

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: JUDGE JOHN ELDRID SMITH

COURT FOR WHICH CANDIDATE APPLIES: SUPREME COURT OF APPEAL

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. BA (Law) (UWC);

1.2.2. LLB (Rhodes University); and

1.2.3. Diploma in Labour Law (UCT).

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.

2.2. The candidate's reputation for integrity, ethics, independence, and objectivity is untarnished.

3. Whether the candidate's appointment would help to reflect the racial and gender composition of South Africa:

3.1. There are currently 22 judges permanently appointed to the SCA. Based on the names listed on the SCA website, the SCA's racial and gender composition appears to be:

3.1.1. 10 black women (7 African, 1 Indian, 2 coloured);

3.1.2. 2 white women;

3.1.3. 7 black men (5 African, 1 Indian, 1 coloured); and

3.1.4. 3 white men.

3.2. The candidate is a black (Coloured) 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 appointed as a judge on 26 July 2010. He will turn 70 on 5 November 2028, at which point he will have served as a judge for more than 15 years.

4.5. If appointed, the candidate could serve 5 further years.

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

5.1. The candidate's commitment to the Constitution is reflected in his participation in the Eastern Cape Democratic Lawyers Association (Secretary from 1983-1985); NADEL (National Vice President from 1989-1990 and National Secretary from 1990-1992); ITEC Educational Institution (Trustee from 2011-2013); and the Legal Resources Centre (Director from 1992-1996).

5.2. From 1983 to 1992, predating the constitutional era, the candidate held positions as the secretary of the Eastern Cape branch of the National Association of Democratic Lawyers (NADEL), as the National Vice President of NADEL, and the National Secretary of NADEL.

5.3. The candidate was the director of the Legal Resources Centre from 1992 to 1996.

5.4. The candidate chose to join Smith Tabata & Van Heerden in 1984, an Eastern Cape firm of attorneys with a reputation as human rights practitioners.

5.5. These activities demonstrate that the candidate pursued the attainment of democracy and promoted the values of the Constitution at a time when doing so may have jeopardised his career progression and personal safety as a black South African.

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

6.1. The candidate has a broad range of knowledge of the law, as reflected in his judgments.

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

7.1. Four of the candidate's judgments have been overturned on appeal (three by the Supreme Court of Appeal and one by the Constitutional Court).

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

8.1. The candidate has extensive professional experience and has held diverse positions, as set out below:

8.2. the candidate was a candidate attorney at TM Mdlanana from 1982-1984;

8.3. the candidate was a partner at Smith Tabata Van Heerden from 1984-1996;

8.4. director of the Legal Resources Centre from 1992-1996

8.5. director at Smith Tabata Inc from 1996-2010;

8.6. Chief Executive Officer at Smith Tabata Inc from 2007-2010;

8.7. Member of the Provincial Legislature from 1994-1995;

- 8.8. the candidate was a director at Smith Tabata Inc from 1996-2010;
- 8.9. the candidate was the Chief Executive Officer at Smith Tabata Inc from 2007-2010;
- 8.10. the candidate has been a judge, in Makhanda Eastern Cape, since July 2010;
- 8.11. the candidate has had various acting appointments in the Supreme Court of Appeal since October 2021;
- 8.12. the candidate was a director of the Legal Resources Centre from 1992-1996;
- 8.13. the candidate was a Trustee at the ITEC Educational Institution from 2011-2013; and
- 8.14. the candidate was the President of the Border Kei Chamber of Commerce from 2007-2010.

9. The candidate's linguistic and communication skills:

- 9.1. The candidate's linguistic and communication skills are excellent.
- 9.2. The candidate's judgments are clear and concise and reflect a thorough knowledge of the pleadings and evidence and appropriately application of the legal principles to the facts of the specific matter.
- 9.3. The candidate's judgments are accessible and understandable to litigants and members of the public.

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

- 10.1. The candidate's judgments reflect that they are delivered promptly.

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

11.1. The candidate is fair, objective, and impartial to all litigants and legal representatives.

11.2. The candidate's judicial temperament is excellent and has been commended by all those who have appeared before him.

12. The candidate's independent mindedness:

12.1. The candidate is independent minded and has earned the respect of legal practitioners who have appeared before him.

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

13.1. The candidate's ability to conduct court proceedings has been commended. The candidate's court starts timeously, and he is in complete control over proceedings even when involving senior legal practitioners.

13.2. The candidate shows respect and courtesy to all legal practitioners who appear before him and also shows respect to all litigants and court staff.

13.3. The candidate has evidenced excellent administrative ability.

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

14.1. The appointment of the candidate will send the message to the community at large that an independent-minded judicial officer has

been appointed based on merit and his potential to contribute to the administration of justice and the transformation of the judiciary.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:

- 1.1. *SA v JHA* 2022 (3) SA 149 (SCA)
- 1.2. *BVT v BMT* 2022 (6) SA 93
- 1.3. *Municipal Employees Pension Fund v Mudau* 2022 (6) SA 343
- 1.4. *Cornerstone Logistics (Pty) Ltd v Zacpak Cape Town Depot (Pty) Ltd* [2022] 2 All SA 13 (SCA)
- 1.5. *Port Elizabeth Municipality v Peoples Dialogue On Land & Shelter* 2001 (4) SA 759 (E)
- 1.6. *LH v LA* 2012 (6) SA 41 (ECG)
- 1.7. *Shoprite Checkers (Pty) Ltd v MEC for Economic Development, Environmental Affairs and Tourism* 2015 (1) BCLR 102 (ECG)
- 1.8. *National Director of Public Prosecutions v Makosholo* 2011 (2) SACR 598 (ECP)
- 1.9. *SADTU v MEC Department of Basic Education* [2013] 2 All SA 474 (ECB)
- 1.10. *Kriel v Bowels* 2012 (2) SA 45 (ECP)
- 1.11. *Andrews v Nedbank Ltd* 2012 (3) SA 82 (ECG)
- 1.12. *Lh And Another v LA* 2012 (6) SA 41 (ECG)

2. Unreported Decisions:

- 2.1. *Malgas v Onega Investments CC* 2021 JDR 0394 (ECG)

- 2.2. *Legend Motors (Pty) Ltd v Oakhurst Insurance Company Ltd* 2021 JDR 0580 (ECGEL)
- 2.3. *Magqabi v Metu* 2021 JDR 0582 (ECGEL)
- 2.4. *The National Director of Public Prosecutions v Vumiso* 2021 JDR 0583 (ECGEL)
- 2.5. *IS v HS* 2021 JDR 0643 (ECG)
- 2.6. *MEC for Department of Human Settlements, Eastern Cape Province v Aveng Grinaker – LTA Building Cape (Pty) Limited* 2021 JDR 1117 (ECG)
- 2.7. *Thompson v James* 2021 JDR 1141 (ECGEL)
- 2.8. *Funda v The Member of the Executive Council for the Department of Health – Eastern Cape* 2021 JDR 2252 (ECB)
- 2.9. *Goliath v Dirk Ellis Motor Group (Pty) Ltd* 2021 JDR 2598 (ECG)
- 2.10. *Nel v Government of South Africa* 2021 JDR 3140 (ECG)
3. Judgments upheld on appeal:
 - 3.1. *Gowar v Gowar* 2015 JDR 0261 (ECG) (upheld by SCA)
 - 3.2. *Mdodana v Premier of The Eastern Cape* 2013 JDR 1407 (ECG) (upheld by Constitutional Court)
 - 3.3. *City Municipality Moerane v Buffalo City Metropolitan Municipality* 2020 JDR 0313 (ECG) (leave to appeal to Supreme Court Appeal and Constitutional Court dismissed)

- 3.4. *Grobbelaar v Botha* (4767/2014) (upheld by a full bench of the Eastern Cape Division)
- 3.5. *Martin v Mquma Municipality* (upheld by full bench)
- 4. Judgments overturned on appeal:
 - 4.1. *Randell v Cape Law Society* 2012 (3) SA 207 (ECG) (overturned by Supreme Court Appeal)
 - 4.2. *Gcam-Gcam v State* (overtuned by Supreme Court Appeal)
 - 4.3. *Langholm Farms v SARS* (overturned by Supreme Court Appeal)
 - 4.4. *Shoprite Checkers v MEC for Economic Development* (overturned by the Constitutional Court)