money forfeit to the State was taken outside the time parameters of the Exchange Control Regulations and when taking that decision, the official failed or neglected to furnish reasons – be they sufficient or acceptable in the circumstances –

for his decision. The full court held that the trial judge erred in her findings.

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

- 8.1. The candidate was a prosecutor for 4 years and presided as a magistrate for a period of 8 years thereafter, followed by a period of 10 years when she practised as an advocate. The candidate was appointed as an acting judge and permanently appointed in 2009. Judge Potterill has been a Judge for 13 years.
- 8.2. In the candidate's period of being a Judge, she has acted at the Constitutional Court of Lesotho for 6 months in 2013, presided as Acting Deputy Judge president of the Gauteng Division, Pretoria for 10 months in 2020. She also acted at the Land Claims Court for 1 year in 2018 and 3 months in 2021 and is currently (2022) acting at the Competition Appeal Court for 1 year. The candidate has acted for two full terms at the Supreme Court of Appeal in 2016 and in 2021.
- 8.3. On the SAFLII website, it appears that the candidate has penned approximately 162 judgements in the Gauteng Division Pretoria High Court, in the Land Claims Court, and in the Supreme Court of Appeal.
- 8.4. Judge Potterill has considerable experience as a High Court Judge and has had valuable exposure in the Supreme Court of Appeal. The candidate's judgments are sound and well-reasoned, despite a few having been overturned on appeal. A closer scrutiny of the cases overturned illustrates that those cases were not the norm but rather

complex. Judge Potterill's experience demonstrates concomitant knowledge of the law.

9. The candidate's linguistic and communication skills:

9.1. The candidate has a good command of the English language, and her judgements are well-written and researched.

9.2. A fine example of a well written and reasoned judgment is the case of *Distell Ltd v The Commissioner for the South African Revenue Service* 2015 JDR 2145 (GP).

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

10.1. The reviewers have no information that any of the candidate's judgments have been outstanding for more than three months.

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

11.1. Members who have appeared on several occasions before the candidate confirm her ability to conduct court proceedings fairly and effectively. The candidate is industrious, and her approach to cases, counsel, attorneys, and litigants is to be commended. The candidate listens carefully to submissions and testimony and is quick to intervene when necessary. The candidate upholds the rules of court and ensures that the rule of law is paramount. She is always fair and well-prepared and has been influential in the introduction of CaseLines.

11.2. The candidate's experience has increased over the years, which is reflected in her judgments and her ability to manage cases before her.

She possesses the necessary judicial temperament in her approach to counsel, attorneys, and litigants. This is illustrated by, among others, *Magistrate Commission & Others v Lawrence* 2022 (4) SA 107 (SCA) (also reported (388/2020) [2021] ZASCA 165).

12. The candidate's independent mindedness:

- 12.1. In the experience of some members, the candidate is objective and independent in her thinking, and her judgments illustrate this.
- 12.2. She is passionate about, and respectful of, her position. The candidate has a good reputation amongst her colleagues on the bench and generally at the Bar.

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

- 13.1. The candidate was the Acting Deputy Judge President of the Gauteng Division during the Covid-19 pandemic. Under unprecedented times, she headed up the general administration of the court. The court managed to create an interim solution to ongoing litigation under circumstances where the court often had no internet and information technology facilities. The candidate's strong administrative skills enabled her to put in place innovative interim solutions and measures to accept court documents, send out documents, and attend to roll call.

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

- 14.1. The message to the public at large would be positive in many respects.

- 14.2. The court for which the judge has applied requires a candidate with the appropriate knowledge, experience and skills. The candidate falls squarely within the requirements. Judge Potterill would be an asset to the SCA and will bring with her over 35 years of experience in the legal field. Moreover, her ability to interact with her colleagues and her approach are qualities which are needed at the SCA. Judge Potterill is generally regarded as an industrious judge, who takes her position seriously and her general conduct is evident of the respect she has for her position and that of the judiciary. Judge Potterill possesses the necessary judicial temperament, is always impartial and objective.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

- 1.1. *CMC Di Ravenna SC and others v Companies and Intellectual Property Commission* 2020 (2) SA 109 (GP)
- 1.2. *Centre for Child Law v Minister for Justice and Constitutional Development* 2008 JDR 1377 (T) – confirmed in *Centre for Child Law v Minister for Justice and Constitutional Development and others* CCT98/08) [2009] ZACC 18; 2009 (2) SACR 477 (CC) (15 JULY 2009)
- 1.3. *Distell Ltd v Commissioner for the South African Revenue Services* 2012 (5) SA 450 (SCA)
- 1.4. *British American Tobacco Pension Fund v Howie NO and others* 2016 (1) SA 398 (GP)
- 1.5. *Basson v Hugo and others* 2019 (5) SA 142 (GP)
- 1.6. *Oakbay Investments (Pty) Ltd v Tegeta Exploration & Resources (Pty) Ltd & others* 2019 JDR 1760 (GP)
- 1.7. *Fireblade Aviation (Pty) Ltd v Minister of home Affairs and 5 others* 2017 JDR 1719 (GP)
- 1.8. *Maringa and another v S* (A127/2013) [2013] ZAGPPHC 263 (17 September 2013)
- 1.9. *Distell Ltd v The Commissioner for the South African Revenue Service* 2015 JDR 2145 (GP)
- 1.10. *Gordhan v The Public Protector* 2019 JDR 1328 (GP)

- 1.11. *Bytes Technology Group South Africa (Pty) Ltd and others v MY Michael* (73809/09) North Gauteng High Court (17 November 2011)
- 1.12. *The Registrar of Pension Funds v British American Tobacco Pension Fund* (664/2015) [2016] ZASCA 130 (28 September 2016);
- 1.13. *Tasima (Pty) Ltd v Department of Transport and others* (44095/2012) [2017] ZAGPPHC 46 (9 February 2017) *Department of Transport and Others v Tasima (Pty) Limited*
- 1.14. *Tasima (Pty) Limited and Others v Road Traffic Management Corporation and Others* [2018] ZACC 21
- 1.15. *Magistrate Commission & Others v Lawrence* 2022 (4) SA 107 (SCA) (also reported (388/2020) [2021] ZASCA 165)
- 1.16. *Magnus Reinier Heystek v SA Reserve Bank and others* (21961/2008) North Gauteng High Court (12 January 2010)
- 1.17. *South African Reserve Bank v Heystek and Others* (A248/2010, 21961/08) [2012] ZAGPPHC 301 (7 November 2012)