

JSC INTERVIEW ROUND: APRIL 2023

NORTHERN CAPE DIVISION OF THE HIGH COURT

CANDIDATE: ADV ALMÉ STANTON

**COURT FOR WHICH CANDIDATE APPLIES: NORTHERN CAPE
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. University of Stellenbosch – BA Law 1995;

1.1.2. University of Stellenbosch – LL.B 1997; and

1.1.3. University of Johannesburg – LL.M 2007.

1.2. The candidate has also held the following professional positions:

1.2.1. Admitted as an attorney on 30 March 2000;

1.2.2. Admitted as a conveyancer on 3 August 2000;

1.2.3. Admitted as a notary on 29 August 2002; and

1.2.4. Admitted as an advocate on 28 January 2010.

2. The candidate's integrity and ethics:

2.1. The candidate has a reputation as a person whose ethics and integrity are beyond reproach.

2.2. There are no circumstances known that would suggest that the

candidate is not a person of integrity or is not a fit and proper person for appointment.

2.3. On the contrary, as appears from the candidate's experience, she has served in a number of positions that clearly emphasise her integrity, for example having served as the Chief Executive Officer of the Free State Law Society, as well as a Council Member of the Northern Cape Legal Practice Council.

2.4. The candidate has a wide field of experience, having practised as an attorney, conveyancer, notary and an advocate for more than 22 years.

3. Whether the candidate's appointment would help to achieve an appropriate racial and gender composition on the bench:

3.1. There are currently six full-time judges in the Northern Cape Division bench, comprising (as far as could be ascertained):

3.1.1. 3 black women (2 African, 1 Coloured);

3.1.2. 2 black men (2 African); and

3.1.3. 1 white man.

3.2. The candidate is a white woman.

3.3. The candidate's appointment to the Northern Cape Division of the High Court will send a message to the public that the judiciary is committed to gender transformation, especially in view of the fact that for numerous years no white woman has been permanently appointed as a Judge in this division.

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 48 years old.
- 4.5. If appointed, the candidate could serve up to 22 years actively in office.

5. The candidate’s personal commitment to the values of the Constitution:

- 5.1. The candidate is committed to the Constitution, and the values thereof, as is clear from both judgments prepared by her, as well as cases undertaken by her.
- 5.2. The candidate has, for a number of years, been one of the Northern Cape Society of Advocates’ members that has undertaken the most

hours of *pro bono* work.

- 5.3. The candidate's commitment to transformation is also illustrated in practice by the fact that in order to assist a junior black woman colleague, the candidate had shared her newly furnished chambers with the junior for about three years.
- 5.4. After about three years the candidate had again taken up other chambers, after having donated the office furniture of the shared chambers to her colleague at no cost.
- 5.5. The candidate's personal commitment to the values of the Constitution is also evident from the manner in which she interacts with practitioners, but also with litigants, witnesses, and accused persons.

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

- 6.1. The candidate has a broad range of knowledge of law, as a result of her background which includes:
 - 6.1.1. practice as an attorney between 2000 and 2004;
 - 6.1.2. serving as the Chief Executive Officer of the Free State Law Society between 2005 and 2009; and
 - 6.1.3. practising as an advocate for more than 10 years since 2011.
- 6.2. By reason of her experience as well as acting stints in both the Northern Cape and the North West Divisions of the High Court, the candidate has wide experience in respect of all aspects of law, including constitutional law matters.

6.3. The candidate held acting appointments in the Northern Cape Division during the First and Third Terms in 2018, the First Term in 2020, the First and Second Terms in 2021, as well as 19 July 2021 to 19 September 2021, and 18 June 2022 to 16 August 2022.

6.4. The candidate also held an acting appointment in the North West Division during June 2020.

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

7.1. The judgment by the candidate in the appeal of *Botes v Sandvik Mining RSA (Pty) Ltd* (CA&R47/2019) [2020] ZANCHC 29 (12 June 2020) was subsequently upheld by the Supreme Court of Appeal.

7.2. The following judgments were overturned on appeal:

7.2.1. The judgment by the candidate in the matter of *Fischer N.O and Others v Mahlabe* (1817/2017) [2018] ZANCHC 7 (2 March 2018) dealing with a *rei vindicatio* was subsequently overturned by the Full Bench of the Northern Cape in *Mahlabe v Fischer N.O and Others* (1817/19) [2019] ZANCHC 63 (18 October 2019).

7.2.2. Phatshoane referred to the judgment of the Court a quo as follows:

“[17] The Court a quo correctly identified that the issue for determination was the ownership of the immovable properties (the farms). It held that the trite principle is that ownership would be properly proven by the

production of the relevant title deeds. Insofar as the Trust produced the relevant title deed to the farms the Court found that it could not be disputed that it was the registered owner thereof. The Court was of the view that Clause 5.2.2 of the Trust Deed confirmed the absence of fraud on the part of the Trust where it stipulates: "Die koper boekstaaf dat die koper daarvan bewus is dat die verkoper tans in 'n regsgeeding betrokke is met die onregmatige okkupeerders van die Dirisanang Small Farmers Communal Property Association ter afsetting van die onregmatige okkupeerders en die afwysing van 'n aksie deur die Dirisanang Small Farmers Communal Property Association." The Court held that in the absence of any allegation that the transaction between Lerospot and the Trust was tainted by fraud it could not conclude that it was not the intention of Lerospot to sell the immovable properties to the Trust and that the Trust intended to obtain ownership thereof.

[18] *The Court further found the underlying agreement between Lerospot and the Trust and the subsequent registration of the transfer of the immovable properties in the name of the Trust to have been valid. It reasoned that any right that the appellant may have had to occupy the farms ceased to exist when the CPA was divested of its ownership of the property. It concluded that the appellant failed to establish that he was vested with some enforceable right that entitled*

him to remain in occupation of the farms. The Court was unpersuaded that the appellant raised real, genuine, or bona fide disputes of facts which could not be resolved on the papers as they stood. As already alluded to, it made an order that the appellant remove his cattle and/or livestock from the farms.”

7.2.3. The Court of Appeal however held that the candidate had erred in the following respects:

“[22] The principles established in the above decisions and authorities cited apply squarely to the present matter. The import is simple. If it can be established that the title to the transferee, in this case Lerospot, was secured through some fraudulent means ownership would not have validly passed to it. This was a key issue in dispute which the Court a quo was enjoined to determine. To the extent that the Court did not consider this principal question it erred. The determination of the issue relating to the intention to sell and acquire the farms between the CPA and Lerospot was, in my view, antecedent to the residual question whether the Trust was the legitimate title holder of the farms. The Court a quo's finding that any right that the appellant may have had to occupy the farms ceased to exist when the CPA was divested of its ownership of the property does not take into account that the issues pertaining to the acquisition of the land by Lerospot were highly contested, in particular the

mandate of those who signed the Deed of Sale on behalf of the CPA was brought into question.

[27] In my view, to resolve this application under the prism of the Plascon Evans rule may lead to considerable injustice. The Court a quo incorrectly determined that the appellant did not raise real, genuine, or bona fide disputes of fact. The veracity of the issues in dispute as foreshadowed in the papers would require to be properly tested. Referring the application to oral evidence is inescapable.”

7.2.4. As a result, the matter was referred for oral evidence by the Court of Appeal.

7.2.5. The judgment of the candidate in the matter of *Technofin (Pty) Limited v Sol Plaatje Municipality* (2230/2014) [2020] ZANCHC 85 (13 November 2020) was overturned on appeal by a Full Bench of the Northern Cape in the matter of *Sol Plaatje Municipality v Technofin (Pty) Ltd* (2230/2014;34/2020) [2022] ZANCHC 14 (18 March 2022).

7.2.6. The trial on the merits were presided over by Matlapeng AJ, whereafter the trial proceeded before the candidate in respect of the *quantum*.

7.2.7. An appeal was noted in respect of the whole of the judgment of the candidate, in respect of the *quantum* of the second claim, based on enrichment.

7.2.8. The question for determination in the appeal was phrased as follows by the Court of Appeal:

“[7] *The issue for determination is thus whether in awarding the damages in the amount of R1,682,715.70 to the respondent the trial court was correct in its finding that the impoverishment of the respondent and the concomitant enrichment of the appellant are on equal terms.*”

7.2.9. The Court of Appeal held that the candidate had erred in the following respects:

“[54] *The following is clear from the foregoing. The Court a quo’s finding does not seem to be in line with Mangaung. The Court a quo incorrectly used as a yardstick, the agreed contractual price in the invalid lease agreement in order to calculate the enrichment and concomitant impoverishment of the parties. The finding that same was on equal terms, must be incorrect simply because, the Court a quo, in calculating the respondent’s impoverishment did not exclude the profit factor.*

[55] *It follows from foregoing that the amount awarded by the Court a quo could not have been the lesser of either the amount by which the appellant had been enriched or the amount by which the respondent had been impoverished, which should not include the profit. I therefore find that the impoverishment of the respondent and the enrichment of the appellant are not on equal terms.*”

7.2.10. As a result of the aforesaid, the amount awarded by the candidate was drastically reduced on appeal to the amount of R180 091-88.

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

8.1. The candidate has diverse legal experience:

8.1.1. the candidate practised as an attorney, conveyancer and notary for 4 years;

8.1.2. the candidate was the Chief Executive Officer of the Free State Law Society for 4 years;

8.1.3. the candidate has been in practice at the Northern Cape Society of Advocates for more than 11 years; and

8.1.4. the candidate acted in the Northern Cape Division for more than 5 terms, as well as a month in the North West Division.

9. The candidate's linguistic and communication skills:

9.1. Although the candidate is soft-spoken, her linguistic and communication skills are good.

9.2. The candidate's judgments are written in clear and concise language and address the issues of fact and principles of law in a logical and well-reasoned manner.

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

10.1. It appears from the candidate's judgments is that she hands judgments down promptly.

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

11.1. No adverse comments were received in respect of the candidate's fairness and impartiality. She is perceived to act and administer the law without fear, favour, or prejudice.

11.2. The candidate has demonstrated her ability to conduct court proceedings fairly, efficiently, and effectively during her acting stints.

12. The candidate's independent mindedness:

12.1. The candidate is independent-minded and this is clearly established by her conduct in court and in her judgments.

12.2. No adverse comments were received in respect of the candidate's independent mindedness.

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

13.1. The candidate's legal experience illustrates that not only does she have a thorough knowledge of the law and practice, but that she also has excellent communication skills, managerial skills, as well as strong administrative skills, as is apparent from having served as the Chief Executive Officer of the Free State Law Society for a number of years.

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

- 14.1. In view of the facts as set out above, the candidate is not only a fit and proper candidate to be appointed to the bench, but her appointment would also be an asset to the bench.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:

- 1.1. *Director of Public Prosecutions, Northern Cape v Swarts and Another* 2023 (1) SACR 101 (NCK)

2. Unreported judgments:

- 2.1. *Nama Khoi Municipality and Others v Member of the Executive Council for Local Government, Northern Cape Provincial Government and Others* [2013] JOL 30646 (NCK)
- 2.2. *Deeps Betting Grounds (Pty) Ltd v Northern Cape Gambling Board* (3018/2017) [2018] ZANCHC 18 (9 March 2018)
- 2.3. *Botes v Sandvik Mining RSA (Pty) Ltd* (CA&R47/2019) [2020] ZANCHC 29 (12 June 2020)
- 2.4. *Fischer N.O and Others v Mahlabe* (1817/2017) [2018] ZANCHC 7 (2 March 2018)
- 2.5. *Technofin (Pty) Limited v Sol Plaatje Municipality* (2230/2014) [2020] ZANCHC 85 (13 November 2020)
- 2.6. *Motsoaledi N.O and Others v Minister of Rural Development and Land Reform and Others* (M160/19) [2020] ZANWHC 62 (17 September 2020)
- 2.7. *Radiokana v Minister of Police* (1609/2017) [2020] ZANWHC 52 (17 September 2020)
- 2.8. *The State v Johannes Moroe* (Conviction) (KS2/2020) ZANCHC (5 March 2020)

2.9. *The State v Johannes Moroe* (Sentence) (KS2/2020) ZANCHC (5 March 2020)

2.10. *Van Heerden v Renosterberg Local Municipality & Others* (1522/2020) ZANCHC (30 April 2021)

3. Judgments upheld on appeal:

3.1. The unreported judgment of the candidate in *Botes v Sandvik Mining RSA (Pty) Ltd* (CA&R47/2019) [2020] ZANCHC 29 (12 June 2020) was subsequently upheld by the Supreme Court of Appeal

4. Judgments overturned on appeal:

4.1. The judgment by the candidate in the matter of *Fischer N.O and Others v Mahlabe* (1817/2017) [2018] ZANCHC 7 (2 March 2018) was subsequently overturned by the Full Bench of the Northern Cape in *Mahlabe v Fischer N.O and Others* (1817/19) [2019] ZANCHC 63 (18 October 2019)

4.2. The judgment of the candidate in the matter of *Technofin (Pty) Limited v Sol Plaatje Municipality* (2230/2014) [2020] ZANCHC 85 (13 November 2020) was overturned on appeal by a Full Bench of the Northern Cape in the matter of *Sol Plaatje Municipality v Technofin (Pty) Ltd* (2230/2014;34/2020) [2022] ZANCHC 14 (18 March 2022)