

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: ADV BRAD CHRISTOPHER WANLESS SC

COURT FOR WHICH CANDIDATE APPLIES: GAUTENG DIVISION

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

1.1. The candidate is appropriately qualified.

1.2. The candidate holds the following qualifications:

1.1.1. BA – University of KwaZulu-Natal (1983);

1.1.2. LLB – University of KwaZulu-Natal (1985); and

1.1.3. Diploma in Maritime Law – University of KwaZulu-Natal (1986).

1.3. The candidate was granted senior counsel status in June 2011.

2. The candidate's integrity and ethics:

2.1. In a previous review on this candidate, a potential issue was raised in respect of his conduct. Subsequent thereto, the Legal Practice Council has issued a certificate of good standing in respect of the candidate.

2.2. No circumstances are known that would suggest that the candidate is not a person of integrity with a reputation for ethical behaviour. There is nothing in the candidate's application or judgments to suggest that he is not a fit and proper person.

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

3.1. There are currently 79 full time Judges on the Gauteng Division bench, comprising (as far as could be ascertained):

3.1.1. 23 black women (16 African, 4 Indian, 2 coloured);

3.1.2. 25 black men (17 African, 4 Indian, 3 coloured);

3.1.3. 15 white women; and

3.1.4. 16 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 61.
- 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 was appointed to act *pro deo* on a regular basis during the first five years of his practice. The applicant served as a member of the *pro deo* committee prior to it being disbanded.
- 5.2. The candidate states that, whilst practising at the KwaZulu-Natal Bar, he mentored approximately nine pupils, of whom eight are said to have been from previously disadvantaged backgrounds. The candidate states that he endeavoured, where possible, to assist the pupil advocates, including by means of financial assistance and by maintaining an open door policy.
- 5.3. As a senior counsel, when briefed together with a junior, the candidate states that his junior was always a black junior counsel.
- 5.4. The candidate states further that he always availed himself to assist with transformation, through briefing patterns, maintaining an open door policy, and providing assistance and advice to juniors at his group and from other groups of advocates.
- 5.5. The candidate assisted with transformation initiatives at the KwaZulu-Natal Bar, including enrolling for an initiative involving fee-sharing arrangements with black counsel.
- 5.6. The candidate served as an acting judge for a period of three years and two days. When he acted in the Gauteng Division he personally

paid the costs of travel and accommodation. This resulted in him being away from his family for extended periods. On at least three occasions, he assisted with the administration of justice in the Gauteng Division on extremely short notice (the day before commencement of a session).

5.7. The candidate recently contributed financially (and sought finance from others) to assist a black law student with his studies at the University of Pretoria and has mentored the student as much as possible.

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

6.1. The candidate has had exposure to diverse areas of the law, from criminal law to matrimonial, family, maritime, contract, delict, insolvency, property, commercial, administrative, competition, labour, environmental, intellectual property, engineering and construction law.

6.2. The candidate was a public prosecutor and a substantial part of the candidate's practice as an advocate comprised the law of delict.

6.3. The candidate has experience in sports law and represented various soccer clubs at disciplinary hearings, appeals and arbitrations.

6.4. To a lesser degree, the applicant practised administrative law, competition law and environmental law.

6.5. Whilst in practice, the candidate did not practise in the field of constitutional law. The candidate refers to one constitutional matter that he was involved in as a junior counsel, that involved the right of an individual to water.

6.6. The candidate has presided over matters involving principles of constitutional law.

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

7.1. No judgments have been found overturning decisions by the candidate.

7.2. The candidate states that:

7.2.1. *“At the time of the submission of these application papers to the JSC, I have only been provided with a formal notification in respect of one matter, namely the matter of Bustque 436 (Pty) Ltd v Vendor’s Paradise (Pty) Ltd, Case Number 56261/2019, Appeal Number: A55/2021 where the appeal was dismissed and my judgment was upheld.”*

7.2.2. *“As far as I am aware there is only one of my judgments where I refused leave to appeal and the applicant petitioned the SCA for leave to appeal. This was refused.”*

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

8.1. Between 23 November 1988 and 31 July 1990 the candidate served as a public prosecutor in the District and Regional Magistrates’ Courts of Durban, KwaZulu-Natal.

8.2. The candidate was a member of the Society of Advocates of KwaZulu-Natal between 1 December 1990 and 30 June 2016, and is said to have been duly registered with the Legal Practice Council from 21 June 2019 to date of his application.

- 8.3. The candidate achieved senior counsel status in June 2011, after approximately 20 years of practice as an advocate.
- 8.4. The candidate has experience in both criminal and civil law, encompassing both trial and motion matters.
- 8.5. The candidate has appeared in various divisions of the High Court and in private arbitrations and insolvency enquiries.
- 8.6. The candidate enjoys a reputation for being prepared for his matters and presenting an in-depth knowledge and understanding of the issues arising from those matters, even those cases involving lengthy papers.
- 8.7. The candidate also has a reputation for being efficient, organised, respectful, and pleasant when dealing with matters and with counsel.

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

- 9.1. In terms of the judgments the candidate has written, both reported and unreported, he exhibits good linguistic and communication skills.
- 9.2. The candidate's judgments are well structured, well written, and easy to follow as he deals directly with the point in issue and simplifies the application of the law to the facts logically.
- 9.3. The candidate has written 51 judgments over his period acting as a judge.
- 9.4. The candidate has penned four reportable judgments in his years serving on the bench.

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

10.1. The candidate on average delivers judgments within an acceptable three month period and appears to be alive to the need for an expeditious resolution of disputes.

10.2. The candidate states that he had no reserved judgments when his questionnaire was completed on 19 June 2023, despite having completed a week of Opposed Motions from 29 May 2023 to 2 June 2023 and having heard an Urgent Special Motion on 5 June 2023.

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

11.1. There is no adverse information in this regard. No concerns appear from the judgments of the candidate that were considered.

11.2. The candidate is known to be able to manage a lengthy motion roll with ease. One of the reviewers had appeared before him several times in unopposed motion court, and mentioned that his roll was always well organised, published well in advance, that he was well prepared and had a polite and pleasant demeanour in court.

11.3. The candidate appears to deal with cases relatively efficiently and expeditiously. Positive reports by members of the Bar are as follows:

11.3.1. *"I ran a trial before him 3 years ago, he is knowledgeable and firm although he has a reserved personality. He is thorough, listens, debates and asks critical questions. He delivered a very good judgment within a week. I was very impressed with his temperament and I think he would be an asset to the judiciary."*

- 11.3.2. *“I have appeared before him a few years ago, he was part of a full bench – he seemed prepared and posed a few questions to both sides. However, since he was the most junior amongst the judges and was reserved compared to the other judges who were more dominant. My sense is that he was still finding his feet and adopted a reserved demeanour. In respect of his fitness, I cannot express a view, other than, there’s nothing that points to his unfitness.”*

12. The candidate’s independent mindedness:

- 12.1. There is nothing to indicate that the candidate is not independent minded in the discharge of his duties as counsel or acting judge.

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

- 13.1. No adverse comments have been received by the reviewers in this regard.
- 13.2. The candidate was a member of a committee entrusted with negotiating the renewal of the leases of various groups of advocates in Durban, KwaZulu-Natal. He has served as the vice chairman of the governing body of a primary school for over ten years. He serves as a committee member of a retirement village, as chairman of the Body Corporate of Glengeni Manor, and as a board member of Highway Hospice.

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

- 14.1. The candidate is an experienced legal practitioner and has an extensive record of diligent service as an acting judge. His appointment would convey the message that the Gauteng Division of the High Court, as the busiest commercial court in the country, places a premium on judicial officers who are efficient and industrious in dispensing justice.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:
 - 1.1. None
2. Unreported judgments:
 - 2.1. *Courtney v Boshoff N.O and others* (2019/41681) [2022] ZAGPJHC 1006 (20 December 2022) (marked Reportable)
 - 2.2. *Krohne (Pty) Ltd v Strategic Fuel Fund Association* (Case number: 43316/2019) (24 October 2022)
 - 2.3. *Lifa Gaxela v The Minister of Home Affairs and Others* (Case number: 2020/17691) (17 October 2022) (marked Reportable)
 - 2.4. *Absa Bank Limited v Mphahlele and Others* (45323/2019 and 42121/2019) [2020] ZAGPPHC 257 (26 March 2020) (marked Reportable)
 - 2.5. *B v B* (38752/2016) [2022] ZAGP JHC 748 (27 September 2022)
 - 2.6. *Naicker v S* (A388(2019) ZAGPPHC 136 (22 February 2021) (appeal upheld from regional court)
 - 2.7. *Morton v The State* (RC35/2017; A367/18) [2020] ZAGPPHC 221 (26 March 2020) (appeal from Regional Court dismissed)
 - 2.8. *Van Rensburg N.O. and Another v Master of the High Court, Pretoria and Another* (56029/18) [2020] ZAGPPHC 73 (14 February 2020)
 - 2.9. *Ferrero S.P.A v Interactive Trading 716 (Pty) Limited* (38478/2019) [2020] (13 February 2020)

- 2.10. *Orion Real Estate Limited v Zephan Properties Proprietary Limited* (09441/2019) [2019] ZAGPJHC 185 (18 June 2019)
- 2.11. *Slabbert v Du Plessis* (A5052/2018) [2019] ZAGPJHC 190 (3 June 2019)
- 2.12. *RNS Investment and Another v Mathole* (23630/17) [2018] ZAGPPHC 669 (28 August 2018)
- 2.13. *Nedbank Limited v Janse Van Vuuren and Another* (33222/2011) [2018] ZAGPPHC 335 (4 May 2018)
- 2.14. *SA Taxi Securitisation (Pty) Ltd v Phambuka* (8821/11) [2012] ZAKZPHC 19 (30 March 2012)
- 2.15. *Georigiou v Tyres 2000 (Heriofdale) (Pty) Ltd* 2015 JDR 2011 (GJ)
- 2.16. *Ndlovu v Beukes* 2020 JDR 0612 (GP)
- 2.17. *Haywood and others v Foresta Timber and Board* 2023 JDR 0903 (GJ)
- 2.18. *Tiedemann v Tiedemann* 2023 JDR 0901 (GJ)
- 2.19. *Strategic Partners Group concessions (Pty) Ltd v Baubela Operating Company (Pty) Ltd and others* 2023 JDR 0108 (GJ)
3. Judgments upheld on appeal:
 - 3.1. *Bustque 436 (Pty) Ltd v Vendor's Paradise (Pty) Ltd* 2020 JDR 1952 (GP) – mentioned by candidate in his application
 - 3.2. *Louw v Patel* 2023 JDR 0682 (SCA)

4. Judgments overturned on appeal:

4.1. None