

Vacancy: Judge of the Labour Court

Candidate: Advocate Suzanna Josephine Harvey

1. The candidate's tertiary qualifications, professional admissions, honours, and permanent judicial appointments

- 1.1. The candidate holds the following tertiary qualifications:
- BSc Engineering (Civil) (cum laude), University of the Witwatersrand (1986)
 - LLB (*cum laude*), University of Cape Town (2008)
 - LLM in Labour Law (with distinction). University of Cape Town, (2009)
- 1.2. The candidate holds the following professional admissions and honours:
- admitted as an advocate in 2010

2. The candidate's integrity and ethics

- 2.1. No circumstances are known to the reviewers 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. The racial and gender composition on the bench

- 3.1. There are currently 11 permanent judges of the Labour Court, as far as could be ascertained:
- 4 black women (3 African, 1 Coloured);
 - 4 black men (3 African, 1 Indian);
 - 2 white women; and
 - 1 white man.
- 3.2. According to the questionnaire, the candidate is white woman.

4. The maximum period the candidate could serve if appointed

- 4.1. At the time of the interviews, the candidate will be approximately 61 years and 2 months old.
- 4.2. If appointed, the candidate would be eligible to complete a period of 13 years and 9

months' active service as a judge.

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

- 5.1. In each aspect of the candidate's professional career – as an engineer, activist, trade unionist, and legal practitioner – the candidate has addressed the concerns of the vulnerable and of marginalised communities. She has done so from developing technology for low-cost water purification, volunteering in community advice centres, and working as a paralegal for trade unions, to representing refugees as an advocate. The candidate has devoted her career to utilising the law – particularly labour law – as a means to achieving social justice. Even in the four-year period when the candidate lived in Canada, she worked in community outreach empowering disadvantage youth.
- 5.2. The candidate was one of the first CCMA Commissioners trained and appointed in terms of the Labour Relations Act, 1995.
- 5.3. The wide support the candidate has received from those recommending her for appointment to the bench speak to the candidate's commitment to the values of the Constitution.

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

- 6.1. The candidate exhibits a commendable grasp of the law, as evidenced by the reasoning in her judgments. Her engagement with legal principles reflects a thorough and methodical approach, demonstrating depth in her legal analysis. Moreover, the candidate's consistent and well-reasoned references to precedent suggest a studious and disciplined approach to adjudication. This indicates not only an awareness of established legal principles but also an ability to apply them thoughtfully to the matters before her, ensuring that her decisions are well-grounded in law and jurisprudence.
- 6.2. None of the decisions considered by the reviewers directly addressed the Constitution but for the fact that the Labour Relations Act, 1995 gives voice to section 23 of the Constitution.

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

- 7.1. The candidate's judgment in *Afzal Finch v E-Tradex (Pty) Ltd t/a Global Trade Solution and Others* (unreported judgment in the Labour Court Cape Town, case number C17/2020, handed down on 2 July 2021) was overturned on appeal in *E Tradex (Pty)*

Ltd t/a Global Trade Solution v Finch and Others (CA 12/2021) [2022] ZALAC 106; (2022) 43 ILJ 2727 (LAC).

- 7.2. The matter involved the review of a CCMA arbitrator's decision that the applicant had not been dismissed and, consequently, that the CCMA lacked jurisdiction to arbitrate the alleged unfair dismissal dispute.
- 7.3. Before addressing the substantive question of the arbitrator's decision, the candidate was required to determine whether the Labour Court had the jurisdiction to entertain the appeal. Two preliminary issues were whether the application had been archived in accordance with the provisions of the Court's Practice Manual and therefore had to be retrieved/reinstated, and whether to condone the late filing of the applicant's replying affidavit.
- 7.4. The candidate found that the matter had not been archived, so that a reinstatement application was not necessary.
- 7.5. On the merits, the candidate held that there had been a dismissal and remitted the case to the CCMA to determine the fairness of the dismissal.
- 7.6. The Labour Appeal Court criticised the candidate's finding that a reinstatement application was unnecessary, and her treatment of the archiving process as administrative in nature. It held that the practice of archiving is a matter of status, not a mere administrative act and that, once a case is archived, it is automatically regarded as lapsed or dismissed. The registrar therefore has no authority to revive an archived matter; only the Court may do so upon application for reinstatement.
- 7.7. The reviewers did not identify any other decisions by the candidate that have been taken on appeal.
- 7.8. The reviewers did not identify any decisions by the candidate, as a commissioner of the CCMA, as a panellist of the Metal and Engineering Bargaining Council Cape Town (MEBC), or as arbitrator appointed by Association of Arbitrators South Africa or Tokiso that have been taken on review. The candidate did not mention any such reviews in her application.

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

- 8.1. Despite first qualifying as an engineer, the candidate has spent her career of 40 years steeped in employment law. Not only has the candidate practised predominately in the

area of labour law for the past 14 years as an advocate, but the candidate has also served as a full-time and part-time commissioner in the CCMA and panellist of the MEBC, and arbitrator of the Association of Arbitrators South Africa or Tokiso. In addition, the candidate served as legal officer and trade union organiser in the late 1980s and early 1990s.

9. The candidate's linguistic and communication skills

- 9.1. The candidate's judgments are written in English.
- 9.2. Nothing in the judgments and other writings considered by the reviewers indicates that the candidate's linguistic and communication skills are not adequate.

10. The candidate's ability to produce judgments promptly

- 10.1. The candidate indicated that no judgments were outstanding at the time of completing the questionnaire.
- 10.2. Most of the candidate's judgements and awards reviewed were delivered within a few weeks of the hearing. The reviewers only noted only one judgement delivered after a period of four months.

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

- 11.1. The reviewers received no adverse comments from colleagues relating to the candidate's ability to conduct court proceedings fairly, efficiently, and effectively.

12. The candidate's independent mindedness

- 12.1. The reviewers received no adverse comments from colleagues relating to the candidate's independent mindedness.
- 12.2. The candidate's decision in the *Afzhal Finch*, though overturned by the LAC, displayed the candidate's independent mindedness in upholding the long-held principle that rules are for the court, not the court for the rules.
- 12.3. The candidate demonstrated her independent mindedness in holding that Labour Court's Practice Manual could not override an employee's right to justice under the LRA.

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

- 13.1. The candidate appears to have a busy practice as an advocate, is involved in advocacy training at the GCB, training of junior legal practitioners employed by Lawyers for Human Rights, and a guest lecturer at the University of Cape Town, which suggest that she is able to juggle a variety of responsibilities effectively.

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

- 14.1. The candidate's appointment would demonstrate that candidate's with extensive and diverse experience in the field of labour law, including experience working for labour organisations, are desirable appointees to the Labour Court.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Office of the Premier, KZN v PSA obo R Govender & 1 other and Others* (D127/2024) LCSA Durban (2024)
2. *Westcor SA (Pty) Ltd v Mey and Others* (C189/2021) [2022] ZALCCT 61; (2023) 44 ILJ 397 (LC) (22 November 2022)

Unreported judgments

3. *Sandra Filby v South African Local Government Bargaining Council and Others* (C88/2023) LCSA Cape Town (13 August 2024)
4. *Mowzer Agri (Pty) Ltd v Abraham Johannes Nortje* (C497/2022) LCSA Cape Town (6 June 2024)
5. *Solidarity obo Blackway v University of the Western Cape and Others* (C497/2022) LCSA Cape Town (20 June 2024)
6. *The City of Cape Town v Anika Kotze and Another* (C753/2021) LCSA (30 September 2024)
7. *Nehawu obo Ntimane v Ntimbana NO and Others* (JR1405/2020) [2024] ZALCJHB 421 (5 November 2024)
8. *Buz v Minister of Defence and Military Veterans and Others* (C493/2019) [2021] ZALCCT 69 (21 September 2021)
9. *Bewuza v CCMA and Others* (C837/2018) [2021] ZALCCT 45 (2 July 2021)
10. *Afzal Finch v E-Tradex (Pty) Ltd t/a Global Trade Solution* (C17/2020) LCSA Cape Town (3 September 2021)
11. *Bosch Uniform Supplies CC v SACTWU obo Marima and Others* (J986/2022) [2024] ZALCJHB 420 (4 November 2024)

Judgments upheld on appeal

12. none

Judgments overturned on appeal

13. *Afzal Finch v E-Tradex (Pty) Ltd t/a Global Trade Solution* (C17/2020) LCSA Cape Town (3 September 2021) overturned by the Labour Appeal Court in *E-Tradex (Pty) Ltd t/a Global Trade Solution v Finch and Others* (CA 12/2021) [2022] ZALAC 106; (2022)

43 ILJ 2727 (LAC) (27 September 2022)

CCMA Awards

14. *Snell v SSM Manufacturing* [1997] 2 BLLR 240 (CCMA)
15. *Van Tonder v International Tobacco Co* [1997] 2 BLLR 254 (CCMA)

MEIBC awards

16. *Ngxowa v Sebenza Manufacturing System* [2010] JOL 25110 (MEIBC)
17. *NUMSA obo Msinelwa v Pressure Concepts* [2007] JOL 19950 (MEIBC)
18. *Toefy v RBG/SA Five and Another* [2007] JOL 19911 (MEIBC)
19. *Geldenhuis v Agon Marine* [2011] 6 BALR 579 (MEIBC)
20. *Ngxowa v Sebenza Manufacturing System* [2009] 11 BALR 1122 (MEIBC)
21. *Feni v SA Five Engineering (Pty) Ltd* [2007] 6 BALR 516 (MEIBC)
22. *ATUSAW obo Williams v Voyage Yachts (Pty) Ltd* [2006] 6 BALR 549 (MEIBC)
23. *Jacobs v Trident Steel* [2005] 11 BALR 1127 (MEIBC)

(With regard to awards 19-23 above, the candidate was a member of a panel. It is not clear whether she penned the awards.)