

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE, GAUTENG DIVISION OF THE HIGH COURT

PROFESSOR WILHEMINA “ELMIEN” JACOBA DU PLESSIS

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 International Studies – Stellenbosch University – 2002

1.1.2. LLB – Stellenbosch University – 2004

1.1.3. LLD – Stellenbosch University – 2009.

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

1.1.4. Associate Professor – North West University – 2014 to 2021

1.1.5. Professor of Law – North West University – 2022 to 2023

1.1.6. Professor of Law – University of Pretoria – 2024 to present.

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, nor 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 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 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 45 years and 1 months old and will have completed a period of approximately 9 months of service as an acting judge.

4.2. If appointed, the candidate would be eligible to serve as a judge for approximately 24 years and 10 months until the age of 70.

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

5.1. The candidate has served in different committees at North-West University, including but not limited to the Diversity and Inclusion Committee, Disciplinary Committee, Human Rights Committee, Ethics and Transformation Committee and the Task Team against Gender-Based Violence, amongst others.

5.2. She has formally supervised and mentored many students, the majority of whom are women.

5.3. She has dedicated her career and research to balancing constitutional law, property law, and customary law. She has written a number of legal and non-legal papers in those specific fields.

5.4. All these demonstrate her 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 has a doctorate degree in law, the highest form of education in the legal field.

6.2. She has co-authored and edited many books, contributing legal knowledge to various fields of law.

6.3. She has written a number of peer-reviewed papers which were published in both local and international journals. She has presented at many local and international legal conferences on various topics of constitutional law, property law, land reform etc.

6.4. Therefore, she possesses a high knowledge of the law, which will benefit the bench.

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

- 7.1. She started acting as a judge in 2022. On 26 May 2023, she granted leave to appeal in *Mining Pressure Systems (Pty) Ltd v Commissioner for the South African Revenue Service* (Leave to Appeal) (14703/2020) [2023] ZAGPPHC 388 (26 May 2023); however, the appeal has not been finalised yet.
- 7.2. We are unaware of any other judgments that have been heard on appeal.

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

- 8.1. The candidate was admitted as an advocate of the High Court in 2005 but has never practised. She does not appear to have experience in litigation and court practice.
- 8.2. She has been an academic throughout her professional career and has made significant contributions there.
- 8.3. She has acted as a judge for approximately 39 weeks since April 2022, including her latest acting appointment which commenced in June 2024.
- 8.4. On SAFLII, approximately 40 written judgments have been published. Two of the candidate's judgments have been reported.
- 8.5. The candidate's bench experience reflects positively.

9. The candidate's linguistic and communication skills

- 9.1. She has a good command of the English language, and her judgments are well written, structured and well researched. As an academic, this is reflected in her writing style, which is detailed although perhaps somewhat lengthy, but clear in her legal reasoning.

10. The candidate's ability to produce judgments promptly

- 10.1. Her judgments are delivered timeously. Most urgent matters were delivered within 2 days, whilst others ranged from 1 to 3 months.
- 10.2. She had 11 outstanding judgments which were reserved from 20 May to 05 June. At the time of this review, based on SAFLII, 9 of those judgments were delivered in July and August 2024.
- 10.3. She does not appear to have any judgments that were delivered outside the 3-month prescribed maximum target.

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

- 11.1. The comments received by the reviewers indicate that the candidate has the necessary ability to conduct proceedings fairly. She takes her time to listen, prompts necessary questions, and gives reasons for disallowing orders.
- 11.2. Whilst she does not have much court experience, this does not appear to be a hindrance.

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. Although she has not practised as an advocate, the candidate has written and presented many papers on various topics locally and internationally.
- 13.2. She has lectured undergraduate students, and she has supervised both masters and doctoral students.
- 13.3. She has advised institutions and government departments on issues such as COVID and land reform.
- 13.4. She accordingly appears to have good administrative ability.

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 appointments to the bench are not reserved for only those who have been in practice. Those who teach, develop, and apply the law also have a role to play.
- 14.2. Her commitment to gender issues will also send a message that it is recognised as a quality appreciated in the judiciary.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Shomang v Motsose N.O. and Others* (6990/2022) [2022] ZAGPPHC 441; 2022 (5) SA 602 (GP) (24 May 2022)

Unreported judgments

2. *I.G v J.V* (30290/21) [2023] ZAGPPHC 691 (8 July 2023)
3. *Engelbrecht NO and Another v Naidoo and Another* (2023 - 066208) [2023] ZAGPJHC 866 (3 August 2023)
4. *Regona Properties (Pty) Ltd and Another v City of Johannesburg Metropolitan Municipality and Another* (2023-074510) [2023] ZAGPJHC 877 (4 August 2023)
5. *Palm Chrome (Pty) Ltd v 2 Glowing Sunset Trading 56 CC and Others* (2023-080001) [2023] ZAGPPHC 760 (28 August 2023)
6. *SMEC South Africa (Pty) Ltd v South African National Road Agency SOC Ltd* (075024/2023) [2023] ZAGPPHC 1108 (29 August 2023)
7. *Langa v South African Legal Practice Council* (79330/2018) [2023] ZAGPPHC 734 (1 September 2023)
8. *Seale and Another v City of Johannesburg Metropolitan Municipality and Another (Leave to Appeal)* (2023-078684) [2023] ZAGPPHC 1149 (8 September 2023)
9. *Standard Bank of South Africa Limited v Engelbrecht and Others* (76079/2019) [2023] ZAGPPHC 1183 (28 September 2023)
10. *Botha and Others v Zanro Fashion CC and Another* (026742-2022) [2023] ZAGPPHC 1181 (28 September 2023)
11. *Brother International (Pty) Ltd v Bopang Distribution and Logistics (Pty) Ltd* (2023-072737) [2023] ZAGPPHC 1180 (2 October 2023)
12. *Nu Africa Duty Free Shops (Pty) Ltd v Commissioner for the South African Revenue Service* (25788/2022) [2023] ZAGPPHC 1855 (27 October 2023)
13. *Trustees for the time being of the Corneels Greyling Trust and Another v Minister of Water and Sanitation and Others* (2023 / 069111) [2023] ZAGPJHC 898 (11 August 2023)
14. *Mashilo v Lemmer and Others* (33669/2021) [2024] ZAGPPHC 329 (12 April 2024)
15. *Mashilo v Lemmer and Others (Variation)* (33669/2021) [2024] ZAGPPHC 330 (12 April 2024)

Judgments upheld on appeal

16. None

Judgments overturned on appeal

17. None