

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: DEPUTY JUDGE PRESIDENT OF THE LAND COURT

JUDGE SUSANNAH JANE COWEN

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. BA (University of Cape Town, 1992)

1.1.2. LLB (University of Cape Town, 1994)

1.1.3. BCL (University of Oxford, 1999).

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

1.2.1. admitted as an advocate from January 2001 to December 2021

1.2.2. conferred senior counsel status in July 2018.

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

1.3.1. Judge of the High Court Division, Gauteng – Secondment to the Land Claims Court effective from 1 January 2022.

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 5 permanent judges of the Land Court:

3.1.1. 2 black women (1 African, 1 Coloured)

3.1.2. 1 African man

3.1.3. 1 white woman, and

3.1.4. 1 white man.

3.2. The President of the court in a Coloured woman.

3.3. According to the questionnaire, the candidate is a 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 53 years and 6 months old and will have completed a period of approximately 2 years and 9 months of active service.

4.2. If appointed, the candidate would be eligible to complete a period of approximately 16 years and 5 months active service as Deputy Judge President.

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

5.1. The candidate has demonstrated commitment to the values of the Constitution throughout her young adult and professional career. The candidate served on the following bodies and positions:

5.1.1. Human Rights Committee (1995-1997);

5.1.2. law researcher in the Constitutional Court (1999-2000);

5.1.3. Legal Resources Centre, Constitutional Litigation Unit (2010-2011);

5.1.4. Council for the Advancement of the South African Constitution - late 2010 until mid 2018 as a member of its Advisory Board (non-executive position).

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

6.1. Considering that the candidate practised as an advocate for 20 years and was conferred with the status of Silk, served as an acting judge for 3 years and served as a judge for 2 years, the candidate has a good knowledge of the law, including constitutional law. This much is also evident from the candidate's judgments, many of which deal with constitutional issues, primarily focussed on land matters and housing. In this respect, the candidate has a full understanding of and specialises in land-related disputes.

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

7.1. The candidate has disclosed that one judgment has been taken on appeal, and the reviewers confirm that the judgment was overturned on appeal.

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

8.1. Considering that the candidate practiced as an advocate for 20 years, served as an

acting judge for 3 years and served as a judge for 2 years, the candidate has demonstrated concomitant knowledge of the law, communication skills, and an ability to manage court proceedings. The candidate's forensic skills contribute considerably to her judicial philosophy.

8.2. The candidate has more than sufficient professional experience coupled with requisite skills for the position applied for.

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 five 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, three of these judgments were still outstanding, of which two have been outstanding for more than three months. The candidate indicated that, in *CapeSpan Agri v Smith* (reserved 30 April 2024), the candidate was unable to deliver judgment as further submissions were required on the impact of certain legislative amendments.

10.3. Of the 34 judgments of the candidate considered by the reviewers, two were handed down more than three months after hearing.

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.

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

13.1. The candidate deputised for Acting Judge President Meer in shortlisting and selecting

for the court manager role in 2022 and the court researcher role in 2023 and attended the Heads of Court Meeting in August 2023.

- 13.2. The candidate also attended a number of meetings with Legal Aid South Africa in 2023 to discuss its new land unit and matters of mutual concern, LAMOSA to engage the Commission in challenges in finalising restitution claims and assisted the Acting Judge President with liaison meetings between the court and the OCJ.
- 13.3. The candidate conducted a review of court performance statistics and supported the Acting Judge President in finalisation of quarterly performance reviews for the year 2023.
- 13.4. During this process, albeit brief, the candidate gained the necessary managerial skills to understand the dynamics and technicalities associated with managing a Court. Further, the candidate has been exposed to and interacted with key stakeholders with interests in land issues.

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

- 14.1. There is a steady movement towards increasing the number of women heading courts within the judiciary. The appointment of the candidate as the Deputy Judge President of the Land Court would send a positive message to the public at large as it would affirm the judiciary's efforts towards promoting diversity in heads of court.
- 14.2. Through her judgments, the candidate has proved herself more than capable in dealing with specialised and sensitive aspects of land restitution. This indicates that the candidate's appointment would send a positive message to the legal community and society in general.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Stellenbosch University v Retolla and Others* 2024 (1) SA 284 (LCC)
2. *Moladora Trust v Mereki and Others* 2023 (3) SA 209 (LCC)
3. *Mphatsoi v Van Staden* 2021 (5) SA 267 (LCC)
4. *Tsotetsi and Others v Raubenheimer NO and Others* 2021 (5) SA 293 (LCC)
5. *The Fonarun Naree Trustees, Copenship Bulklers A/S (in liquidation) and Others v Afri Grain Marketing (Pty) Ltd and Others* 2020 (4) SA 188 (GJ)
6. *Moladora Trust v Mereki and Others* 2023 (3) SA 209 (LCC)

Unreported judgments

7. *Crookes Brothers Limited and another v Makhatha and others* 2023 JDR 4905 (LCC)
8. *Du Plessis and another v Kriel NO and another* 2023 JDR 4808 (LCC)
9. *Exxaro Coal (Pty) Limited and another v Sindane and others* 2023 JDR 4606 (LCC)
10. *Dutch Reformed Presbytery: Mafikeng v Minister of Public Works and Others* 2022 JDR 3106 (LCC)
11. *Bakgatla-Ba-Kgafela Communal Property Association v Chief Land Claims Commissioner and Others* 2022 JDR 3105 (LCC)
12. *Dutch Reformed Presbytery: Mahikeng v Minister of Public Works and Others* 2022 JDR 3107 (LCC)
13. *Green NO. and Others v Khumalo and Others* 2022 JDR 3102 (LCC)
14. *Dangazele and others v Minister of Agriculture, Land Reform and Rural Development and others* 2022 JDR 3099 (LCC)
15. *Ga-Mabohlatjana Community v Capricorn District Municipality* 2021 JDR 3361 (LCC)
16. *Business Partners Limited v Securo Traders (Pty) Ltd and Others* 2021 JDR 2960 (GJ)
17. *CDH Watson NO and Others v Tsoanyane and Another* [2020] ZALCC 35 (21 December 2020)
18. *Du Plessis and Another v Ross and Others* [2020] ZALCC 20 (31 August 2020) (decision on application for leave to appeal)
19. *Delta 200 Properties (Pty) Ltd v Dale* 2020 JDR 2780 (LCC) ([2020] ZALCC 24 (12 August 2020))
20. *Du Plessis v Ross* 2020 JDR 2802 (LCC) ([2020] ZALCC 30 (26 May 2020))
21. *Changing Tides 17 (Pty) Limited v Muriritirwa* 2020 JDR 0717 (GP) ([2020] ZAGPPHC 132 (7 April 2020))

22. *Firststrand Bank Ltd v Mogodiri* 2020 JDR 0719 (GP) ([2020] ZAGPPHC 126 (7 April 2020))
23. *Henning and Others v Baloyi and Others (Nkuna and Land Claimants of Moddervlei Community Intervening Parties)* 2022 JDR 3103 (LCC) ([2022] ZALCC 31 (6 May 2022))
24. *Kim v Agri Staff Pension Fund and Others* [2019] ZAGPJHC 156 (6 Feb 2019) ([2019] ZAGPJHC 156 (6 February 2019))
25. *Investec Bank Limited v Big Business Innovations Group (Pty) Ltd* 2023 JDR 4340 (GP) ([2023] ZAGPPHC 1895 (6 November 2023))
26. *Investec Bank Limited v Singh and another (Counter-Application)* 2023 JDR 4341 (GP) ([2023] ZAGPPHC 1887 (6 November 2023))
27. *Mahlangu and Others v Van Der Merwe and Others* 2022 JDR 0427 (LCC)
28. *Manenzhe Community v Regional Land Claims Commissioner and Others; Ramphabana Tribe and Others v Regional Land Claims Commissioner, Limpopo, and Others* ([2022] ZALCC 29 (30 March 2022))
29. *Mosenogi v Webster* 2020 JDR 0724 (GP) ([2020] ZAGPPHC 127 (7 April 2020))
30. *Iswelethu Cemforce CC v Trustees for the Time Being of the National Education Collaboration Trust and another* 2023 JDR 3208 (GP) ([2023] ZAGPPHC 720 (21 August 2023))
31. *Makgahlela v Maboi 6 Community Trust* 2020 JDR 2801 (LCC) ([2020] ZALCC 29 (10 November 2020))
32. *Napier Grunstucks GMBH and Others v Fredericks and Others* 2023 JDR 0124 (LCC) ([2022] ZALCC 42 (23 December 2022))
33. *Investec Bank Limited v Singh and another* 2024 JDR 3140 (GP)
34. *Ntsako NO and Another v Mthembu and Others* (021190/2024) [2024] ZAGPPHC 796 (14 August 2024)

Judgments upheld on appeal

35. None

Judgments overturned on appeal

36. *Moladora Trust v Mereki and Others* [2022] ZALCC 32; 2023 (3) SA 209 (LCC); [2022] JOL 56253 (LCC)

Academic writings

37. Sarkin J and Cowen S 'Draft National Prosecuting Authority Bill 1997: A Critique' *South African Journal of Criminal Justice* 1997
38. Cowen S 'Can Dignity Guide South Africa's Equality Jurisprudence?' *South African Journal of Human Rights* Vol 17 Part 1 2001
39. Cowen S '*Judicial Selection: What qualities do we expect in a South African Judge*' 2010 Monograph published by UCT Faculty of Law under the auspices of the Democratic Governance and Rights Unit
40. Cowen S 'Judicial Selection: What qualities make for a good judge', chapter in *Falls the Shadow: Between the promise and the reality of the South African Constitution* 2013 Bentley, Nathan and Calland (eds) 2013 UCT Press (reworked version of the monograph above)