

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: ADVOCATE JACOBUS JOHANNES STRIJDOM 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:

1.2.1. Dip Iuris, Unisa, 1979;

1.2.2. Dip Legum, Unisa, 1983;

1.2.3. B Iuris, Unisa, 1986; and

1.2.4. LLB, Unisa, 1993.

1.3. The candidate has held the following professional roles:

1.3.1. Admitted as an advocate of the High Court, South Africa, 1993;

1.3.2. Admitted as an advocate of the High Court, Bophuthatswana, 1994;

1.3.3. Member of the Pretoria Society of Advocates, 1994 (not currently a member); and

1.3.4. Granted senior counsel status, 11 December 2010.

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

3.1.1. 23 black women (17 African, 4 Indian, 2 coloured);

3.1.2. 25 black men (19 African, 3 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 68.

4.5. If appointed, the candidate could serve up to 7 years actively in office.

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

5.1. The candidate took part in the training of prosecutors and magistrates.

5.2. The candidate has held 30 acting appointments since 2013.

5.3. The candidate appeared in numerous matters pro deo appearances before the pro deo system was replaced.

5.4. The candidate was a member of the Pupillage Committee of the Pretoria Society of Advocates, responsible for pupil training and lecturing the pupils.

5.5. The candidate was in charge of the pro deo system responsible for allocating pro deo cases to junior counsel whereby accused persons who could not afford legal representation would have junior counsel represent them in the High Court.

5.6. In the previous review, the GCB commented on the candidate and his commitment to the Constitution as follows: "*A significant part*

of the candidate's early career was spent as an employee of the Department of Justice in the late 1970s and the 1980s. This potentially raises concerns regarding the candidate's commitment to human rights, and calls for some consideration and reflection, including in particular by him." This aspect was canvassed in the candidate's interviews in October 2018 and 2021. In the latter he apologised for being part of apartheid's justice system which he said had "*inhumane laws*". He further stated he regrets the part he played in the system. The candidate stated: "*I apologise that I was part of the apartheid system and was part of apartheid laws, that we applied those laws, and that I was one of the instruments to apply that law. I apologise to those people.*"

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

- 6.1. The candidate appears to have a good knowledge of the law, including constitutional law, and in both civil and criminal respects.
- 6.2. The candidate's judgments reflect a sound understanding of legal principles.

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

- 7.1. *Nicolaas Johannes Swart v Conrad Alexander Starbuck*, unreported judgment of the Gauteng Division of the High Court, Pretoria, Case No 48444/2008 (3 December 2013). In *Swart v Starbuck & others* (20785/2014) [2016] ZASCA 83 (30 May 2016)) the SCA dismissed the appeal of an insolvent who had instituted a claim on behalf of his insolvent estate for the payment of damages by his trustees allegedly caused by their maladministration of the estate. The SCA dismissed

the appeal, holding that there was no proof of maladministration on the part of the trustees with the result that the claim for damages had been dismissed. Leave to appeal to the Constitutional Court was refused in *Swart v Starbuck and Others* (CCT153/16) [2017] ZACC 23 (29 June 2017).

7.2. *De Beer v Minister of Police* (69360/2013) [2015] ZAGPPHC 959 (17 November 2015). In *Minister of Police v De Beer* (69360/2013, A376/2016) [2017] ZAGPPHC 1112 (8 November 2017) the full court upheld the appeal to the limited extent of claim 2, holding that on the evidence an initial agreement did not acquire contractual force. The full court made the following findings:

7.2.1. at para 6: *“Before dealing with the cause of action which Plaintiff’s Counsel in Court described as a claim [...] ‘for economic loss’, it is necessary to deal with the actual evidence that was in my view not correctly dealt with and analysed by the Court a quo, nor in fact by the parties’ Counsel.”*

7.2.2. at para 8: *“In my view, the Court a quo materially erred in finding that an agreement had been entered into, and that as a result of the non-attendance it followed that the profits emanating from that agreement had been lost. It is clear from the quotations themselves that they give no detail as to when services had to be performed, at which particular rate, when an invoice would have to be submitted and paid. There is no mention of the duration of any such contract and how it could be terminated.”*

7.2.3. at para 12: *“In my view, the Court a quo erred in distinguishing the decision of Minister of Safety and Security*

v Scott supra. The question of remoteness of damages is an important one, especially on the present facts, and there is no sound reason to impose liability on the loss of contractual income and profits onto the police in relation to contract the details of which they were unaware of, and could not have been aware of.”

- 7.3. *Lindley Farm 528 (Pty) Ltd v Cradle City (Pty) Ltd* (13868/2013) [2016] ZAGPPHC 44 (29 January 2016)). In *Cradle City v Lindley Farm* (1212/2016) [2017] ZASCA 185 (06 December 2017) the SCA upheld the appeal to the limited extent of the quantum of Claim 3. At para 29 the SCA held that it was not seriously disputed by Cradle City that the defence of reciprocity was not available to it in relation to Claim 3; that the amount was due in terms of a separate portion of the land for which it received compensation from the State; that the proviso that Cradle City had to pay it when it was in a position to do so meant that it had to pay it once the money had been paid to it; and that the amount was due and payable. The SCA also upheld the appeal in respect of the dismissal of the counterclaim, substituting an order of absolution from the instance in its stead. At para 30 the SCA found that no evidence was led to show what the market value of the property was at the date of the conclusion of the sale agreement nor its value now that it was occupied by the unlawful occupiers; that Cradle City thus failed to adduce sufficient evidence to prove its claim; and that an appropriate order should have been to grant absolution from the instance.
- 7.4. Save to the extent of the comments outlined above in para 7.2 above, no further adverse or negative comments have been made on the candidates’ judgments in the decisions concerned.

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

8.1. The candidate has vast professional experience as a clerk, then prosecutor, then senior prosecutor, then Magistrate (civil and criminal), then chief magistrate, and then as a practicing advocate of the High Court, including as Senior Counsel from 2010. This experience is especially in criminal matters but includes substantial civil matters. The candidate's experience also includes the candidate holding 30 acting appointments since 2013.

9. The candidate's linguistic and communication skills:

9.1. The candidate's linguistic skills are adequate. Whilst some of the candidate's judgments may have been better structured and his process of reasoning made clearer, the quality of the candidate's judgments is adequate.

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

10.1. The applicant generally produces judgments with diligence.

10.2. According to the candidate, as at 15 June 2023 he had an outstanding judgment in Case no. 33700/2020, a special motion that was heard on 7 June 2023, and an outstanding judgment in case no. 24248/2023, an opposed motion that was heard on 12 June 2023.

10.3. Of the judgments considered, *Afrisam (South Africa) (PTY LTD) v Make Commodities (PTY) Ltd* (A5075/2021; 3071/2018) [2022] ZAGPJHC 641 (5 September 2022)) and *Elsys (Pty) Ltd t/a Electrosystems v BTS Electrical and Mechanical Services (Pty) Ltd (In Liquidation) and Another* (21/59086) [2023] ZAGPJHC 624 (5 June 2023)) were delivered one day short of three months.

10.4. In a previous evaluation of the candidate in 2022 it was recorded with reference to the judgments considered that only two were not produced within three months, namely:

10.4.1. *S v Lubisi* 2018 JDR 1079 (GP) – an appeal against conviction and sentence heard on 22 March 2018 where judgment was handed down on 12 July 2018; and

10.4.2. *Netshandama v The Minister of Police* 2020 JDR 0920 (GP) – an action for damages consequent upon unlawful arrest and detention heard on 12 December 2019 where judgment was handed down on 20 March 2020.

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

11.1. The candidate's ample experience as an acting judge demonstrates that he has the ability to conduct court proceedings.

11.2. No adverse comments were received about the candidate in this regard.

11.3. A senior counsel who appeared before the candidate in the High Court, Gauteng Division indicated that the candidate has a good judicial temperament.

11.4. One comment received from a senior counsel who appeared before the candidate in a complex customs and excise matter was to the effect that the candidate's judgment was wrong on an aspect of the case, but that the candidate realised his mistake and granted leave to appeal. The senior counsel's overall impression was that the candidate has a good judicial temperament.

11.5. A senior junior member of the Johannesburg Society of Advocates commented that the candidate is always collegial and well-tempered when presiding as an acting judge.

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

12.1. The candidate's judgments demonstrate that he is independently minded.

12.2. No adverse comments were received about the candidate in this regard.

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

13.1. The candidate has professional experience as a clerk, then being promoted to prosecutor, then senior prosecutor, then Magistrate, then Chief Magistrate, and then as practicing advocate of the High Court, including as Senior Counsel from 2010, and including attending to *pro deo* and teaching duties during this time. This demonstrates that he has good administrative abilities.

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

14.1. The candidate is a vastly experienced practitioner who can bring his experience to the bench, which experience shows that he is trustworthy. His appointment would enhance the public view of the bench as an experienced and trustworthy institution.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

- 1.1. *Swart and Another v Cash Crusaders Southern Africa (Pty) Ltd* 2018 (6) SA 287 (GP)

2. Unreported judgments:

- 2.1. *Neondo Trading 464 CC v The Companies and Intellectual Properties Commission and Another* (Gauteng Division, Pretoria, Case number 24183/2018 (11 May 2020))
- 2.2. *Victor Mozomba Mokhare v S* (Gauteng Division, Pretoria, Case number A303/2020 (17 June 2021))
- 2.3. *Diageo South Africa (Pty) Ltd v Commissioner for the South African Revenue Service* (Gauteng Division, Pretoria, Case number 93168/2019 (18 March 2021))
- 2.4. *Consumer Goods and Services Ombud NPC and Another v Voltex (Pty) Ltd and Others* (18096/2017) [2021] ZAGPPHC 309 (26 March 2021))
- 2.5. *Afrisam (South Africa) (PTY LTD) v Make Commodities (PTY) Ltd* (A5075/2021; 3071/2018) [2022] ZAGPJHC 641 (5 September 2022))
- 2.6. *Eco Africa Investments (Pty) Ltd v Snappy Chef Trading (Pty) Limited* (10135/2021) [2023] ZAGPJHC 153 (16 February 2023))
- 2.7. *Elsys (Pty) Ltd t/a Electrosystems v BTS Electrical and Mechanical Services (Pty) Ltd (In Liquidation) and Another* (21/59086) [2023] ZAGPJHC 624 (5 June 2023))

3. Judgments upheld on appeal:

- 3.1. *Nicolaas Johannes Swart v Conrad Alexander Starbuck* Case No 48444/2008 (3 December 2013) upheld on appeal in *Swart v Starbuck & others* (20785/2014) [2016] ZASCA 83 (30 May 2016)

4. Judgments overturned on appeal:

- 4.1. *De Beer v Minister of Police* (69360/2013) [2015] ZAGPPHC 959 (17 November 2015) overturned on appeal in *Minister of Police v De Beer* (69360/2013, A376/2016) [2017] ZAGPPHC 1112 (8 November 2017)
- 4.2. *Lindley Farm 528 (Pty) Ltd v Cradle City (Pty) Ltd* (13868/2013) [2016] ZAGPPHC 44 (29 January 2016) overturned in part on appeal in *Cradle City v Lindley Farm* (1212/2016) [2017] ZASCA 185 (06 December 2017)