

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE, GAUTENG DIVISION OF THE HIGH COURT

ADVOCATE ETTIENNE CHRISTOFFEL LABUSCHAGNE SC

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

1.1. The candidate holds the following tertiary qualifications:

1.1.1. BLC (cum laude) – University of Pretoria – 1983

1.1.2. BA (Hons) (Latin) (cum laude) – University of Pretoria – 1985

1.1.3. LLB (cum laude) – University of Pretoria – 1985

1.1.4. LLM – University of Cambridge – 1990.

1.2. The candidate holds the following professional admissions and honours:

1.2.1. admitted as an advocate in 1988

1.2.2. conferred the status of Senior Counsel in 2006.

2. The candidate's integrity and ethics

2.1. The candidate has been practising as an advocate for 36 years. The reviewers are unaware of any complaints against him at the Pretoria Society of Advocates, and as far as could be ascertained, there are no complaints against him with the Legal Practice Council. He has never been struck off the roll of practising advocates.

2.2. His profile shows evidence of someone who is vested with good ethics and integrity, someone who has dealt with complex cases and controversial cases and, is therefore, not afraid to stand for the rule of law.

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

3.1. As far as could be ascertained, there are currently 76 permanent judges of the Gauteng Division of the High Court:

3.1.1. 24 black women (19 African, 2 Coloured, 3 Indian)

3.1.2. 23 black men (17 African, 2 Coloured, 4 Indian)

3.1.3. 14 white women

3.1.4. 15 white men

3.2. According to the questionnaire, the candidate is a white man.

4. The maximum time period the candidate could serve if appointed

4.1. At the time of the interviews, the candidate will be approximately 63 years and 1 month old and will have completed a period of approximately 0 years and 3 months of service as an acting judge.

4.2. If appointed, the candidate would be eligible to serve as a judge for approximately 11 years and 11 months until the age of 75.

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

5.1. Being part of Brooklyn Advocates Chambers, he has led the transformation initiative of bringing in black junior counsel into the building. He has mentored many black junior advocates. As part of the Pretoria Society of Advocates, he has been part of the pupil training committee.

5.2. All these demonstrate his passion to give effect to the objectives of the Constitution.

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

6.1. The candidate achieved his qualifications *cum laude*. He has been practising as an advocate for 36 years, and as senior counsel for 18 years.

6.2. His practice comprises 60-70% of administrative law and constitutional law.

6.3. He has sat as an arbitrator in many cases, including international arbitrations and has appeared in the Supreme Court of Appeal and the Constitutional Court in a number of cases.

6.4. Therefore, he possesses a thorough knowledge of the law and experience that will benefit the bench.

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

7.1. The candidate mentions one case, which deals with section 18(3) of the Superior Courts Act. However, we have not managed to find the exact judgment on SAFLII.

7.2. The reviewers found no other judgments that have been considered on appeal.

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

8.1. The candidate obtained his qualifications *cum laude*. He was a junior lecturer for 2 years at the University of Pretoria. He served articles for 2 years. He wrote and passed his attorney's board exams, and notary and conveyancing exams. He then joined the Pretoria Society of Advocates, where he has been practising for 36 years. He received his letters patent for silk in 2006.

8.2. He has been an acting judge in the same division he is applying for since 2006. His last acting judge stint was in July 2024. In total, he has acted for 19 weeks.

8.3. The candidate has vast experience in litigation which is needed at the bench.

8.4. Although the candidate only has had 19 weeks on the bench, this should be weighed against his 36 years of practice as an advocate.

9. The candidate's linguistic and communication skills

9.1. The reviewers found 24 written judgments written by him of SAFLII. The judgments are concise and well written.

9.2. He has a good command of the English language, and his judgments are well-written, structured and supported. His writing style is straight to the point, cutting out all the fluff whilst containing all the necessary details, and he outlines the facts and background to enable the reader to understand the reasoning.

10. The candidate's ability to produce judgments promptly

10.1. All his judgments were delivered promptly, most urgent matters were delivered the same day of the hearing, whilst others were delivered within 2 days, and other matters were delivered within 2 weeks. He delivers all his judgments by the time his acting stint ends.

10.2. As far as the reviewers are aware, he has no reserved judgments and no part-heard matters.

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

- 11.1. Comments from colleagues indicate that the candidate conducts proceedings fairly.
- 11.2. The candidates concise and prompt judgments show that he conducts court proceedings efficiently and effectively.

12. The candidate's independent-mindedness

- 12.1. Based on the highlight cases of his career, he is able to be independent and deal with controversial cases in a good manner, and without fear or favour.
- 12.2. The written judgments he has under SAFLII, demonstrate his passion for law and that he is objective.
- 12.3. In *Monyela N.O. and Others v Tayob N.O and Others* (2023/117272) [2024] ZAGPPHC 86 (2 February 2024), the candidate dealt with his attendance at a dinner arrangement with senior counsel appearing for the applicant. The judgment records that he was informed that the respondent had consented to his attending. It appears from the judgment that the respondent had with this knowledge, not objected and acquiesced. The candidate explained his non-disclosure at the hearing by indicating he had cancelled the appointment. He only attended after being informed that the respondent counsel had consented.
- 12.4. The cancellation of the appointment demonstrates the candidate was aware of his duty to be seen to act independently.

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

- 13.1. He has practised and litigated for 36 years and shows his administrative ability. His judgments are well reasoned and substantiated.

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

- 14.1. The message that would be sent is that practitioners of significant experience and dedication are valued for appointment to the bench to assist with complex cases of commercial, administrative, and constitutional law, and that judges are required to deliver judgments timeously, including giving urgent matters urgent attention.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. None

Unreported judgments

2. *Nedbank v Ilanga Automotive (Pty) Ltd t/a Citroen Centurion and Others* (61907/2019) [2021] ZAGPPHC 855 (26 November 2021)
3. *Smith v Kintru Truck Hire (Pty) Ltd t/a Emit Reversing Time* (39697/2014) [2021] ZAGPPHC 806 (26 November 2021)
4. *Dainfern Homeowners Association v Roodt and Others* [2023] ZAGPPHC 2109; 82688/2017 (5 May 2023)
5. *C.C.R v A.R and Another* [2023] ZAGPPHC 2117; 62908/2020 (10 May 2023)
6. *Mohamud and Others v Minister of Home Affairs and Another* [2023] ZAGPPHC 2125; 037352/2023 (11 May 2023)
7. *Independent Development Trust (IDT) v Bakhi Design Studio CC and Others* [2023] ZAGPPHC 363; 033351/2023 (12 May 2023)
8. *May 62 General Enterprise (Pty) Ltd v City of Tshwane Metropolitan Municipality* (037830/2023) [2023] ZAGPPHC 362 (12 May 2023)
9. *Arcadia Residents and Ratepayers Association v Florap (Pty) Ltd and Others* (3714/2022) [2023] ZAGPPHC 603 (21 July 2023)
10. *Xstream Holdings (Pty) Ltd and Others v Chicky Investments (Pty) Ltd and Another* (2023/066319) [2023] ZAGPPHC 601 (21 July 2023)
11. *Vresthena (Pty) Ltd v City of Tshwane Metropolitan Municipality and Others* (065167/2023) [2023] ZAGPPHC 599 (21 July 2023)
12. *Louw v Prinsloo and Another* (2022/022132) [2023] ZAGPPHC 600 (21 July 2023)
13. *Road Accident Fund v Ruele and Others* (2016/19982) [2023] ZAGPPHC 602 (21 July 2023)
14. *Ruele and Others v Road Accident Fund and Another (Leave to Appeal)* (2016/19982) [2023] ZAGPPHC 639 (28 July 2023)
15. *T.M v S* (A199/2022) [2023] ZAGPPHC 699 (16 August 2023)
16. *Monyela N.O and Others v Tayob N.O and Others* (2023/117272) [2024] ZAGPPHC 86 (2 February 2024)
17. *T.K v N.M.P* (81131/2018) [2024] ZAGPPHC 341 (5 April 2024)
18. *Darne N.O v Druids Garden (Pty) Ltd* (2023/091315) [2024] ZAGPPHC 400 (9 April 2024)

2024)

19. *Molatoli v Legal Practice Council and Another* (2024/037762; 2024/027752) [2024] ZAGPPHC 383 (9 April 2024)
20. *Mutombo v Minister of Home Affairs and Another* (2023/121964) [2024] ZAGPPHC 339 (9 April 2024)
21. *Pooe v Macheke* (72144/2018) [2024] ZAGPPHC 366 (10 April 2024)
22. *S.S.S v C.T.S* (77365/2019) [2024] ZAGPPHC 412 (19 April 2024)
23. *Madi Investments (Pty) Ltd v African Tanacity (Pty) Ltd and Another* (2023/071165) [2024] ZAGPPHC 382 (19 April 2024)
24. *Wessels v Capitec Bank Limited and Others* (2024/030523) [2024] ZAGPPHC 390 (22 April 2024)
25. *Preference Capital (Pty) Ltd v Nomageba Trading CC and Others* (2024/031809) [2024] ZAGPPHC 419 (8 May 2024)
26. *Rabboni Centre Ministries v Multisand (Pty) Ltd and Others* (2010/67006) [2024] ZAGPPHC 427 (3 May 2024) and leave to appeal, [2024] ZAGPPHC 738 (25 July 2024)
27. *G.J.W v L.W* (2023-114308) [2024] ZAGPPHC 823 (8 August 2024)

Judgments upheld on appeal

28. None

Judgments overturned on appeal

29. The candidate referred to a judgment, but the reviewers could not find it on SAFLII