

JSC INTERVIEW ROUND: APRIL 2023

CANDIDATE: ADVOCATE JOHN HOLLAND-MÜTER SC

**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 holds the following qualifications:

1.1.1. B Juris – University of Pretoria (1978); and

1.1.2. LLB – UNISA (1993).

1.2. From 1975 to 1978, the candidate was employed as a clerk in the Department of Justice.

1.3. From 1981 to 1982, he was employed first as a prosecutor and then as a senior prosecutor.

1.4. From 1982 to 1988, he served as a magistrate.

1.5. From 1988 to 1998, he lectured in law at, variously, the Justice College, government departments, Technicon South Africa and UNISA.

1.6. He joined the Pretoria Bar at the beginning of 1998 and was conferred Senior Counsel status (Silk) on 30 July 2019. He has acted as the convenor of a number of bar committees.

1.7. The candidate has acted as a judge for a period of 95 weeks.

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 75 full-time judges on the Gauteng Division bench, comprising (as far as could be ascertained):

3.1.1. 22 black women (16 African, 4 Indian, 2 Coloured);

3.1.2. 24 black men (17 African, 4 Indian, 3 Coloured);

3.1.3. 14 white women; and

3.1.4. 15 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 was born in 1956 and is therefore presently 66 years of age and will turn 67 in 2023. If appointed, the candidate could serve up to 8 years actively in office if allowed to continue his service in terms of Section 4(4).

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

5.1. The candidate refers to his involvement in:

5.1.1. transforming Laerskool Rietfontein-Noord from an Afrikaans-medium school to a parallel-medium school offering classes in Afrikaans and English, paving the way for children from Eersterust and Mamelodi townships to enter school;

5.1.2. engaging the parents from the Eersterust and Mamelodi communities in the school;

5.1.3. procuring travelling for the children from these communities;

5.1.4. assisting other school governing boards in training on the South African Schools Act and school governance;

5.1.5. upliftment of, housing, and caring for abandoned children and orphans; and

5.1.6. mentoring and assisting junior women advocates to develop their practices, including assisting a former prisoner with her LLM studies, as well as her entry into the legal profession.

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

6.1. The candidate is well-versed in the law and its underlying principles, having lectured and practiced in different fields of the law. His judgments as an acting judge are judicially sound.

6.2. While the candidate's practice consists of only 5% constitutional law, his judgments show that he has a good grasp of constitutional law and is capable of applying it where necessary.

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

7.1. The reviewers considered five judgments of the candidate that have been upheld, commented on, or overturned on appeal.

7.2. In *Jenni Button (Pty) Ltd v Hyprop Investments Ltd* (Case no 65643/2015), an opposed spoliation application, the full bench of the Gauteng Division, Pretoria set the candidate's judgment aside. The *locus standi* of the applicant (as a sub-division of a holding company) was contested. The finding on the merits was not challenged, only the issue of *locus standi*.

7.3. In *Leon St Leger Boutell v Road Accident Fund* (Case no 55458/2014), the candidate granted leave to appeal to the Supreme Court of Appeal because, in his view, there was no existing case law on the question of whether "private" annuities compared with employees' compulsory retirement funds may amount to unfair

discrimination. The appeal was heard on 14 May 2018 and the Supreme Court of Appeal upheld the candidate's judgment.

- 7.4. In *Cloete Murray N.O. v VI Moureau* (Case no 13366/2013), the Supreme Court of Appeal upheld the candidate's judgment. This was an insolvency matter where the dispute was whether certain monies received by an insolvent from a provident fund constituted an asset in his estate. Monies received before insolvency, as a result of *commixtio*, became part of the insolvent's estate and therefore vested in his later insolvent estate.
- 7.5. In *M Kenosi v L Mofokeng* (Case no 50196/2016), the Supreme Court of Appeal dismissed the petition after the candidate refused to grant leave to appeal against his judgment referring the matter to trial for oral evidence. The question which served before court was whether it was possible to determine on affidavit if certain signatures were falsified or not.
- 7.6. In *R Leathern N.O. v Reserve Bank* (Case no 41306/2019), the Supreme Court of Appeal set the candidate's judgment aside. The matter was about "*tainted monies*" and whether these monies were protected by the Insolvency Act or could be attached by a "*blocking order*" issued by an employee of the Reserve Bank. The candidate held that the Insolvency Act superseded the blocking order by an employee, but the Supreme Court of Appeal found the opposite.
- 7.7. To date only two appeals against the candidate's judgments have been successful. According to the candidate, he has granted at least ten applications for leave to appeal against his judgments and refused approximately ten, of which four were petitioned unsuccessfully.

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

8.1. The candidate has in excess of 30 years' professional experience in law, which include the following:

8.1.1. 3 years clerking at the Department of Justice (1975 to 1978);

8.1.2. 9 years serving as a prosecutor, senior prosecutor, and Magistrate (1981 – 1988);

8.1.3. 10 years serving as law lecturer at the Justice College, part-time lecturer at Technikon South Africa and UNISA, and examiner at Technikon South Africa;

8.1.4. 25 years practising as an advocate; and

8.1.5. acting as a judge for in excess of 95 weeks between 2015 and 2022.

9. The candidate's linguistic and communication skills:

9.1. The candidate is proficient in English, his judgments are well written, and well-reasoned.

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

10.1. The candidate demonstrates the ability to produce judgments promptly.

10.2. He has delivered all but three of his judgments within three months, and where the candidate has taken longer than the recommended three months, his delay in handing down judgment has been minimal.

10.3. He took longer than three months to hand down judgments in the following matters:

10.3.1. *Minister of Safety and Security v Dino Peterson* (Full Court Appeal): appeal was heard on 4 December 2019 and judgment delivered on 6 March 2020. The candidate was one of a number of judges.

10.3.2. *T Motau and Other v HPCSA and Others*: matter was heard on 25 October 2017, both counsel supplied further heads of argument at the end of November 2017, and judgment was delivered on 23 February 2018.

10.3.3. *Etresia van der Walt v Marie E Stoop*: matter was heard from 6 to 8 June 2018. Oral arguments were presented on 27 July 2018. Certain recalculations had to be done after the evidence was finalised. The recalculations were submitted to the candidate during September 2018. After receipt of the recalculations, the candidate delivered his judgment on 30 October 2018.

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

11.1. The candidate appears to be able to conduct court proceedings fairly, effectively and efficiently, having regard to his judgments.

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

12.1. The candidate appears appropriately independent minded.

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

13.1. The candidate is administratively proficient. His career record and practice of more than 30 years, his involvement in Bar Council activities (including training and mentorship of pupils), his academic work (lecturing and publications) and his parish's activities illustrate his administrative ability.

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

14.1. The candidate has actively participated in the committees and projects of the Pretoria Bar, and in community related activities.

14.2. The candidate has extensive experience in criminal law, also in the apartheid era.

14.3. The candidate's judgments illustrate that he is unbiased.

14.4. The candidate demonstrates potential to contribute to the judiciary, having regard to his judgments, experience, capabilities, and demeanour.

14.5. The appointment of the candidate would send a positive message to the public.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:

- 1.1. *Manwood Underwriters (Pty) Ltd and others v Old Mutual Life Assurance Company (South Africa) Limited* [2013] 1 All SA 701 (WCC)
- 1.2. *Retmil Financial Services (Pty) Ltd v Sanlam Life Insurance Company Ltd and others* [2013] 3 All SA 337 (WCC)

2. Unreported judgments:

- 2.1. *Mohalelo v Johan Tsietsi Aphiri t/a Aphiri Attorneys* (67331/2018) 2022 ZAGPPHC 568 (27 July 2022)
- 2.2. *Aphiri v Mohalelo and another* (67331/2018) [2022] ZAGPPHC 627 (16 August 2022)
- 2.3. *S v Philander* (CC 53/2012) WCC
- 2.4. *Macsteel Service Centre SA (Pty) Ltd v Heavy Feather Trading* 50 CC 2021 JDR 1319 (GP)
- 2.5. *LD Rensburg and 3 others v South African Legal Practice Council* (Case no 69359/2019) ZACPPHC
- 2.6. *Solidarity and Afriforum v Minister of Tourism* (Case no 14128/2021) ZACPPHC
- 2.7. *Anyasi v Passenger Rail Agency of South Africa* (27304/2019) [2022] ZAGPPHC 867 (16 November 2022)
- 2.8. *Nedbank Ltd v Centurion Townhouses (Pty) Ltd and Another* (26051/2011) [2022] ZAGPPHC 664 (25 August 2022)

2.9. *John Wright Veneers (SA) (PTY) LTD v Komatiland Forests SOC (PTY) LTD* (A133/2021) [2022] ZAGPPHC 657 (31 August 2022)

2.10. *ABSA Bank Ltd v Ndziba N.O and Others In re ABSA Bank Ltd v Ndziba N.O and Others* (13189/2014) [2022] ZAGPPHC 692 (8 September 2022)

3. Judgments upheld on appeal:

3.1. *Konsult One CC v Strategy Partners (Pty) Ltd* (2607/10) [2013] ZAWCHC 55 (19 March 2013)

3.2. *Naude and another v Louis Pasteur Medical Investments (Pty) Ltd and others* [2022] JOL 56070 (SCA)

4. Judgments overturned on appeal:

4.1. *S v Salie* (CC072013) WCC (appeal case no. 116/2017)