

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: JUDGE JOHN ELDRID SMITH

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) (UWC);

1.1.2. LLB (Rhodes University); and

1.1.3. Diploma in Labour Law (UCT).

1.2. The candidate is appropriately qualified.

2. The candidate's integrity and ethics:

2.1. The candidate holds a good reputation for integrity, ethics, independence, and objectivity.

2.2. The candidate is a fit and proper person to be appointed as a judge of the Supreme Court of Appeal.

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 black (Coloured) 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 63 years old and has completed a period of 12 years of active service as a judge.

4.5. If appointed, the candidate could serve up to 7 years actively in office.

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

5.1. The candidate's commitment to the Constitution is reflected in his participation in the Eastern Cape Democratic Lawyers Association (Secretary from 1983–1985) and in NADEL (National Vice President from 1989-1990 and National Secretary from 1990–1992); ITEC Educational Institution (Trustee from 2011–2013) and Legal Resources Centre (Director from 1992–1996).

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

6.1. The candidate has a broad range of knowledge of the law.

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

7.1. Five of the candidate's judgments have been overturned by the Supreme Court of Appeal.

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

8.1. The candidate has extensive professional experience and has held diverse positions in law, as set out below.

- 8.2. The candidate was a candidate attorney at TM Mdlanana from 1982–1984
- 8.3. The candidate was a partner at Smith Tabata Van Heerden from 1984–1996.
- 8.4. The candidate was a Member of the Provincial Legislature from 1994–1995.
- 8.5. The candidate was a director at Smith Tabata Inc from 1996–2010.
- 8.6. The candidate was the Chief Executive Officer at Smith Tabata Inc from 2007–2010.
- 8.7. The candidate has been a judge, in Makhanda, Eastern Cape since July 2010.
- 8.8. The candidate has had acting appointments in the Supreme Court of Appeal from October 2021–May 2022.
- 8.9. The candidate was a director of the Legal Resources Centre from 1992–1996.
- 8.10. The candidate was a Trustee at the ITEC Educational Institution from 2011–2013.
- 8.11. The candidate was the President of the Border Kei Chamber of Commerce from 2007–2010.

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

- 9.1. The candidate's linguistic and communication skills are excellent.

- 9.2. The candidate's judgments are clear and concise.
- 9.3. The candidate's judgments are accessible and understandable to litigants and members of the public.
10. **The candidate's ability to produce judgments promptly:**
- 10.1. The candidate's judgments reflect that they are delivered promptly.
11. **The candidate's ability to conduct court proceedings fairly, efficiently and effectively:**
- 11.1. The candidate is fair, objective and impartial to all litigants and legal representatives.
- 11.2. The candidate's ability to conduct court proceedings has been commended. The candidate's court starts punctually and he is in control of proceedings even when involving senior legal practitioners.
- 11.3. The candidate's judicial temperament is excellent. The candidate shows respect and courtesy to all legal practitioners who appear before him as well as to all litigants and court staff.
- 11.4. No adverse reports have been received regarding the conduct of the candidate since he was appointed to the bench in 2010.
- 11.5. The candidate has demonstrated a sound legal instinct, good research skills and an excellent work ethic.
- 11.6. The candidate has always shown great humility.

11.7. The candidate's commitment is reflected in the diverse positions which he has held (as highlighted above) and is also reflected in the judgments which he has handed down.

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

12.1. The candidate is independent-minded.

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

13.1. The candidate has excellent administrative ability.

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

14.1. The appointment of the candidate will send the message to the community at large that an independent minded judicial officer has been appointed based on merit and can greatly contribute to the administration of justice.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported decisions

- 1.1. *Kriel v Bowels* 2012 (2) SA 45 (ECP)
- 1.2. *Andrews v Nedbank Ltd* 2012 (3) SA 82 (ECG)
- 1.3. *LH and Another v LA* 2012 (6) SA 41 (ECG)

2. Unreported Decisions

In addition to the judgments submitted by the candidate the following judgments have been reviewed:

- 2.1. *Malgas v Onega Investments CC* 2021 JDR 0394 (ECG)
- 2.2. *Legend Motors (Pty) Ltd v Oakhurst Insurance Company Ltd* 2021 JDR 0580 (ECGEL)
- 2.3. *Magqabi v Metu* 2021 JDR 0582 (ECGEL)
- 2.4. *The National Director of Public Prosecutions v Vumiso* 2021 JDR 0583 (ECGEL)
- 2.5. *IS v HS* 2021 JDR 0643 (ECG)
- 2.6. *MEC for Department of Human Settlements, Eastern Cape Province v Aveng Grinaker – LTA Building Cape (Pty) Limited* 2021 JDR 1117 (ECG)
- 2.7. *Thompson v James* 2021 JDR 1141 (ECGEL)

2.8. *Funda v The Member of the Executive Council for the Department of Health – Eastern Cape* 2021 JDR 2252 (ECB)

2.9. *Goliath v Dirk Ellis Motor Group (Pty) Ltd* 2021 JDR 2598 (ECG)

2.10. *Nel v Government of South Africa* 2021 JDR 3140 (ECG)

3. Judgments upheld on appeal:

3.1. *Gowar v Gowar* 2015 JDR 0261 (ECG) (upheld by SCA)

3.2. *Mdodana v Premier of The Eastern Cape* 2013 JDR 1407 (ECG) (upheld by Constitutional Court)

3.3. *City Municipality Moerane v Buffalo City Metropolitan Municipality* 2020 JDR 0313 (ECG) (leave to appeal to Supreme Court of Appeal and Constitutional Court dismissed)

3.4. *Grobbelaar v Botha* (4767/2014) (upheld by a full bench of the Eastern Cape Division)

4. Judgments overturned on appeal:

4.1. *Randell v Cape Law Society* 2012 (3) SA 207 (ECG) (overturned by Supreme Court of Appeal)

4.2. *Gcam-Gcam v State* (overturned by Supreme Court of Appeal)

4.3. *Langholm Farms v SARS* (overturned by Supreme Court of Appeal)

4.4. *Shoprite Checkers v MEC for Economic Development* (overturned by the Constitutional Court)

4.5. *Eastern Cape Parks Board v Medburg*