

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: ADV JAN JACOBUS CLUTE SWANEPOEL

COURT FOR WHICH CANDIDATE APPLIES: HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION

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

1.1. The candidate has the following qualifications:

1.1.1. 1982 BA Law, University of Johannesburg (formerly Rand Afrikaans University);

1.1.2. 1984 LLB, University of Johannesburg (formerly Rand Afrikaans University);

1.2. The candidate is appropriately qualified.

1.3. The candidate has also held the following positions:

1.3.1. 1989 – 1991, member of the Johannesburg Society of Advocates;

1.3.2. 1994 – 2005, member of the Law Society of the Northern Provinces;

1.3.3. 2005 – 2009, member of the Johannesburg Society of Advocates;
and

1.3.4. 2009 – current, practising advocate, now registered with the Legal Practice Council.

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 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 62 years old and has no active service as a permanent judge.
- 4.5. If appointed, the candidate could serve up to 13 years actively in office.

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

- 5.1. The candidate, through his membership of the Presbyterian Church, has participated in charitable work including organising food drives and organising and funding a programme to provide English lessons to people who do not speak English with a view to improving their employment and economic prospects.
- 5.2. The candidate has for more than ten years provided pro bono legal advice to the New Beginnings Foundation, a non-profit organisation in Boksburg which provides assistance to people experiencing poverty and homelessness.

5.3. The candidate also provides direct assistance as a Youth Leader of the New Beginnings Foundation, organising functions and providing shelter, care, and support to young people assisted by the foundation.

5.4. The candidate is a member of the Transformation and Diversity Committee of St Dominic's School for Girls in Boksburg. The committee investigates allegations of discrimination, assesses whether school rules and practices may be discriminatory in effect, and provides guidance to staff on how to deal sensitively with potential discrimination.

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

6.1. The candidate's legal experience is varied. He has criminal law experience, including as a prosecutor and he has commercial law experience, including as a prosecutor of commercial crimes.

6.2. His experience in administrative and constitutional law is, by his own account, limited. Only two of the candidate's judgments dealt directly with constitutional law questions, but they are well reasoned and, in one instance, have been upheld on appeal. Given this, the candidate would appear capable of addressing constitutional issues when they arise.

6.3. In total, the judgments available for the candidate show that he has a wide knowledge of the law.

6.4. In addition to the judgments considered in the course of reviewing the candidate's previous application during 2021, the reviewers were able to find only three additional judgments for the purposes of this review.

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

7.1. Two of the candidate's judgments have been appealed.

7.1.1. In *Zephan (Pty) Ltd and Others v Noormahomed* (1303/18) [2019] ZASCA 162, the SCA dismissed the appeal finding that the 'court below correctly refused the application for rescission'.

7.1.2. In *Minister of Justice & Correctional Services and Others v Pretorius and Others* 2022 (1) SACR 564 (GJ), which addressed several constitutional issues, the full court dismissed the appeal, holding that the court a quo was correct in its finding that the respondents had been unfairly discriminated against and the order did not impinge on the separation of powers.

7.2. In *Mokaba and Another v Absa Bank Limited and Another* (26719/2019) [2020] ZAGPPHC 666 (16 November 2020) an application to rescind a default judgment granted by the candidate was dismissed by Avvakoumides AJ.

7.3. The candidate granted leave to appeal in *M obo M v Member of the Executive Council for Health of the Limpopo Provincial Government* (31261/2015) [2021] ZAGPPHC 139.

7.4. The candidate refused leave to appeal in *Trustco Group International (Pty) Ltd and Others v Hahn & Hahn Inc* (78757/2014) [2019] ZAGPPHC 499.

7.5. In *Industrial Development Corporation of South Africa v Energy Fabrication (Pty) Ltd and Others* (6855/2020) [2021] ZAGPJHC 734 (16 November 2021), Flatela AJ cited and relied on the candidate's judgment in *Investec Bank Ltd v Lombard Insurance Company Ltd and Another* (69330/2018) [2019] ZAGPPHC 251 (26 June 2019) as authority for the principle that a performance guarantee is the same as a construction guarantee and assures a contracting party that it will be paid, or that it will receive value for its performance.

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

8.1. The candidate has 35 years' experience as a legal practitioner, including as a prosecutor (for a period of 5 years), attorney (for a period of 11 years), and advocate (for a period of 19 years). The candidate has indicated, particularly, that he has amassed significant experience appearing in court over the course of his career.

8.2. By the end of 2022, the candidate will have completed 96 weeks of service as an acting judge in a period of 5.5 years, which amounts to significant experience as an acting judge.

9. The candidate's linguistic and communication skills:

9.1. The candidate is articulate and has a good command of the English language.

9.2. This is evidenced in the candidate's judgments which are consistently well-written and well-reasoned.

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

- 10.1. Of the 47 judgments for which both the hearing and judgment date were available, the longest it took the candidate to produce a judgment was 77 days from hearing, which included the December/January court recess period. On average, the candidate produced judgments in 13 days.
- 10.2. The candidate took between two and three weeks in the case of seven judgments and between three and four weeks in the case of two further judgments.
- 10.3. In the case of four further judgments, the candidate took 38, 42, 51, and 63 days respectively to deliver a written judgment. In the first and last instances, this period included the December/January court recess period.
- 10.4. The candidate has no reserved judgments.

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

- 11.1. The reviewers received no comments in this regard.

12. The candidate's independent mindedness:

- 12.1. The candidate appears to make an effort to craft equitable orders in difficult matters. His judgments make careful and often extensive reference to case authorities and he appears to be mindful of binding precedent.

- 12.2. A review of judgments handed down by the candidate reveal that he is sensitive to the prevalence of violent crimes against women and children. The candidate's judgments demonstrate sensitivity to circumstances which may render litigants particularly vulnerable. These are taken into account in arriving at an equitable outcome.
- 12.3. In a recent judgment, the candidate did not hesitate to uphold the rules of court and refused to condone the late filing of an answering affidavit.
13. **The candidate's administrative ability (other than in relation to court proceedings):**
- 13.1. The candidate's application reveals that, in addition to practising as an advocate for more than 20 years, cumulatively, he was the director of a firm of attorneys for more than eleven years. This would indicate that he is a competent administrator.
- 13.2. The candidate's judgments are generally well-structured and neatly presented.
- 13.3. As indicated above, the candidate has acted as a judge for 96 weeks over 5.5 years. He currently has no outstanding judgments. He has over that period also managed his legal practice as an attorney /advocate. It would thus appear that his administrative ability in terms of time management and work output are extremely sound. It further talks to the candidate's diligence and conscientiousness.

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

- 14.1. The candidate is a legal practitioner with 35 years' experience as a prosecutor, attorney, and advocate. He has devoted 22 months over the past five years to acting in various courts of the Gauteng Division. This is a considerable investment which demonstrates the candidate's commitment to gaining sufficient experience as an acting judge.
- 14.2. The candidate's application to be appointed permanently to the bench does not appear unconsidered, opportunistic, or premature. He is clearly a valued and respected member of his community.
- 14.3. The candidate's judgments are sound and well written. He is meticulous in setting out the law, the applicable facts and then dealing with the vexing issues *in casu*. The result is that he produces well-reasoned and comprehensive judgments. This sends a positive message to the public at large regarding the competency and ability of those that serve on the bench as well as how their matters are dealt with.
- 14.4. It is the reviewer's opinion that his appointment would send a positive message to the community at large that judicial officers are required to be persons of experience, integrity, and commitment.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:
 - 1.1. No judgements listed
2. Unreported judgments:
 - 2.1. No judgements listed
3. Judgments upheld on appeal:
 - 3.1. No judgements listed
4. Judgments overturned on appeal:
 - 4.1. No judgements listed