

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE, WESTERN CAPE DIVISION OF THE HIGH COURT

ADVOCATE PENELOPE MAGONA-DANO

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. B. Iuris from the University of the Western Cape ('UWC') (1998)

1.1.2. LLB degree from UWC (2001)

1.1.3. LLM (Labour Law) from the University of South Africa (2006).

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

1.2.1. admitted as an advocate in 2001.

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. As far as could be ascertained, there are 27 permanent judges of the Western Cape Division of the High Court:

3.1.1. 10 black women (4 African, 6 Coloured)

3.1.2. 12 black men (5 African, 5 Coloured, 2 Indian)

3.1.3. 2 white women

3.1.4. 3 white men

3.2. According to the questionnaire, the candidate is an African woman.

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

- 4.1. At the time of the interviews, the candidate will be approximately 49 years and 4 months old and will have completed a period of approximately 2 years and 6 months of service as an acting judge.
- 4.2. If appointed, the candidate would be eligible to serve as a judge for approximately 20 years and 7 months until the age of 70.

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

- 5.1. The candidate's commitment to the achievement of dignity, equality and freedom for all, and human rights generally, is evidenced through her involvement, past and present, in the following areas:
 - 5.1.1. member of Advocates for Transformation;
 - 5.1.2. member of the Black Lawyers Association and occupier of various leadership roles;
 - 5.1.3. forming a panel that gave legal advice to members of a community;
 - 5.1.4. member of the South African Women Lawyers Association;
 - 5.1.5. acting as motivational speaker to law faculty students at UWC and acting as a presiding officer in their moot court program; and
 - 5.1.6. Cape Town Small Claims Court Commissioner.

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

- 6.1. The candidate's practice, first as state prosecutor/advocate and thereafter as an advocate, is predominantly a criminal law practice.
- 6.2. The candidate only mentions having acted in one matter of a civil nature (relating to the ambit of the record in a review application) in her response to the questionnaire.

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

- 7.1. The SCA partly upheld and partly overturned the judgment in *Gore NO and Another v Van Wyk Van Heerden Attorneys* 17897/2019 after the candidate had refused the application for leave to appeal. (See *Van Wyk Van Heerden Attorneys v Gore NO and*

Another (828/2021) [2022] ZASCA 128). The candidate did not refer to this matter in her questionnaire.

7.2. In *Top Stores (Pty) Ltd, trading as Topplan v Surrey Holmes* (sic) 9902/19, the SCA dismissed the application for leave to appeal.

7.3. The judgment in *Bwanya v Master of the High Court, Cape Town and Others* (1) SA 138 (WCC) was partially upheld and partially overturned by the Constitutional Court. However, the order that was overturned, was made by the candidate because she correctly considered herself bound by a previous judgment on the question by the Constitutional Court.

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

8.1. The candidate was employed as a state prosecutor, state advocate and senior state advocate in the period from 1999 to 2007.

8.2. She was a member of the Cape Bar from 2009 to 2022 and of the Pan African Bar Association of South Africa from 2023 to date.

8.3. The candidate acted in the Western Cape Division for 2 terms in 2015, 3 terms during 2016, 4 terms during 2017, 2 terms during 2018 and 3 terms during 2020.

9. The candidate's linguistic and communication skills

9.1. The candidate's judgments are not well written. The last available one, *Bwanya*, is replete with typographical errors and unfocused reasoning. The earlier judgments suffer from the same defects, but it is concerning that there has not been an improvement.

10. The candidate's ability to produce judgments promptly

10.1. The candidate has the ability to produce judgments promptly.

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

11.1. Three senior members of the Cape Bar have expressed strongly divergent (one positive and two negative) views about the manner in which the candidate conducted proceedings.

11.2. In *Van Wyk Van Heerden Attorneys v Gore NO and Another* (828/2021) [2022] ZASCA 128 (at para 47), the SCA recorded that the papers before the candidate (in the High

Court) did not support her adverse comments on, or inferences of improper conduct by the attorney concerned. The SCA recorded that if not corrected, these issues could have serious adverse ramifications for the attorney and corrected them.

- 11.3. There is, to the knowledge of the reviewers, no further complaints about the candidate's conduct as an acting judge.

12. The candidate's independent-mindedness

- 12.1. The candidate's independent-mindedness is evident from the judgments that she has handed down.

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

- 13.1. The candidate appears to have sufficient administrative abilities. She is a member of various professional organisations and has served on their committees.

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

- 14.1. The candidate has served as an acting judge for 14 terms over a period of 6 years. She is an African woman. Her appointment would accordingly send a strong positive transformational message to the public at large.
- 14.2. Unfortunately, the quality of the candidate's judgments may reflect that she is not ready for appointment.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. None

Unreported judgments

2. *GN Hardisty and another v A Noor and others* 6885/16
3. *Gore NO and Another v Van Wyk Van Heerden Attorneys* 17897/2019

Judgments upheld on appeal

4. *Top Stores (Pty) Ltd, trading as Topplan v Surrey Holmes* (sic) 9902/19

Judgments overturned on appeal

5. *Bwanya v Master of the High Court, Cape Town and Others* 2021(1) SA 138 (WCC) – partially upheld and partially overturned by the Constitutional Court.