

JSC INTERVIEW ROUND: MAY 2024

CANDIDATE: JUDGE ELIZABETH BAARTMAN

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 holds a B juris and LLB degree from the University of the Western Cape.
- 1.2. The candidate was a prosecutor between 1986 and 1991. She then served as a magistrate between 1991 and 1998 and then as the Director of the People's Family Law Centre between 2001 and 2003.
- 1.3. Between 2003 and 2008 the candidate served as a senior state advocate for the NPA.
- 1.4. The candidate began acting as a High Court judge in October 2008 and was appointed as a judge of the High Court in 2009.
- 1.5. Between May 2015 and April 2016, the candidate acted as a judge of the Supreme Court of Appeal. She acted again from December 2023 to March 2024.

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 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. 11 black women (8 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. 2 white men.

3.2. The candidate is a (Coloured) woman.

4. The maximum 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 63 years old and has completed 13 years of active service as a judge.
- 4.5. If appointed, the candidate could serve close to 7 years actively in office.

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

- 5.1. The candidate has taken part in extra-curricular activities such as training and facilitating workshops relating to law, race, and gender. She has also served as a co-ordinating mentor for the aspirant judge's programme. She has a passion for family law, which is an important area of the law and has given talks at conferences and seminars in this regard.

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

- 6.1. The candidate has an adequate knowledge of constitutional law. Her judgment in *Scalabrini Centre Cape Town v Minister of Home Affairs* 5441/2020 demonstrates that she is familiar with principles of constitutional law.

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

7.1. The review team did not consider the judgments listed by the candidate in her application.

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

8.1. The candidate's experience is extensive as she has worked her way up the ladder in the legal profession. She started as a prosecutor, has worked as a magistrate, as a senior state advocate and later as a judge of the High Court.

9. The candidate's linguistic and communication skills:

9.1. The candidate's judgments are well written and understandable. Her judgments as an acting judge in the SCA are brisk, lucid, and to the point.

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

10.1. The candidate's record shows that she is able to produce judgments promptly. At the time of her application, she had only one reserved judgment.

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

11.1. The candidate is known to conduct court proceedings fairly and judiciously. The review team received no adverse comments in this regard.

12. The candidate's independent-mindedness:

12.1. The candidate has handed down judgments for and against the executive, without fear or favour.

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

13.1. The candidate's involvement in setting up the divorce court in the Western Cape Division suggests that she 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 senior High Court judge, with considerable experience as a judicial officer. She acted in the SCA between 2015 and 2016 and was considered by the JSC for possible elevation shortly after those acting stints. Although she was unsuccessful, she has had nearly seven years of further experience in the High Court and has recently acted again in the SCA. The message that her appointment will send is that seniority and experience matter.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments

- 1.1. *Khoin and Others v Jenkins and Others In re: Observatory Civic Association and Another v Trustees for the time being of the Liesbeek Leisure Properties Trust and Seven Others* (12339/2022;12994/2021) [2022] ZAWCHC 227; [2023] 1 All SA 110 (WCC) (8 November 2022)
- 1.2. *Joint Owner of Remainder ERF 5216 Hartenbos v MEC of Local Government, Environmental Affairs and Development Planning, Western Cape Province and Another* (23635/2009) [2010] ZAWCHC 197; 2011 (1) SA 128 (WCC) (2 September 2010)

2. Unreported judgments

- 2.1. *Shabros Property Investment (Pty) Ltd v Mobile Telephone Networks (Pty) Ltd* (2507/2013) [2023] ZAWCHC 118 (23 May 2023)
- 2.2. *The State v Roswell Diedericks and 4 Others* (delivered on 7 December 2023) (no full neutral citation provided)
- 2.3. *Bester N.O. and Others v Horn* (11641/2015) [2022] ZAWCHC 228 (5 October 2022)
- 2.4. *Ramokgopa v Nxumalo* (7922/2020) [2022] ZAWCHC 175 (8 September 2022)
- 2.5. *Booyesen v Major and Another* (5043/2021) [2021] ZAWCHC 273 (31 August 2021)
- 2.6. *Scalabrini Centre Cape Town and Another v The Minister of Home Affairs and Others* (5441/2020) (delivered 30 November 2020) (no full neutral citation provided)
- 2.7. *Indwe Aviation (Pty) Ltd v Petroleum Oil and Gas Corporation of South*

Africa (Pty) Ltd t/a Petro SA and Another (4610/2011) [2011] ZAWCHC 346 (19 April 2011)

3. Judgments upheld on appeal

- 3.1. *Bester N.O. and Others v Horn* (11641/2015) [2022] ZAWCHC 228 (5 October 2022)
- 3.2. *Scalabrini Centre Cape Town and Another v The Minister of Home Affairs and Others* (5441/2020) (delivered 30 November 2020) (no full neutral citation provided)
- 3.3. *Pepkor Speciality (Proprietary) Limited and Another v Van Huyssteen and Others* (16806/2018) (delivered on 4 March 2019) (no full neutral citation provided)
- 3.4. *KWV South African (Proprietary) Limited v Johannes Matthys Annandale and Others* (4765/2016) (no full neutral citation provided)
- 3.5. *The Commissioner of the South African Revenue Services v Fastmould Specialist CC* (A642/2010) (no full neutral citation provided)
- 3.6. *Shirley Searl v Mossel Bay Municipality and Other* (9583/09) (no full neutral citation provided)
- 3.7. *City of Cape Town v Andile Lily and Others* (3945/2001) (no full neutral citation provided)

4. Judgments overturned on appeal

- 4.1. *Speaker of the National Assembly and Public Protector v Public Protector and Others; Democratic Alliance v Public Protector and Others* [2022] ZACC 1 (no citation provided for candidate's judgment)
- 4.2. *Caxton and CTP Publishers and Printers Limited v Novus Holdings Limited* (Case no 219/2021) [2022] ZASCA 24 (9 March 2022) (no citation

provided for candidate's judgment)

- 4.3. *Claire Joanne Helman v The Kingsbury Foetal Assessment Centre (Pty) Ltd* (4872/2013) (no full neutral citation provided)
- 4.4. *Prince Mangosuthu Gatsha Buthelezi, MP and Another v Minister of Home Affairs and Another* (22071/2011) (no full neutral citation provided)
- 4.5. *Jacobus Du Plessis Both N.O. and Others v Members of the Executive Council for Education, Western Cape* (24611/2011) (no full neutral citation provided)
- 4.6. *Imperial Marine Company v The Motor Vessel "Filippo Lembo" Deiulemar Compagnia Di Navigazione Spa* (AC8/2009 and AC 20/90) (no full neutral citation provided)