

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: ADV STUART DAVID JAMES WILSON

**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. MA (Philosophy, Politics and Economics) (Oxford);

1.1.2. LLB (with distinction) (Wits);

1.1.3. PhD (Law) (Wits); and

1.2. The candidate is appropriately qualified.

1.3. The candidate has been a Member of the Johannesburg Bar for 12 years since December 2009.

2. The candidate's integrity and ethics:

2.1. No circumstances are known that would suggest that the candidate lacks integrity, has behaved unethically or for any other reason is not a fit and proper candidate 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 Judges Remuneration and Conditions of Employment Act, 2001 (the Act) was promulgated to regulate the terms that judges may hold office.

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, he or she has completed a period of active service of not less than ten years. If he or she has not actively served for ten years by the time he or she reaches 70, he or she will be discharged from active service after completing 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, he or she has not yet actively served for 15 years.

4.4. The candidate is 42 years of age.

4.5. If appointed, the candidate could serve up to 28 years actively in office.

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

5.1. The candidate has a proven track record of human rights work as well as other activities that promote the values of the Constitution. His involvement with human rights at grassroots level equips him well to make the Constitution a living text since it is anticipated that he will be able to tap into his experience at ground level when interpreting the Constitution and giving effect to its underlying values.

5.2. He has written a book entitled *Human Rights and the Transformation of Property* (Juta Law Publishers, Cape Town; 2021). In it, he explains the role played by the Constitution and the law in achieving social change in South Africa, having regard in particular to the right of access to housing.

5.3. He has written a number of scholarly articles, all of which deal with advancing constitutional values and law:

5.3.1. *"The Right to Adequate Housing"* for the Research Handbook on Economic and Social Rights as Human Rights;

- 5.3.2. *“Making Space for Social Change: Pro-poor Property Rights Litigation in Post-Apartheid South Africa”* for the South African Journal on Human Rights;
- 5.3.3. *“Conflict management in an era of Urbanisation: Twenty Years of Housing Policy in Johannesburg after Blue Moonlight”* for the South African Journal on Human Rights;
- 5.3.4. *“Constitutional Jurisprudence: the first and second waves”* for Symbols or Substance: the Role and Impact of Socio-Economic Rights Strategies in South Africa;
- 5.3.5. *“Taking Poverty Seriously: The South African Constitutional Court and Socio-Economic Rights”* for the Stellenbosch Law Review;
- 5.3.6. *“Planning for Inclusion in South Africa: The State’s Duty to Prevent Homelessness and the Potential of ‘Meaningful Engagement’”* for the Urban Forum;
- 5.3.7. *“Litigation Housing Rights in Johannesburg’s Inner City: 2004 – 2008”* for the South African Journal on Human Rights;
- 5.3.8. *“Breaking the Tie: Evictions, Homelessness and the New Normality”* for the South African Law Journal;
- 5.3.9. *“Judicial Enforcement of the Right to Protection from Arbitrary Eviction: Lessons from Mandelaville”* for the South African Journal on Human Rights;
- 5.3.10. *“Taming the Constitution: Rights and Reform in the South African Educational System”* for the South African Journal on Human Rights; and

- 5.3.11. *“The Myth of Restorative Justice: Truth, Reconciliation and the Ethics of Amnesty”* for the South African Journal on Human Rights.
- 5.4. Some of these writings have been cited in judgments.
- 5.5. He helped to develop a programme for the Education Rights Project at the Centre for Applied Legal Studies (CALS) during 2000 - 2001. While employed at CALS, between August 2002 and April 2009, he carried out paralegal work to assist parents and children who had been unlawfully excluded from public schools.
- 5.6. During his time at CALS, he also assisted poor and vulnerable people living in informal settlements and derelict buildings in a number of ways, including resisting evictions and providing them with paralegal advice. He made representations on their behalf to municipalities to compel the municipalities to provide them with basic services such as water and sanitation.
- 5.7. While completing pupillage, he founded the Socio-Economic Rights Institute of South Africa (SERI), a human rights NGO dealing exclusively with socio-economic rights together with Professor Jackie Dugard.
- 5.8. His commitment to the values of the Constitution is aptly demonstrated with reference to his judgment in *S v Moyo* [2022] ZAGPJHC 250 (21 April 2022) which concerned a special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 following the District Court’s conviction of the accused, Ms Moyo, of fraud resulting in the imposition of a prison sentence of 18 months with the option of a fine of R1800.00.

- 5.9. After concluding that neither the conviction nor the sentence could stand in the face of a plea explanation that did not support a guilty plea on the charge of fraud, he remitted the matter to the District Court and further remarked how striking it was that the District Court had no regard to the decision of the Constitutional Court in *S v M* 2008 (3) SA 232 (CC), which required careful consideration and sensitivity into the best interests of the accused's children and how they would be impacted by a sentence of imprisonment.
- 5.10. In this instance Ms Moyo was the primary caregiver to three children, the youngest of which was 2 at the time sentence was passed. The candidate concluded that if the matter progressed to sentencing, the error ought to be avoided.

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

- 6.1. The candidate has a diverse practice at the Bar in the varied fields of:
- 6.1.1. Constitutional law (60%);
- 6.1.2. Administrative law (30%);
- 6.1.3. Labour law (5%); and
- 6.1.4. Criminal law (5%).

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

- 7.1. None of the candidate's judgments, as far as could be ascertained, were successfully taken on appeal. No favourable or adverse

comments have thus been made on the candidate's judgments in decisions by appeal courts.

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

8.1. The candidate has been practising at the Johannesburg Bar for 12 years since December 2009. He practises in the various fields mentioned in paragraph 6 above.

8.2. He has also been a Small Claim Court Commissioner since September 2020. He has acted as a judge in the Gauteng Division of the High Court for approximately five terms, one of which was in the criminal court between January and March 2022 as indicated under sections 9.2 and 9.3 of his completed questionnaire on pages 19-20.

8.3. He has, during his acting stints, handed down 51 judgments, three of which have been reported. He has competently dealt with matters that traverse the full spectrum of law, from mercantile law to criminal law to family law etc.

8.4. He has sat as a judge of first instance as well as in appeals.

9. The candidate's linguistic and communication skills:

9.1. The candidate's judgments are written plainly, detailed and easy to understand. They are also logical, well-reasoned and to the point.

9.2. His judgments and citations therein show that in each matter that he heard, he had a firm grasp of the applicable legal principles. There is no judgment that we know of that can be said to be clearly wrong or to be an instance of where he did not understand the issues at hand.

9.3. In summary, his judgments each time tell the story of what happened and what the (legal) reasons for his decision are in such a way that a reader, whether a lawyer or a lay person, can understand it. The importance of this attribute cannot be underscored enough since it is imperative that judges play a role in making the law more accessible to the lay public. The candidate's judgments thus serve their purpose with regards to the administration of justice since they clearly inform the parties (and potentially the court on appeal) why he made the decisions that he did.

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

10.1. On average the candidate delivers judgments within a month of hearings. A tabulated list of his judgments with dates of hearing and judgment appears on pages 32-42 of his paginated application.

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

11.1. With reference to the reviewers' experience and comments from counsel who have appeared before the candidate, it appears that the candidate is fair and thorough. He is courteous to counsel appearing before him and has a good judicial temperament. His quick turnaround time from hearing matters to delivering judgments attests to an ability to manage his time and administrative judicial duties well.

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

12.1. The candidate has an independent judicial mind.

- 12.2. Indeed, in *S v Shoba* [2022] ZAGPJHC 174 (25 March 2022), he alluded to his duty to be objective and to be guided by the evidence when hearing a matter as follows: “*It does not matter whether I subjectively believe that Mr. Shoba is guilty. Nor does it matter if I subjectively disbelieve parts or the whole of his story. What matters is whether, objectively evaluated, the facts proved before me are consistent with the reasonable possibility that he is innocent.*”
- 12.3. He has handed down a large number of judgments. It is clear from considering them that he does not favour any particular litigant or class of litigants. Rather, his judgments show that he treats all litigants – whether the state and government entities, corporations or embattled private persons in divorce-related proceedings – fairly and equally.
- 12.4. Moreover, he is not afraid to make what might seem like an unpopular decision. In *Siemens v Eskom Holdings* [2021] ZAGPJHC 128 (16 August 2021), a matter dealing with a tender, he made a finding of illegality against Eskom.
- 12.5. However, when it came to deciding on the appropriate remedy, he adopted a big-picture approach which demonstrated a sensitivity to the greater public interest. He observed: “*Given the present fragility of South Africa’s power distribution system, I am loath to simply set aside the tender process without some sense of what effect, if any, that would have on Camden Power Station and its productive capacity. I am alive to the fact that the contract awarded to Senta Square pursuant to the tender has only just over six months left to run. I need to know how, on the facts, that might affect any order I make to require the tender process to be rerun.*”

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

13.1. The candidate has proven administrative abilities in that:

13.1.1. He hands down his judgments within a month after hearing them;

13.1.2. He founded SERI during his pupillage and he was its Executive Director from December 2012 until December 2019 and its Director of Litigation from January 2010 to December 2012;

13.1.3. He has managed to teach and supervise postgraduate students at Wits while also practising at the bar;

13.1.4. He is an accomplished writer.

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

14.1. The candidate's appointment will send a positive message to the public. That is so since he is demonstrably committed to promoting the values enshrined in the Constitution, is plainly aware of the socio-economic problems faced by most South Africans, and has also been proven to be a competent judge.

14.2. That his application is supported by two Justices of the Constitutional Court, is a further indication that he is the type of candidate whose appointment will be in the public interest and will send a positive message to the public.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

- 1.1. *Johannesburg City v K2016498847 (Pty) Ltd* 2022 (3) SA 497 (GJ)
(attached to application)
- 1.2. *Mashele v BMW Financial Services (Pty) Ltd* 2021 (2) SA 519 (GP)
(attached to application)
- 1.3. *Mntambo v Piotrans (Pty) Ltd* (2021) 42 ILJ 2298 (HG) (attached to application)

2. Unreported judgments:

- 2.1. *Absolute View (Pty) Ltd v Caterpillar Financial Services SA (Pty) Ltd* [2021] ZAGPJHC 592 (28 October 2021)
- 2.2. *Du Plessis v S* [2022] ZAGPJHC 116 (28 February 2022) (attached to application)
- 2.3. *Gibb (Pty) Ltd v Passenger Rail Agency of South Africa and Another* [2021] ZAGPJHC 146 (26 August 2021) (attached to application)
- 2.4. *Hageman NO and Another v Wilgeheuwel Aftree-oord (Pty) Ltd* [2021] ZAGPJHC 102 (27 July 2021)
- 2.5. *HAT v DBT* [2021] ZAGPJHC 817 (13 December 2021)
- 2.6. *Hykue Supply Company (Pty) Ltd and Another v Khulio (Pty) Ltd and Others* [2021] ZAGPJHC 668 (8 November 2021)
- 2.7. *I[....] v P[....]* [2021] ZAGPJHC 119 (5 August 2021)
- 2.8. *J v J* [2021] ZAGPJHC 76 (20 May 2021)

- 2.9. *JDL v FNR* (36807/2021) Gauteng Local Division, Johannesburg, 20 August 2021
- 2.10. *LP v MP* [2021] ZAGPJHC 398 (20 September 2021)
- 2.11. *M on behalf of L, a child v Member of the Executive Council for Health: Gauteng Provincial Government* [2021] ZAGPJHC 501 (8 October 2021) (attached to application)
- 2.12. *Mafunda v S* [2022] ZAGPJHC 138 (14 March 2022)
- 2.13. *Maroko v Minister of Police and Another* [2021] ZAGPJHC 602 (2 November 2021)
- 2.14. *Matodzi v S* [2022] ZAGPJHC 152 (17 March 2022)
- 2.15. *MC v JC* [2021] ZAGPJHC 373 (8 September 2021)
- 2.16. *Melaphi and Another v Minister of Home Affairs and Another* [2020] ZAGPPHC 699 (3 December 2020)
- 2.17. *Mntambo v Piotrans (Pty) Ltd* [2021] ZAGPJHC 111; (2021) 42 ILJ 2298 (HC) (2 August 2021)
- 2.18. *Monnakhotle v Road Accident Fund* [2021] ZAGPJHC 152 (17 May 2021)
- 2.19. *MV v WV* [2022] ZAGPJHC 64 (4 January 2022)
- 2.20. *Nzwalo Investments (Pty) Ltd v Infoguardian (Pty) Ltd* (6950/2020) [2021] ZAGPJHC 95 (23 July 2021)
- 2.21. *PCCW Vuclip (Singapore) PTE Ltd v E.tv (Pty) Ltd* [2021] ZAGPJHC 143 (24 August 2021) (attached to application)

- 2.22. *Pellow N.O. v Improvon Property Fund 2 (Pty) Ltd and Others* [2021] ZAGPJHC 504 (7 October 2021)
- 2.23. *Pillay v Imani and Another* [2021] ZAGPJHC 691 (15 November 2021)
- 2.24. *Rooplal N.O v Khangela and Another* [2021] ZAGPJHC 667 (5 November 2021)
- 2.25. *S v Makgopa and Others* [2022] ZAGPJHC 192 (4 April 2022)
- 2.26. *S v Makhenke* [2022] ZAGPJHC 165 (22 March 2022) (attached to application)
- 2.27. *S v Moyo* [2022] ZAGPJHC 250 (21 April 2022)
- 2.28. *S v Shoba* [2022] ZAGPJHC 174 (25 March 2022)
- 2.29. *Selahle v S* [2022] ZAGPJHC 73 (31 January 2022)
- 2.30. *Siemens (Pty) Ltd v Eskom Holdings (SOC) Ltd and Another* [2021] ZAGPJHC 128 (16 August 2021)
- 2.31. *Tawodzera v Minister of Home Affairs* [2020] ZAGPPHC 717 (1 December 2020)

3. Judgments upheld on appeal:

None of the candidate's judgments, as far as could be ascertained, were successfully taken on appeal.

4. Judgments overturned on appeal:

No judgments have been overturned on appeal as far as could be ascertained.