

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: ADV KELSEY ALLEN-YAMA

**COURT FOR WHICH CANDIDATE APPLIES: LABOUR COURT
(DURBAN)**

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:

1.2.1. B. Proc (UNISA) (2000); and

1.2.2. LLB (UNISA) (2001).

1.3. The candidate's professional admissions and honours:

1.3.1. admitted as an attorney (17 March 2003);

1.3.2. admitted as a solicitor (Law Society of England and Wales) (15 December 2006); and

1.3.3. admitted as an advocate (20 April 2009).

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 who 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 12 judges permanently appointed to the Labour Court. Based on the names listed on the judiciary's website, the Labour Court's racial and gender composition appears to be:

3.1.1. 5 black women (4 African, 1 coloured);

3.1.2. 2 white women;

3.1.3. 3 black men (2 African, 1 coloured); and

3.1.4. 2 white men.

3.2. The only current full-time judge on the Labour Court bench in Durban is a coloured woman.

3.3. The candidate is a white woman.

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 50 years old.

4.5. If appointed, the candidate could serve up to 19 years actively in office.

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

5.1. The candidate has tirelessly represented the interests of employees and trade unions in numerous cases before the Labour Court and Labour Appeal Court, respectively.

5.2. The candidate has devoted her practice to the advancement of human rights, particularly those of employees.

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

6.1. The candidate has displayed an intimate knowledge of labour law and constitutional law, as it relates to labour disputes, in her numerous appearances before the Labour Court and Labour Appeal Court, respectively.

6.2. The judgments attached by the candidate to her application reveal a detailed understanding of the requisite procedural and substantive legal principles for the position of a judge of the Labour Court.

6.3. The candidate has delivered lectures to junior advocates on labour law (including on disciplinary procedures in the workplace, motion court proceedings in the Labour Court, and review applications in

the Labour Court) as part of the Bar's continuing skills development programme.

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

7.1. The candidate has disclosed that one or more of her judgments have been taken on appeal, however, the appeals have not yet been decided.

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

8.1. The candidate has extensive experience in the field of labour law.

8.2. Whilst the candidate may not have significant experience in other areas of law, she is applying for a position on the Labour Court bench and, accordingly, has sufficient professional experience having appeared both in the Labour Court and Labour Appeal Court, respectively, as well as having acted in that court over four terms since 21 February 2022.

9. The candidate's linguistic and communication skills:

9.1. The candidate has good linguistic and communication skills which are evident from the judgments attached to her application.

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

10.1. The candidate has disclosed in paragraph 9.5 of her JSC questionnaire that she has thirteen outstanding reserved judgments.

10.2. The candidate has six reserved judgments which have been outstanding for slightly more than three months, the most extensive of which dates back to 19 April 2023.

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

11.1. The candidate has shown an ability from her time as an acting judge to conduct proceedings with fairness, punctuality, and efficiency.

11.2. The candidate exhibits an eagerness to engage counsel in debating the issues, has a courteous judicial temperament, and exhibits adherence to procedural rules.

11.3. The candidate competently manages judicial case management functions and appears to have a good working relationship with court officials such as clerks, interpreters, and secretaries.

12. The candidate's independent mindedness:

12.1. The candidate's judgments exhibit independent mindedness, which to some extent has been informed by her practice representing employees and vulnerable people in labour disputes.

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

13.1. The candidate has shown an ability to manage litigation, other than in relation to court proceedings, in that she was appointed to the panel of arbitrators of the Arbitration Foundation of South Africa and has chaired arbitrations.

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

14.1. The Durban Labour Court urgently needs another experienced permanently appointed judge as it currently only has one permanent

judge and has to rely on acting appointments, which disrupts the continuity of the court and administration of justice.

- 14.2. Appointing the candidate would send the message that competent legal practitioners will be appointed.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

- 1.1. *SACCAWU and Others v Oyster Box Hotel (Pty) Ltd* (2018) 39 ILJ 2337 (LC)
- 1.2. *Enforce Security Group v Fikile and Others* (2017) 38 ILJ 1041 (LAC)
- 1.3. *SAMWU and Others v Ethekwini Municipality and Others* [2016] 12 BLLR 1208 (LAC); (2017) 38 ILJ 158 (LAC)
- 1.4. *SAPS v Public Service Association of South Africa and Others* (2015) 8 BLLR 805 (LAC); (2015) 36 ILJ 1828 (LAC)
- 1.5. *Rainbow Farms (Pty) Ltd v Dorasamy NO and Others* (2014) 35 ILJ 3462 (LC)
- 1.6. *Munsamy v Minister of Safety and Security and Another* (2013) 7 BLLR 695 (LC)

2. Unreported judgments:

- 2.1. *Govender and Others v CCMA and Others* (2021) JOL 52642 (LC)
- 2.2. *Govind v AC Nielsen Marketing and Media (Pty) Ltd* (2020) JOL 48822 (LC)
- 2.3. *Nongoma Local Municipality v Biyela and Others* (2019) JOL 43801 (LC)
- 2.4. *Fihlani v Ingquza Hills Local Municipality and Others* [2019] JOL 42425 (ECM)

- 2.5. *WNS Global Services (Pty) Ltd v CCMA and Others* (2019) JOL 42334 (LC)
- 2.6. *Uthukela District Municipality v Khoza and Others* [2019] JOL 41155 (LC)
- 2.7. *Supercare Services Group (Pty) Ltd v Whitear-Nel and Others* (2016) JOL 36893 (LC)
- 2.8. *Lavangee v National Bargaining Council for the Chemical Industry and Others* [2016] JOL 35674 (LAC)
- 2.9. *Malek v Transnet Bargaining Council and Others* (2014) JOL 32258 (LC)
- 2.10. *Lovemore Bros Transport (Pty) Ltd v National Bargaining Council for the Road Freight Industry and Others* (2012) JOL 28449 (LC)

3. Judgments upheld on appeal:

- 3.1. None

4. Judgments overturned on appeal:

- 4.1. None