

Vacancy: Judge-Member of the Electoral Court

Candidate: Judge Leicester Rock Adams

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 holds the following professional qualifications and honours:
 - admitted as an attorney of the High Court in July 1989
 - obtained the right of appearance in the High Court in 1998
- 1.3. The candidate was permanently appointed as a Judge of the High Court (Gauteng Division) on 20 January 2017.
 - Acting Judge of the High Court, Gauteng Division (2015-2016)
 - Acting Judge-Member of the Electoral Court (November 2023-October 2024)

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.
- 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. The racial and gender composition on the bench

- 3.1. There are currently 2 permanent judge-members of the Electoral Court, comprising:
 - 1 black woman (African); and
 - 1 black man (African).
- 3.2. According to the questionnaire, the candidate is a Coloured man.

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 3 months old and will have completed a period of approximately 8 years and 2 months of active service.
- 4.2. The candidate is eligible to complete a further period of 8 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 promoted and protected in our jurisprudence.
- 5.3. The candidate authored a short article on the abuse of power by Metro Police officers in the April 2011 edition of The Lindsay Keller Update which shows the candidate's appreciation of the need to guard against abuse of powers by state law enforcement agencies.
- 5.4. The candidate assists regularly as a volunteer trainer for pupils of the Johannesburg Society of Advocates.

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

- 6.1. The candidate was an attorney for 27 years prior to his appointment to the bench. In that capacity, the candidate practised in a variety of fields of law. He has also written judgments during his tenure on the bench in a variety of legal fields.
- 6.2. 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.
- 6.3. It is evident from the judgments of the candidate in *National Director of Public Prosecutions and Others v 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.

- 6.4. The candidate has demonstrated a sound knowledge of electoral laws from the Electoral Court judgments reviewed, which have enjoyed the support of a majority of the members of that court. The judgments analyse the statutory provisions relevant to the adjudication of the despite in clear and precise language. This is an important consideration as it allows for a better understanding of the Electoral Court's reasoning by political parties and the wider public.
- 6.5. The matter of *Labour Party of South Africa and Others v Electoral Commission of South Africa and Others* (008/2024EC; 012/2024EC; 011/2024EC; 009/2023EC; 010/2024EC) [2024] ZAEC 4 (9 March 2024), which was upheld on appeal to the Constitutional Court in *African Congress for Transformation v Electoral Commission of South Africa 2024 (8) BCLR 987 (CC) (20 May 2024)*, concerned non-compliance by the applicants with the timetable relating to section 27 of the Electoral Act 73 of 1998 for the submission of lists of candidates by political parties and the nomination of independent candidates.
- 6.6. In rejecting the main complaint by the applicants that the Electoral Commission's online portal made it impossible to meet the 8 March 2024 deadline, the candidate held for the majority that 'The electoral timetable is the central mechanism which regulates and thus gives effect to the rights to vote, stand for public office and to free and fair elections'. The application was dismissed with no order as to costs.
- 6.7. In *Arise South Africa v Electoral Commission of South Africa; Independent South African National Civic Organisation v Electoral Commission of South Africa* (014-2024EC; 020-2024EC) [2024] ZAEC 8 (6 May 2024), a matter concerning unrepresented registered political parties contesting an election for compensatory seats in the National Assembly in terms of sections 27(1), (2)(cB) and item 3(2) of Schedule 1A, the applicants sought to review their disqualification from contesting the elections and sought a mandatory interdict.
- 6.8. The candidate held, for a unanimous Court, that, '*in order to contest the elections for the National Assembly, the Electoral Act requires a political party to submit both a national list of candidates and at least one regional list of candidates. This is clear from section 27 read with item 3(2) of Schedule 1A to the Electoral Act, which refer to both*

lists. Moreover, section 27(2)(cB)(i) requires an unrepresented party wishing to contest elections for the National Assembly to submit voter signatures demonstrating its support in the electorate totalling 15 percent of the quota for the region concerned in the preceding election. As submitted on behalf of the Commission, if a party were able to choose only to contest the compensatory seats (and thus submit only the compensatory list of candidates), this important requirement – aimed at the legitimate purpose of preventing frivolous participation in elections and logistical problems that can arise from that – would be rendered meaningless’.

- 6.9. *Liebenberg v Electoral Commission of South Africa (0023/24EC) [2024] ZAEC 16 (20 May 2024)* concerned the application of sections 31A, 31B, 31C, and regulation 2A of the Regulations concerning the nomination of independent candidates and their contesting elections in more than one region for the National Assembly.
- 6.10. The candidate, for a unanimous Court, applied the SCA decision in *Pepper Bay Fishing (Pty) Ltd* that ‘as a general principle an administrative authority has no inherent power to condone failure to comply with a peremptory requirement. It only has such power if it has been afforded the discretion to do so’. The candidate held that the absence of a discretion to condone non-compliance with deadlines serves the important function of ensuring the fairness of elections and enabling the Commission to manage elections properly. The candidate held that ‘a power to relax deadlines for certain parties would undermine the very purpose of the deadlines. It would place the Commission in the impossible position of having to decide on a case-by-case basis whether to condone or not. Howsoever the Commission acted, it would risk being accused of favouring one party over another. That would undermine its role as a neutral facilitator of the elections’.

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

- 7.1. The candidate’s judgment in *Mashinini v The Member of the Executive Committee for Health, Gauteng Province 2021 JDR 0363 (GJ)* was overturned by the SCA in a unanimous judgment per Zondi JA in *Mashinini v The Member of the Executive Council for Health and Social Development, Gauteng Provincial Government [2023] ZASCA 53 (18 April 2023)*.

- Mrs Mashinini underwent gallbladder removal surgery, during which she sustained

a major bile duct and hepatic artery injury. Mrs Mashinini instituted an action for damages based on medical negligence against the Gauteng Department of Health and the doctor who performed the surgery.

- Mrs Mashinini claimed future medical expenses, to which the Department pleaded the so-called ‘public health defence’, i.e. that Mrs Mashinini could attend at a public hospital for future medical services, which the Department had tendered to provide. As a result, Mrs Mashinini could not be paid the amount claimed for future medical expenses.
- The candidate upheld the Department’s defence.
- The SCA held that the candidate had misdirected himself by finding that the public health defence is applicable on the basis of the *MSM obo KBM v Member of the Executive Council for Health, Gauteng Provincial Government* [2019] ZAGPJHC 504; 2020(2) SA 567 (GJ); [2020] 2 All SA 177 (GJ), which, the Court held to be incorrectly decided. The SCA held that future medical expenses ought to be treated as part of the delictual claim.
- The SCA made no adverse comments on the candidate’s judgment.

7.2. The candidate’s judgment in *Occupiers of Erven 87 & 88 Berea v Frederick NO and Another* [2015] ZAGPJHC 271 (12 November 2015) was overturned by the Constitutional Court in *Occupiers of Erven 87 & 88 Berea v De Wet NO 2017 (5) SA 346 (CC)*.

- The candidate, at the time an acting judge, dismissed an application to rescind and evict an order granted by Khumalo AJ by agreement between the parties. The applicants alleged that they had not agreed to the order and that the order could not be granted because no enquiry into the circumstances of the people to be evicted, as required by the PIE Act and the Constitution, had been undertaken.
- The candidate dismissed the application on the bases that the order was ostensibly by agreement and there was therefore no justus error and that the Occupiers had no bona fide defence to the eviction under the common law.
- The Constitutional Court held that the candidate had erroneously held that the Occupiers were legally represented when the eviction order was agreed to. The Occupiers were in fact not represented, and the party who ostensibly consented to

the eviction was not even one of the Occupiers.

- The court also held that the candidate had failed to appreciate the proactive role a court is called upon to play when considering an eviction application, taking into account the PIE Act and the Constitution.
- 7.3. The candidate's judgment in *Fujitsu Services Core (Pty) Ltd v Schenker South Africa (Pty) Ltd* [2020] ZAGPJHC 111 (25 March 2020) was overturned by the Supreme Court of Appeal in *Schenker South Africa (Pty) Ltd v Fujitsu Services Core (Pty) Ltd* [2022] ZASCA 7 (18 January 2022). A further appeal against the judgment of the Supreme Court of Appeal was dismissed by the Constitutional Court in *Fujitsu Services Core (Pty) Ltd v Schenker South Africa (Pty) Ltd* [2023] ZACC 20.
- 7.4. The parties had concluded a distribution agreement in terms of which Schenker would collect, clear, carry, and deliver goods to Fujitsu. An employee of Schenker stole the goods that were to be delivered to Fujitsu. As a result, Fujitsu instituted an action for damages against Schenker. The candidate awarded the claimed damages to Fujitsu.
- 7.5. Schenker had conceded that it was vicariously liable for its employee's conduct but argued that exemption clauses in the distribution agreement excluded its liability for theft by the employee.
- 7.6. The candidate found that the exemption clauses did not apply because the employee was not executing the contract when he stole the goods. Therefore, Schenker was vicariously liable for the loss.
- 7.7. Neither the SCA, nor the CC made any adverse comments about the candidate.

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, a position that he held for 10 years.
- 8.2. The candidate has been a Judge of the High Court for approximately 8 years.
- 8.3. The candidate has been an Acting Judge of the Electoral Court since 1 November 2023.
- 8.4. Importantly, the candidate was an Acting Judge of the Electoral Court during and after the 2024 elections, which saw an unprecedented number of electoral matters come before the court. This has no doubt provided the candidate with invaluable experience for the vacancy to which he has been nominated.

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 4 judgments were outstanding at the time of completing the questionnaire.
- 10.2. As far as could be ascertained at the time of completing this review, two of these judgments were subsequently handed down, namely, in *Sasria SOC v TUHF Limited (2023/046891) [2024] ZAGPJHC 1296 (23 December 2024)* and *Central Authority of Republic of South Africa and Another v C.M (2023/077002) [2025] ZAGPJHC 99 (10 February 2025)*.
- 10.3. The candidate demonstrates an ability to deliver judgments promptly in the Electoral Court. The candidate has delivered judgments within a few days or up to a period of three weeks.
- 10.4. Of the 39 judgments of the candidate analysed by the reviewers, 13 were handed down more than three months after hearing, six of which were handed down more than five months after hearing. However, all judgments were handed down within six months.
 - *GWB Concrete Walling CC and Others v CJB Concrete Walling CC and Others [2024] ZAGPJHC 707; 2024 JDR 3345 (GJ)*, heard 6 March 2024 and judgment delivered on 6 August 2024 (5 months).
 - *Mashinini v The Member of the Executive Committee for Health, Gauteng Province [2021] ZAGPJHC 11; 2021 JDR 0363 (GJ)*, heard on 12 August 2020 and judgment delivered on 25 January 2021 (5 months 13 days).
 - *Grid Electronics (Pty) Ltd v Quandomanzi Investments (Pty) Ltd [2024] ZAGPJHC 633; 2024 JDR 2941 (GJ)*, heard on 24 January 2024 and judgment delivered on 12 July 2024 (5 months 19 days).
 - *Lord's View Property Owners Association NPC v Member of the Executive Council for Economic Development Agriculture Environment and Rural Development Gauteng Province and Others [2024] ZAGPJHC 718; 2024 JDR 3371 (GJ)*, heard

on 12 February 2024 and judgment delivered on 6 August 2024 (5 months 27 days).

- *Imperial Group Holdings (Pty) Ltd v Sime Darby Hudson & Knight (Pty) Ltd [2023] ZAGPJHC 309 (11 April 2023)*, heard 14 October 2022 and judgment delivered on 11 April 2023 (5 months 28 days).

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.
- 11.2. The candidate appears able to conduct court proceedings fairly and efficiently, having regard to his judgments.
- 11.3. The candidate is generally perceived by members of the bar to be fair and courteous in court, as well as measured and sincere in demeanour.
- 11.4. He has a good reputation and is valued by his colleagues, as far as could be ascertained.

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 appears to be appropriately independent minded.
- 12.3. 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) Ltd 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 and independence.

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 10 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, as well as independence are values taken into account when appointing judges to the Electoral Court.
- 14.2. After having acted in the Electoral Court since 1 November 2023 and now applying for this position for the third time, the candidate's appointment would demonstrate that perseverance and development are required to be appointed to the Electoral Court.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments:

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

Unreported judgments:

4. *A v Commissioner of Revenue Services* 2023 JDR 0493
5. *Abbas v South African Veterinary Council and Others* [2017] ZAGPPHC 1309 (14 December 2017)
6. *African Shades Trading (Pty) Ltd and Others v South African Diamond and Precious Metals Regulator and Others* 2022 JDR 3621 (GJ)
7. *Arise South Africa v Electoral Commission of South Africa; Independent South African National Civic Organisation v Electoral Commission of South Africa* [2024] ZAEC 08 (06 May 2024)
8. *Aviation Co-Ordination Services (Pty) Ltd and Others v Airports Company South Africa SOC Ltd and Others* 2024 JDR 4751 (GJ)
9. *Central Authority of the Republic of South Africa and Another v CM* 2025 JDR 0631 (GJ)
10. *Dlamini and Others v Imbokodvo Lemabalabala Holdings Ltd and Others (Leave to Appeal)* 2024 JDR 4661 (GJ)
11. *Dlamini v Imbokodvo Lemabalabala Holdings Ltd* [2024] ZAGPJHC 647 (16 July 2024)
12. *Edwards v Minister of Police and Others* 2024 JDR 4849 (GJ)
13. *FirstRand Bank Ltd v McCallum* 2024 JDR 4396 (GJ)
14. *Grid Electronics (Pty) Ltd v Quandomanzi Investments (Pty) Ltd* 2024 JDR 2941 (GJ)
15. *Grindrod Bank Ltd v Culverwell and Another (Leave to Appeal)* 2024 JDR 1631 (GJ)
16. *GWB Concrete Walling CC and Others v CJB Concrete Walling CC and Others* 2024 JDR 3345 (GJ)
17. *Imperial Group Holdings (Pty) Ltd v Sime Darby Hudson & Knight (Pty) Ltd* [2023] ZAGPJHC 309 (11 April 2023)

18. *IN2IT Tech (Pty) Ltd v Gijima Holdings (Pty) Ltd, State Information Technology Agency SOC Ltd, Minister of Police and Others* 2023 JDR 1423 (GJ)
19. *Known Associates (Pty) Ltd v Astron Energy (Pty) Ltd* 2024 JDR 4434 (GJ)
20. *Labour Party of South Africa and Others v Electoral Commission of South Africa and Others* [2024] ZAEC 04 (09 March 2024)
21. *Le Feuvre v Standard Bank of South Africa Ltd and Others* 2024 JDR 4261 (GJ)
22. *Le Roux v Estate Late Benjamin Jacobus Le Roux and Others* 2024 JDR 5242 (GJ)
23. *Liebenberg v Electoral Commission of South Africa* [2024] ZAEC 16 (20 May 2024)
24. *Lord's View Property Owners Association NPC v Member of the Executive Council for Economic Development Agriculture Environment and Rural Development Gauteng Province and Others* 2024 JDR 3371 (GJ)
25. *Maharaj NO and Others v Johannesburg Water SOC Ltd* [2022] ZAGPJHC 790 (7 October 2022)
26. *Manaka v University of the Witwatersrand* 2023 JDR 0819 (GJ)
27. *Matinyarare and Another v Innscor Africa Ltd and Another* 2024 JDR 4114 (GJ)
28. *Mkhondo NO and Another v Mashilo and Others* 2024 JDR 5268 (GJ)
29. *Ndhlovu v Correctional Supervision and Parole Board Kgosi Mampuru II Central and Others* 2025 JDR 0072 (GJ)
30. *S v Rasehlapa* 2022 JDR 0084 (GJ)
31. *Sasria SOC v TUHF Ltd* 2025 JDR 0069 (GJ)
32. *SB Guarantee Company (RF) (Pty) Ltd v Lekoma and Another* 2024 JDR 2460 (GJ)
33. *Spanogiannis and Another v Emgeo (Pty) Ltd and Another* 2025 JDR 0012 (GJ)
34. *Sun City Waterworld (Pty) Ltd v Sun International (South Africa) Ltd* 2024 JDR 4621 (GJ)
35. *TALT v Commissioner for the South African Revenue Services* 2024 JDR 3698 (GJ)
36. *Zwane v Johannesburg City Parks & Zoo and Others* [2022] ZAGPJHC572 (18 August 2022)

Judgments upheld on appeal:

37. *African Congress for Transformation v Electoral Commission of SA; Labour Party of SA v Electoral Commission of SA and Others; Afrikan Alliance of Social Democrats v Electoral Commission of SA* [2024] ZACC 7; 2024 (8) BCLR 987 (CC) (20 May 2024)
38. *Armitage NO v Valencia Holdings 13 (Pty) Ltd and Others* [2023] ZASCA 157 (23 November 2023)

39. *Body Corporate of Marsh Rose v Steinmuller and Others* [2023] ZASCA 143 (2 November 2023)
40. *C v Y* [2022] ZAGPJHC 805 (13 October 2022)
41. *Cook v Hesber Impala (Pty) Ltd* 2016 JDR 0324 (GJ)
42. *Cooper v Clark* 2016 JDR 0797 (GJ) -
43. *Dube v Off the Grid CC* 2020 JDR 1013 (GJ)
44. *Educated Risk Investments 54 (Pty) Ltd v Master of the High Court Johannesburg and Others* 2024 JDR 4104 (GJ)
45. *Markit Systems Ltd v Fulcrum Group (Pty) Ltd* 2023 JDR 1361 (GJ)
46. *Massmart Holdings Ltd v The Commissioner for the South African Revenue Services* 2019 JDR 2386 (Tax)
47. *Mayfair Residents Association v City of Johannesburg Metropolitan Municipality* 2021 JDR 1957 (GJ)
48. *Minister of Justice and Correctional Services and Others v Wilhelm Pretorius and Others* [2023] ZASCA 155 (17 November 2023)
49. *PC v LGY* [2023] ZAGPJHC 1256 (2 November 2023)

Judgments overturned on appeal:

50. *Fujitsu Services Core (Pty) Ltd v Schenker South Africa (Pty) Ltd* [2020] ZAGPJHC 111 (25 March 2020)
51. *Mashinini v The Member of the Executive Committee for Health, Gauteng Province* 2021 JDR 0363 (GJ)
52. *Occupiers of Erven 87 & 88 Berea v Frederick NO and Another* [2015] ZAGPJHC 271 (12 November 2015)