

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: JUDGE LEICESTER ROCK ADAMS

COURT FOR WHICH CANDIDATE APPLIES: ELECTORAL COURT

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: B.Proc, University of the Witwatersrand (1986).
- 1.3. The candidate was admitted as an attorney of the High Court (July 1989);
- 1.4. The candidate was permanently appointed as a Judge of the High Court on 20 January 2017 (to the Gauteng Division).

2. The candidate's integrity and ethics:

- 2.1. There is nothing in the candidate's application or judgments to suggest that he is not a fit and proper candidate.
- 2.2. The candidate served as a member of the disciplinary committee of the Law Society of South Africa from 2006 to 2017. This indicates that the candidate would have a significant appreciation for what would constitute proper ethical conduct and standards.

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

3.1. Current judge-members of the Electoral Court comprise (as far as could be ascertained from the most recent available judgments delivered by the Electoral Court):

3.1.1. 3 black women (2 African, 1 Indian,); and

3.1.2. 2 black (African) 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 is 59. Accordingly, he would be able to serve a full 7-year term as a judge of the Electoral Court.

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

5.1. The candidate refers to his involvement in:

5.1.1. Assemblies of God Church;

5.1.2. Wits Alumni;

5.1.3. Rotary Club of Orange Grove; and

5.1.4. NHLS All Sport Club.

5.2. The candidate highlights that:

5.2.1. he did work early in his career through the Legal Aid Bureau and the Legal Aid Board for indigent accused; and

5.2.2. has acted for clients from less privileged socio-economic backgrounds on a *pro amico* basis throughout his professional life.

5.3. The candidate has been involved in litigation and presided over reported matters that deal with accountability of the state, preservation of the right to freedom of expression, the right to a fair trial, and the rights to equality and dignity.

5.4. This demonstrates an exemplary appreciation of the values of the constitution and his own commitment to ensuring that these are articulated in jurisprudence at a level that is of interest to practitioners and judges.

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

- 6.1. The candidate was an attorney for 27 years prior to being elevated to the bench.
- 6.2. He practiced in a variety of fields of law. He has also written judgments during his tenure on the bench on a variety of fields.
- 6.3. His judgments on constitutional and administrative law issues show that he has gained experience in this field since his elevation to the bench. This is evident from his judgments in, *Minister of Justice & Correctional Services and Others v Pretorius and Others* (A312/2028) [2022] ZAGPJHC2; 2022 (1) SACR 564 (GJ) (21 January 2022) and *Mayfair Residents Association v City of Johannesburg Metropolitan Municipality* 2021 JDR 1957 (GJ).
- 6.4. The candidate's judgments show him to be a competent judge. His knowledge and understanding of the law appears to be of a high standard.

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

- 7.1. The reviewers have been able to find 9 judgments of the candidate that went on appeal. In 6 of the appeals, the candidate's judgments, were upheld.
- 7.2. With the exception of the appeal in *Occupiers of Erven 87 & 88 Berea v De Wet NO* 2017 (5) SA 346 (CC), none of the judgments were critical of the candidate's reasoning.
- 7.3. In the former case, the Constitutional Court commented as follows:

- 7.4. *“[56] In dismissing the application to rescind, Adams AJ found that the difficulty in this case was that the applicants were represented at court when the eviction order was granted. In these circumstances, it was held that ‘they were fully entitled to canvas all the relevant circumstances and to bring same to the attention of the Court.’ In other words, the High Court regarded the presence of the appearer applicants and Mr Ngubane as excusing it from making the necessary enquiry. The High Court erred as the applicants were, as a matter of fact, not legally represented in the eviction proceedings. In addition, Mr Ngubane, who confirmed that the applicants had agreed to the eviction order, did not have a mandate to do so, nor was he one of the applicants. The High Court equally failed to appreciate the proactive role that a court considering an eviction application is called upon to play as set out above.”*
- 7.5. *“[57] Furthermore, Adams AJ accepted that the Court that had granted the eviction order did not conduct an enquiry as enjoined by the Constitution and PIE. That should have been the end of the enquiry and a sufficient factor to justify rescission. In reasoning further that, even if the eviction court had conducted the requisite enquiry, it would still have been satisfied that the eviction was just and equitable, the court committed a further error.”*
- 7.6. The candidate’s decision was handed down while he was an acting judge, and his more recent judgments have not been subject to similar criticism on appeal reflecting the candidate’s current high level of experience.

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

8.1. The candidate was an attorney for 27 years and became the managing partner of his firm. This is consistent and long-term service that demonstrates commitment and the ability to grow into leadership positions.

8.2. The candidate has been a Judge of the High Court for approximately 6 and a half years.

9. The candidate's linguistic and communication skills:

9.1. The candidate is proficient in English. His judgments are well written, well reasoned, and succinct.

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

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

10.2. He states in his application that he had, as of June 2023, 3 judgments outstanding.

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

11.1. The candidate is able to conduct court proceedings fairly, efficiently, and effectively, having regard to his judgments and the experience of members of the bar.

11.2. The candidate is also perceived by members of the bar to be fair and courteous in court, as well as measured and sincere.

11.3. He has a good reputation and is valued by his colleagues.

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

- 12.1. The candidate appears to be appropriately independent-minded.
- 12.2. He does not appear to have any political leanings that could impair his ability to conduct himself objectively and with integrity as a member of the Electoral Court.

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

- 13.1. The candidate was a partner in the firm Lindsay, Keller & Partners for ten years, and subsequently the managing partner of Lindsay Keller Attorneys (comprising 6 partners and 33 staff members) from 2006 to 2016.
- 13.2. He trained approximately 20 legal graduates to become attorneys during his career.
- 13.3. The candidate was able to attend to the administrative requirements of managing an attorneys' firm and training candidate attorneys. He clearly has well developed administrative experience and ability.
- 13.4. The candidate's roles as a member of the Commercial Crimes and Family Court Committee; and Continuing Judicial Education & Training Committee demonstrate his administrative ability.

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

- 14.1. The candidate's appointment would send the message to the public at large that the long-term commitment to service, training, and

consistency, are values considered when appointing judges to the Electoral Court.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

- 1.1. *Minister of Justice & Correctional Services and Others v Pretorius and Others* (A312/2028) [2022] ZAGPJHC2; 2022 (1) SACR 564 (GJ) (21 January 2022)
- 1.2. *National Director of Public Prosecutions and Others v Fields of Green For All NPC and Others* 2019 (2) SACR 564 (GP)
- 1.3. *Ilex South Africa (Pty) Ltd v National Health Laboratory Service and Others* 2011 (5) SA 587 (GJ)

2. Unreported judgments:

- 2.1. *Manaka v University of the Witwatersrand* 2023 JDR 0819 (GJ)
- 2.2. *A v Commissioner of Revenue Services* 2023 JDR 0493
- 2.3. *IN2IT Tech (Pty) Ltd v Gijima Holdings (Pty) Ltd, State Information Technology Agency SOC Ltd, Minister of Police and Others* 2023 JDR 1423 (GJ)
- 2.4. *S v Rasehlapa* 2022 JDR 0084 (GJ)
- 2.5. *Zwane v Johannesburg City Parks & Zoo and Others* (26584/2021) [2022] ZAGPJHC572 (18 August 2022)
- 2.6. *Maharaj N.O. and Others v Johannesburg Water SOC Limited* (26816/2020) [2022] ZAGPJHC 790 (7 October 2022)
- 2.7. *Abbas v South African Veterinary Council and Others* (2016/9239) [2017] ZAGPPHC 1309 (14 December 2017)

3. Judgments upheld on appeal:

- 3.1. *Baard v Allem* 2021 JDR 2521 (GJ). Mtati J's judgment with which Adams J concurred
- 3.2. *Mayfair residents Association v City of Johannesburg Metropolitan Municipality* 2021 JDR 1957 (GJ)
- 3.3. *Cook v Hesber Impala (Pty) Ltd* 2016 JDR 0324 (GJ)
- 3.4. *Cooper v Clark* 2016 JDR 0797 (GJ)
- 3.5. *Dube v Off the Grid CC* 2020 JDR 1013 (GJ)
- 3.6. *Markit Systems Ltd v Fulcrum Group (Pty) Ltd* 2023 JDR 1361 (GJ)

4. Judgments overturned on appeal:

- 4.1. *Mashinini v The Member of the Executive Committee for Health, Gauteng Province* 2021 JDR 0363 (GJ)
- 4.2. *Occupiers of Erven 87 & 88 Berea v De Wet NO* 2015 JDR 2602 (GJ) [2017 (5) SA 346 (CC)]
- 4.3. *Fujitsu Services Core (Pty) Ltd v Schenker SA (Pty) Ltd* 2020 JDR 1027 (GJ) [2023 ZACC 20]