

JSC INTERVIEW ROUND: APRIL 2024

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 holds a B. Proc from the University of the Witwatersrand (1986).
- 1.2. The candidate was admitted as an attorney of the High Court in 1989.
- 1.3. 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 constitutes proper ethical conduct and standards.
- 2.3. According to the candidate's nominator, Molahlehi DJP, the candidate's integrity and work ethic are beyond reproach.

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

3.1. The Electoral Court is currently comprised of two permanent judicial members, who are both black (African) women (as provided by the Registrar of the Electoral Court).

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. Section 19(2) of the Electoral Commission Act, 51 of 1996 provides that the President shall determine the terms of office of members of the Court.

4.5. At the time of the interviews, the candidate will be approximately 60 years and 4 months old and will have completed a period of approximately 7 years and 2 months of active service.

4.6. The candidate is eligible to complete a further period of 9 years and 8 months' active service as a judge, during which period he would remain eligible to be a judge-member of the Electoral Court.

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

5.1. 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.

5.2. This demonstrates an appreciation of the values of the Constitution and his own commitment to ensuring that these values are articulated in jurisprudence at a level that is of interest to practitioners and Judges.

5.3. The candidate authored a short article on the abuse of power by Metro Police officers. The article was published in the April 2011 edition of *The LindsayKeller Update*.

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

6.1. The candidate was an attorney for 27 years prior to being appointed to the bench.

6.2. In that capacity, the candidate practised in a variety of fields of law.

- 6.3. He has also written judgments during his tenure on the bench on a variety of fields.
- 6.4. The candidate's judgments show him to be a competent Judge. His knowledge and understanding of the law appear to be of a high standard and his ability to adjudicate complex disputes is evident from his judgments.
- 6.5. It is evident from the judgments of the candidate in *National Director of Public Prosecutions and Other Fields of Green for All NPC and Others* 2019 (2) SACR 564 (GP) and *Minister of Justice and Correctional Services and Others v Pretorius and Others* 2022 (1) SACR 564 that the candidate has a good understanding of constitutional law.

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

- 7.1. The candidate indicated in his questionnaire that three of his judgments have been overturned on appeal.
- 7.2. The reviewers have been able to find 12 judgments of the candidate that were appealed. 3 of them were successfully appealed.
- 7.3. 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.
- 7.4. In the former case, the Constitutional Court commented as follows:

“[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.”

“[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.”

- 7.5. 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 consistent long-term service demonstrates commitment and the ability to grow into leadership positions.

8.2. The candidate has been a Judge of the High Court for more than 7 years.

8.3. The candidate has been an Acting Judge of the Electoral Court of South Africa since 1 November 2023.

9. The candidate's linguistic and communication skills:

9.1. The candidate's judgments are well written, well-reasoned and succinct.

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

10.1. The Electoral Court is required to issue urgent judgments in short time periods in accordance with section 20 of the Electoral Commission Act, 51 of 1996.

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

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. As appears from the judgment in *African Shades Trading (Pty) Limited and others v South African Diamond and Precious Metals Regulator and others* 2022 JDR 3621 (GJ), the candidate will not hesitate to hold regulatory and law enforcement agencies accountable which suggests that the candidate is likely to discharge his judicial duties with dispassion.

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.

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 that long-term commitment to service, training and development, and independence are values considered when appointing Judges to the Electoral Court.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. 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 Other 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)

2.8. *African Shades Trading (Pty) Limited and others v South African Diamond and Precious Metals Regulator and others* 2022 JDR 3621 (GJ)

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)

3.7. *P.C v L.G.Y* (A5075/2022) [2023] ZAGPJHC 1256 (2 November 2023)

3.8. *Massmart Holdings Limited v The Commissioner for the South African Revenue Services* 2019 JDR 2386 (Tax)

3.9. *Armitage NO v Valencia Holdings 13 (Pty) Ltd and Others* (638/2022) [2023] ZASCA 157 (23 November 2023)

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]