

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE PRESIDENT, WESTERN CAPE DIVISION OF THE HIGH COURT

JUDGE ANDRÉ LE GRANGE

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, University of the Western Cape, 1986

1.1.2. LLB, University of the Western Cape, 1998

1.1.3. BCom (Honours), University of Cape Town, 2003.

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

1.2.1. admitted as an advocate, and employed as a public prosecutor, 1988 – 1993.

1.3. The candidate was permanently appointed to the following judicial roles:

1.3.1. Additional Magistrate, 1993 – 1998

1.3.2. Regional Magistrate, 1998 – 2005

1.3.3. Judge of the High Court (Western Cape High Court), 1 May 2007 – March 2023.

2. The candidate's integrity and ethics

2.1. No circumstances known to the reviewers 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 is considered to be a man and a judge of unquestionable integrity.

3. The 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 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 7 months old and will have completed a period of approximately 17 years and 5 months of active service.

4.2. If appointed, the candidate would be eligible to complete a period of approximately 8 years and 4 months' active service as Judge President.

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

5.1. When a Magistrate, the candidate was, inter alia, a District Electoral Officer (Wynberg Magisterial District, 1995).

5.2. The candidate became a member of JOASA (Judicial Officer's Association of South Africa) when it was established in 1998. In September 2000, he was unanimously elected as National Executive President for a two-year term.

5.3. The candidate has attended and participated in several international conferences, including one on women's rights (Mali, 2001).

5.4. The candidate was a member of the Transformation Committee of Bishops Diocesan College, Rondebosch, 2019 – 2021, which committee drafted a document for the college council regarding diversity and transformation as applicable to learners, staff, and visitors to the college.

5.5. The candidate has participated in both the Cape Bar and GCB pupillage training programmes, sitting as a judge in training exercises for the past approximately five years.

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

6.1. The candidate has, in his numerous judgments, demonstrated his excellent knowledge of the law and an ability to consider both criminal matters and civil matters (in various areas of law) and write comprehensive and well-reasoned judgments in all such matters.

7. Judgments of the candidate that have been taken on appeal

7.1. The judgments of the candidate upheld on appeal, in respect of which he submitted comments with his application, are:

7.1.1. *Byrne v Hawekwa Youth Camp and Others* 7244/06 [2008] ZAWCHC 54 (16 September 2008). The candidate's judgment was upheld in *Hawekwa Youth Camp and Another v Byrne* 2010 (6) SA 83 (SCA).

7.1.2. *In Democratic Alliance v Speaker of the National Assembly and Others* 2015 (4) SA 351 (WCC) and *Democratic Alliance v Speaker of the National Assembly and Others* 2016 (3) SA 487 (CC) (18 March 2016) the Constitutional Court upheld the finding that s11 was constitutionally invalid, but cured the constitutional defect by reading in the words "*other than a member*" after the word "*person*" to ensure that the section does not apply to members of Parliament.

7.1.3. *Café Chameleon CC v Guardrisk Insurance Company Ltd* [2020] ZAWCHC (20 June 2020).

"My judgment was also the subject of an article written by the author Eugene Bester and Nomlayo Mabhena-Mlilo of the Law Firm, Cliff Dekker and Hofmeyer dated 15 July 2020. On 20 December 2020 the SCA upheld my judgment, save for paragraphs 2 and 3 of my order where I ordered that the Respondent was to make payments in respect of such losses as the applicant was able to quantify from time to time; and that the applicant may approach the court on the same papers, supplemented as may be necessary for such further clarification or incidental relief as may be necessary with due notice to the respondent."

See *Guardrisk Insurance Company Limited v Café Chameleon CC* 2021 (2) SA 323 (SCA) (17 December 2020).

7.1.4. *PRASA v Bischoff N.O obo Reyners* (A119/2019) [2022] ZAWCHC 83; [2022] 3 All SA (WCC) (12 May 2022). The SCA in *Bischoff N.O obo Reyners v PRASA* (727/2022) [2023] ZASCA 160 (28 November 2023) ruled that the majority of the full court misdirected itself by assuming that in the face of uncontested expert evidence to the contrary, Mr Reyners had the same cognitive abilities as a person without brain damage or disability. The candidate's judgment (the

minority) was upheld. The matter was discussed by Ayanda Nondwana and Sive Dukada of Eversheds Sutherland (SA) Inc. on 5 December 2023 on its legal affairs platform under the heading “*The treacherous landscape of prescription*”.

- 7.1.5. *Fariel Moosa N.O and others v Harnaker and others* [2017] All SA 498 (WCC); 2017 (6) SA 425 (WCC) (14 September 2017). The matter was referred to the Constitutional Court for confirmation. On 19 June 2018, the CC confirmed the candidate’s order in the matter of *Moosa and others v Minister of Justice and Correctional Services and others* [2018] ZACC 19.
- 7.1.6. *Redisa, NPC and Others v Moodliar and Others* [2019] 4 All SA 812 (WCC); 2020 (1) SA 632 (WCC) (26 June 2019). On 27 August 2020, the SCA, save to a limited extent related to the order of costs in respect of the counter-applications, confirmed the candidate’s order and dismissed the appeal with costs.
- 7.1.7. *Bo-Kaap Civic and Ratepayers Association and Others v City of Cape Town and Others* (7031/17) [2018] ZAWCHC 101; [2018] 4 All SA 93 (WCC) (17 August 2018). The candidate’s judgment was upheld in *Bo-Kaap Civic and Ratepayers Association and Others v City of Cape Town and Others* (case no 112/2019) [2020] ZASCA 15 (24 March 2020).
- 7.1.8. *Van der Burg and Another v National Director of Public Prosecutions* (A236/10) [2011] ZAWCH 75 (16 March 2010). In this case, the important issue was whether the property of the appellants was used as an instrument in committing offences as contemplated in the Prevention of Organised Crime Act 121 of 1998 (POCA) and whether the forfeiture thereof would be disproportionate to the offences committed by the appellants. The property was used specifically and extensively to store and illegally sell alcohol to all, including minors, in a residential area. The illegal use of the property occurred continuously for a period of more than six years. Writing on behalf of the full court, the candidate concluded it was unavoidable as the property was a direct instrument in the offences the appellants were committing. In respect of the forfeiture of the property, this was no ordinary matter and must have ranked as one of the extreme cases where crime had become the appellant’s business. Minors had repeatedly frequented the property to purchase liquor. A primary school was situated 30

metres away and in direct line of sight of the appellants' property. Other places of worship were also in close proximity, including a high school. Complaints by neighbours of severe anti-social behaviour of drunk patrons were the order of the day. Writing on behalf of the full court, the candidate concluded, having regard to the facts and the law, that the forfeiture of the property and movables was not disproportionate to the purposes which POCA aims to achieve. Aggrieved by the decision, the appellants approached the Constitutional Court. See *Van der Burg and Another v National Director of Public Prosecutions* 2012 (2) SACR 331 (CC); 2012 (8) BCLR 881 (CC) (12 June 2012). The CC upheld the judgment on the forfeiture of the property. Therefore, the forfeiture of the property and movables is not disproportionate to the purposes that POCA aims to achieve.

7.1.9. *M5 Developments (Cape) (Pty) Ltd v Groenewald NO and Others* (6277/08) [2009] ZAWCHC 3 (12 February 2009). In this instance M5 lodged an internal appeal in terms of Section 62 of the Local Government: Municipal System Act 32 of 2000, as amended, against the municipality's decision to award a tender. The municipal manager, in dealing with appeals was of the view that one of the tenderer's appeal, Asla, could not be considered as it was out of time. However, a tenderer, Blue Whale's appeal was found to be without merit, as it had no prospect of success; it scored the lowest points. Instead of dismissing Blue Whale's appeal, the municipal manager re-evaluated the tenders submitted. In doing so, he concluded that both the consulting engineers and the Bid Evaluation Committee (BEC) had incorrectly scored the tenders. He hence approached M5 and Asla requesting the provision of further information to him by a certain date. Asla responded in time, but M5, in spite of an extension of the due date, did not respond. M5 requested a further extension, but the municipal manager declined. Based upon the new information received from Asla, the municipal manager recalculated the points scored and decided that the tender should have been awarded to Asla, since it scored the highest points according to his recalculation. Unhappy with that decision, M5 took the matter on review.

"In my judgment I concluded that an appeal under Section 62 of the Municipal Systems Act is a "wide appeal" involving a re-hearing of the issues but held that the Section 62 does not allow the appeal authority to

revisit all the tenders and to award the tender to an unsuccessful bidder who did not appeal or, as in this case, whose appeal was out of time. The municipal manager's decision to award the contract to Asla was reviewed and set aside and ordered that M5 was entitled to enter into a contract with the municipality pursuant to the allocation of the tender. The SCA agreed with my findings and order and dismissed the appeal."

See *Groenewald N.O and Others v M5 Developments (Cape)* 2010 (5) SA 82 (SCA).

- 7.1.10. *Swartland Municipality v Louw NO and Others* 2010 (5) SA 314 (WCC) (21 December 2009). The main issue for consideration was whether the grant of a mining right issued by the Minister of Mineral Resources in terms of s 23 of the Minerals and Petroleum Resources Development Act 28 of 2002 (the MPRDA) entitles the holder of that right to undertake mining operations without obtaining authorisation in terms of the Land Use Planning Ordinance 15 of 1985 (C) (LUPO). This ordinance empowered municipalities to determine and enforce the use to which land in their areas of jurisdiction may be put.

"In my judgment I found that the MPRDA operates alongside LUPO and that it was applicable in these circumstances. On appeal with leave of the court, the SCA in Louw NO and others v Swartland Municipality (650/10 [2011] ZASCA 142 (23 September 2011) in paragraphs 9-12 agreed with my reasoning and order. The appeal was dismissed with costs".

- 7.2. The judgments of the candidate overturned on appeal are:

- 7.2.1. *Scholtz v Scholtz* (209/2011) [2012] ZASCA 9; 2012 (5) SA 230 (SCA); [2012] 2 All SA 553 (SCA) (14 March 2012)
- 7.2.2. *Helen Suzman Foundation v Judicial Service Commission and Others* (145/2015) [2016] ZASCA 161; [2017] 1 All SA 58 (SCA); 2017 (1) SA 367 (SCA) (2 November 2016)
- 7.2.3. *De Beers Marine (Pty) Ltd v Harry Dilley (Pty) Ltd* (413/22) [2023] ZASCA 110 (19 July 2023)
- 7.2.4. *Beadica 231 CC v Sale's Hire CC* (1191/2018) [2020] ZASCA 76; (30 June 2020)

7.2.5. *MEC for health Western Cape v Q* (928/2018) [2018] ZASCA 132 (28 September 2018)

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

- 8.1. The candidate was a prosecutor for five years.
- 8.2. The candidate was a Magistrate for twelve years before taking up a position as an acting judge, which position he held for two years before being permanently appointed. He has accordingly sat as a judicial officer for some 31 years.

9. The candidate's linguistic and communication skills

- 9.1. The candidate's judgments are written in English. He is fully bilingual in both English and Afrikaans.
- 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. Rather, the candidate's judgments are considered to be well-written and well-reasoned.

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.

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. On the contrary, the candidate was widely stated to be renowned for his courteous and fair court manner and his ability to run any court in which he sat effectively.
- 11.2. The candidate is well-prepared for matters and able to engage in robust and fair debate with counsel on relevant issues and keeps an open mind when so doing.
- 11.3. The candidate is patient and courteous to unrepresented litigants and assists them to the extent permissible regarding matters of procedure.

12. The candidate's independent-mindedness

- 12.1. The reviewers received no adverse comments from colleagues relating to the candidate's independent-mindedness.

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

- 13.1. The candidate has demonstrated his excellent administrative ability, particularly during the period when he had additional administrative duties as Acting Deputy Judge President.
- 13.2. During this time, the candidate addressed matters regarding the efficiency of administrative processes regarding various rolls in the Western Cape High Court. His understanding of these processes and ability to listen to concerns, proposals, and views (whether from practitioners or administrative staff) in a fair and open manner have resulted in him successfully implementing change and gaining respect in so doing.
- 13.3. The candidate's duties have included allocating cases to judges, managing full bench appeals, and allocating s309 of the CPA petitions. He has done so effectively.

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

- 14.1. The candidate's appointment would send a message that leadership positions within the judiciary will be assigned to judicial officers with demonstrated leadership skills and administrative abilities, who command the respect of the legal profession.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Byrne v Hawekwa Youth Camp and Others* 7244/06 [2008] ZAWCHC 54 (16 September 2008)
2. *Café Chameleon CC v Guardrisk Insurance Company Ltd* [2020] ZAWCHC (20 June 2020)
3. *PRASA v Bischoff N.O obo Reyners* (A119/2019) [2022] ZAWCHC 83; [2022] 3 All SA (WCC) (12 May 2022)
4. *Faried Moosa N.O and Others v Harnaker and Others* [2017] All SA 498 (WCC); 2017 (6) SA 425 (WCC) (14 September 2017)
5. *De Lille v DA and Others* [2018] 3 All SA 684 (WCC) (27 June 2018)
6. *Equal Education and Others v Minister for Education Western Cape Western Province and Others* [2023] 3 All SA 698 (WCC) (17 July 2023)
7. *Democratic Alliance v Speaker of the National Assembly and Others* 2015 (4) SA 351 (WCC)
8. *Redisa, NPC and Others v Moodliar and Others* [2019] 4 All SA 812 (WCC); 2020 (1) SA 632 (WCC) (26 June 2020)
9. *Bo-Kaap Civic Ratepayers Association and Others v City of Cape Town and Others* (7031/17) [2018] ZAWCHC 101; [2018] 4 All SA 93 (WCC) (17 August 2018)
10. *Labia Theatre CC v South African Human Rights Commission and Others; Palestinian Solidarity Campaign v Labia Theatre CC and Other* (8589/2015); EC11/2015) [2021] ZAWCHC 63 (26 March 2021)
11. *Commissioner of SARS v Wiese and Others* [2022] 4 All SA 748 (WCC) 2023 (1) SA 199 (WCC)

Unreported judgments

12. None

Judgments upheld on appeal

13. None

Judgments overturned on appeal

14. None