

VACANCY: JUDGE OF THE COMPETITION APPEAL COURT

Candidate: Judge James Dumisani Lekhuleni

1. The candidate's tertiary qualifications, professional admissions, honours, and permanent judicial appointments
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1.1. The candidate holds the following tertiary qualifications:

- BProc, University of the North (now University of Limpopo) (1992);
- LLM, University of Pretoria (2004);
- LLB, University of the North (2008);
- LLD (Labour Law), University of the Western Cape (2012);
- LLM (Family Law), University of Pretoria (2016);
- LLM (Transnational Criminal Justice), University of the Western Cape (2022).

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

- admitted as an attorney on 21 August 1997;
- appointed as a Reserve Force Military Judge in 2003 and 2004.

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

- Additional Magistrate (Cape Town) in November 2004;
- Regional Magistrate (Cape Town) on 1 November 2013;
- Judge of the High Court (Western Cape Division) on 1 January 2022.

1.4. The candidate has acted in the following roles:

- Regional Court President, Western Cape (August 2017 to September 2018 and January 2019 to March 2020, during the terms in which the Regional Court President acted in the High Court);
- Judge of the High Court (Western Cape Division) (approximately 45 weeks);
- Judge of the Competition Appeal Court (appointed for the whole of 2026).

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.
- 2.2. The candidate's nomination letter references his impeccable character.

3. The racial and gender composition of the bench

- 3.1. As far as could be ascertained, the current Competition Appeal Court judges, both permanent and acting, comprise:
- 4 black women (4 African)
 - 3 black men (3 African)
 - 2 white women
 - 2 white men
- 3.2. According to the questionnaire, the candidate is an African man.

4. The maximum period the candidate could serve if appointed

- 4.1. At the time of the interviews, the candidate will be approximately 56 years old and will have completed a period of approximately 4 years and 9 months of service as a judge. If appointed, the candidate would be eligible to serve as Judge of the Competition Appeal Court for a period of up to 13 years and 11 months.

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

- 5.1. The candidate is involved in voluntary efforts in judicial education and mentorship. He has presented training courses to regional magistrates and aspirant regional magistrates in the Western Cape. He has presented to District Court magistrates of the Western Cape on judicial independence and accountability at the request of the Chief Magistrate (23 May 2026).
- 5.2. He has presented to the judges of his division, at the request of the Judge President and the division's Education Committee, on the different pathways of review of administrative action.

- 5.3. He mentors aspirant judges in the Brigitte Mabandla Aspirant Judges' Programme, including reviewing and giving feedback on their judgments and presenting to them on the Promotion of Administrative Justice Act 3 of 2000 ("PAJA").
- 5.4. The candidate states that he makes himself available to preside over moot courts and mock trials for law students and pupil advocates, including at the University of Cape Town, the University of the Western Cape (2016, 2017 and 2018), the University of Stellenbosch (April 2026), the Cape Bar's pupil advocacy training (13 March 2026), and the 11th Annual Kader Asmal Moot Court Competition (2 August 2025).
- 5.5. The candidate's thesis in his LLM (Family Law), *A loud call for equality for same-sex couples*, criticises provisions of the Civil Union Act 17 of 2006 as unfairly discriminating against same-sex couples in conflict with sections 9 and 10 of the Constitution.
- 5.6. A judgment of the candidate on the questioning of unrepresented accused persons under section 112(1)(b) of the Criminal Procedure Act (*S v Elmie*, May 2021) was circulated by the Magistrates' Commission to all magistrates as a training measure (Circular 10/2021), reflecting a practical contribution to access to justice in the lower courts.
- 5.7. The nomination pack indicates that the candidate is committed to furthering transformation within the legal profession, principally through the training and mentorship described above.
- 5.8. He was a member of the South African chapter of the International Association of Women Judges and is currently a member of the International Association of Refugee and Migration Judges.

6. The candidate's knowledge of the law, including constitutional law
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- 6.1. The candidate's judgments cover administrative law and review under PAJA, statutory interpretation, criminal law and procedure, children's and family law, whistle-blower protection, and eviction law. The judgments demonstrate strong legal knowledge, including statutory interpretation and the application of the Constitution.
- 6.2. In *Steyn v Registrar of Medical Schemes* 2021 (3) SA 551 (WCC), the candidate reviewed a decision of the section 50 Appeal Board under the Medical Schemes Act 131 of 1998 upholding a medical scheme's cancellation of membership for alleged non-disclosure. The candidate distinguished the appeal structures under sections 47, 48 and

50 of that Act, analysed the nature of a “wide” appeal, and held that the Appeal Board breached the *audi alteram partem* principle by deciding the matter on issues raised for the first time in argument without affording the member an opportunity to lead evidence on them, and that the alleged non-disclosure was not material. Its subsequent appellate history is dealt with in section 7 below, where the Constitutional Court reached the same outcome as the candidate, on partly different grounds.

- 6.3. *School Governing Body, Paarlzicht Primary School v MEC for Education, Western Cape* [2021] 2 All SA 241 (WCC) exemplifies the candidate’s exercise of judicial restraint in review proceedings. The candidate condoned a 17-day delay on an application of the interests-of-justice standard (including *Gijima*), but dismissed the merits of a rationality and bias challenge to the Head of Department’s appointment of a school principal, holding that the functionary need not rubber-stamp the governing body’s preference and that the decision was rationally connected to the reasons given for it.
- 6.4. *S v Lorenzi* 2025 (1) SACR 421 (WCC) concerned bail pending a reconsideration application under section 17(2)(f) of the Superior Courts Act 10 of 2013 by a company director convicted of large-scale theft and fraud. Finding no authority on point, the candidate formulated an applicable test, assimilating it to bail pending appeal, and considered the directors’ fiduciary duties and the Supreme Court of Appeal’s sentencing jurisprudence on white-collar crime.
- 6.5. *Ramela v Cooper NO and Others* (WCC, 5 May 2025, unreported) dismissed an urgent application by a suspended Robben Island Museum executive who invoked the Protected Disclosures Act 26 of 2000 to forestall disciplinary proceedings. The candidate analysed the requirements of a protected disclosure, its interface with sections 188A(11) and (12) of the Labour Relations Act, and the limits of urgency, holding that a protected disclosure does not immunise an employee from discipline.
- 6.6. *RS v JPS* 2024 (6) SA 609 (WCC) (Bishop AJ concurring) upheld an appeal against a maintenance court’s finding that a former foster father owed no duty of support to a child he had undertaken, in a settlement agreement and adoption application, to maintain. The candidate exercised the High Court’s powers as the upper guardian of minors and invoked a practical interim order for maintenance pending a section 10 enquiry.

- 6.7. In *S v Lenting* 2023 (2) SACR 409 (WCC), an interlocutory ruling in a 20-accused, 145-count gang trial, the candidate held that sections 153(2)(b) and 158(2)(b) of the Criminal Procedure Act 51 of 1977 protect adult witnesses whose evidence would be compromised by fear or distress, and are not confined to sexual offence or child witness cases, drawing on Canadian and United Kingdom comparative material.
- 6.8. In *S v RVR* [2026] 1 All SA 559 (WCC) (Slings J concurring), a special review under the Child Justice Act 75 of 2008, the candidate held that a court considering a section 105A plea and sentence agreement in a child offender matter is not a rubber stamp and should call the probation officer where the agreed sentence departs materially from the pre-sentence recommendation.
- 6.9. In *Pedro v S* (WCC, 15 April 2021, Gamble J concurring), the candidate interpreted section 35(3) of the National Road Traffic Act 93 of 1996 to resolve a conflict of authority within the Western Cape Division of the High Court on the factors relevant to licence-suspension orders.
- 6.10. In *City of Cape Town v Johannes Rooyen* (A23/2025) [2025] ZAWCHC 507 (31 October 2025), the candidate wrote the judgment in a full court appeal upholding an appeal in which the court *a quo* had dismissed the city's application to make an interim anti-land intrusion interdict final. The judgment involved a balancing of sections 25, 26 and 34 of the Constitution and the Prevention of Illegal Eviction Act 19 of 1998 ("PIE Act") as well as a comparative discussion of English authority on litigating against unnamed parties. The candidate identified and separated the remedies relating to eviction, spoliation and interdicts, which the lower court had conflated.
- 6.11. The judgment from the candidate's current acting role on the Competition Appeal Court ("CAC") in *Cape Gate (Pty) Ltd v Competition Tribunal and Others* (276/CAC/Oct25) [2026] ZACAC 3 (1 June 2026) is the only judgment linked to the CAC. The candidate co-authored the majority judgment with Masipa AJA, with Nkosi AJA dissenting. The majority reviewed and set aside a Competition Tribunal decision finding Cape Gate to have participated in a scrap-metal buyers' cartel in contravention of section 4(1)(b)(i) of the Competition Act 89 of 1998, on the ground that the Tribunal's six-year delay in delivering its decision, the contradictory explanations of the panel members and the Tribunal's reliance on post-hearing authorities without affording the parties an opportunity to address them, cumulatively rendered the decision unlawful, irrational,

unreasonable and procedurally unfair under PAJA. The majority interpreted section 52(2)(a) of the Competition Act purposively and rejected the argument, accepted by the dissent, that the duty to act “*as expeditiously as possible*” is confined to the hearing stage. The majority found that the section, read with section 237 of the Constitution, is extended to the making and delivery of the Tribunal’s decision.

- 6.12. An area of concern is that the candidate has only one judgment in the CAC, which was resolved on administrative-law grounds. The candidate has a strong academic background; however, his judgments have not involved large commercial matters and therefore do not display his ability to determine complex commercial issues.

7. Judgments of the candidate that have been overturned, upheld, or commented on, on appeal:
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- 7.1. The candidate has disclosed that six judgments have been taken on appeal. On appeal, three judgments have been upheld, and three judgments have been overturned.

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

- *Steyn v Registrar of Medical Schemes* 2021 (3) SA 551 (WCC) was upheld in *Swanepoel NO v Profmed Medical Scheme* [2024] ZACC 23
 - The Constitutional Court unanimously held that a medical scheme seeking to terminate membership for non-disclosure under section 29(2)(e) of the Medical Schemes Act 131 of 1998 must prove not only that the non-disclosure was objectively material but also that it induced the scheme to contract. Profmed had proved neither, and the termination was set aside.
 - The result restored the substance of the candidate’s order, although his own reasoning was based on procedural fairness.
- *Public Protector of South Africa v Speaker of the National Assembly and Others* 2023 (4) SA 205 (WCC) (the section 18 judgment) confirmed in *Democratic Alliance and Another v Public Protector of South Africa and Others* [2023] ZACC 25; 2024 (3) SA 1 (CC)
 - This was a joint judgment delivered by the full court comprising Nuku J, Francis J and the candidate in an extremely urgent application under section 18(1) and (3) of the Superior Courts Act 10 of 2013 to have the court’s earlier order of 9 September 2023 declaring the Public Protector’s

suspension invalid declared immediately operational and executable pending the confirmation and appeal process. The full court found that until the Constitutional Court confirmed the order, it was inchoate and had no force. The matter required urgent examination and careful interpretation of sections 167(5), 172(1)-(2) of the Constitution to determine “conduct” vs “decision”.

- The Constitutional Court confirmed the finding of the court *a quo*.

7.3. The judgments of the candidate overturned on appeal are:

- *African Transformation Movement v Speaker of the National Assembly and Others* [2021] 2 All SA 757 (WCC), overturned in *African Transformation Movement v Speaker of the National Assembly and Others* [2021] ZASCA 164; 2022 (4) SA 409 (SCA)
 - The candidate, sitting alone as an acting judge, dismissed the ATM’s rationality challenge to the Speaker’s refusal of a secret ballot on a motion of no confidence in the President.
 - The SCA upheld the appeal and set aside the candidate’s order and substituted the order reviewing and setting aside the Speaker’s decision to decline a secret ballot, and remitting the ATM’s request to the Speaker for a fresh decision.
- *Todd v Magistrate, Clanwilliam and Others* 2023 (1) SACR 481 (WCC), overturned in *Todd v Magistrate: Clanwilliam and Others* [2025] ZASCA 185 (4 December 2025)
 - The candidate had dismissed a review of an inquest Magistrate’s finding that the death of the applicant’s wife was prima facie brought about by an offence on his part.
 - The SCA set the finding aside and remitted the matter for a public inquest with oral evidence, holding that the manner in which the inquest was conducted was not in accordance with the law.
- *Bergrivier Boerdery (Pty) Ltd v Pieterse and Others* (200/2021) [2024] ZAWCHC 161 (3 June 2024), overturned in part in *Bergrivier Boerdery (Pty) Ltd v Pieterse and Others* (A303/2024) [2026] ZAWCHC 246 (19 May 2026)

- The candidate dismissed a PIE eviction application against a farmworker and his wife, who had sold their home to their employer in circumstances the candidate found involved misrepresentation and abuse of economic power, and made ancillary directives (referrals to the Department of Labour and the Master, and the appointment of a forensic accountant).
- The full court found no misdirection by the court *a quo* in its factual findings and endorsed the candidate's engagement with all relevant circumstances in the just-and-equitable enquiry but held that he ought to have found the occupiers to be unlawful occupiers under the Act and replaced the dismissal with a structured eviction order suspended for 180 days to enable negotiation and litigation of the occupiers' claims.

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

- 8.1. The candidate has over 30 years of professional legal experience.
- 8.2. He started as a candidate attorney, developed into a senior legal advisor, and spent three years as a public prosecutor, whereafter he became a legal advisor at LegalWise.
- 8.3. He practised as a sole practitioner at James Lekhuleni Attorneys, Polokwane, in the fields of labour, criminal and family law for four years until 2004
- 8.4. In 2004, he was appointed as an Additional Magistrate in Cape Town for nine years and advanced to a Regional Magistrate in Cape Town for eight years until 2021, including service as a Provincial Coordinator for civil matters and as Acting Regional Court President.
- 8.5. The candidate was appointed as a Judge of the Western Cape Division in January 2022.
- 8.6. He also served periodically as a Reserve Force Military Judge (2003–2004).
- 8.7. On the High Court bench, the candidate has presided over many matters, including criminal trials, criminal and civil appeals, special reviews, opposed motions, PAJA reviews, family and children's matters, evictions and urgent applications.
- 8.8. His formal specialisations, reflected in his doctorate and masters degrees, are labour law, family law, transnational criminal justice and, most recently, competition law. The candidate is enrolled at the University of the Western Cape for an LLM in competition

law from 2023 to date. He has completed the coursework, submitted his assessment, and is awaiting the outcome.

8.9. The candidate is currently acting on the CAC, where he has co-authored one judgment of that Court (*Cape Gate*).

8.10. The candidate's career has been predominantly in criminal, family, and labour work in the lower courts and the High Court, with limited involvement in adjudicating complex commercial disputes and only one judgment in the CAC. His developing academic specialisation in competition law is recent and not yet developed.

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 one judgment was outstanding at the time of completing the questionnaire.

10.2. As far as could be ascertained at the time of completing this review, the delivery of that judgment was still outstanding, and at the date of the questionnaire the judgment had been outstanding for slightly less than four months.

10.3. Of the judgments of the candidate considered by the reviewers (including the CAC judgment in *Cape Gate*, heard on 5 March 2026 and delivered on 1 June 2026, within three months), one was handed down more than three months after hearing, namely, *Bergvriër Boerdery* (5.7 months).

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. There is no reason to believe that the candidate, if appointed, would not bring an independent mind to bear on issues presented for judicial determination, nor that the

candidate would be unduly influenced in any way, including by the executive or legislative branches of government.

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

- 13.1. The candidate served as Provincial Coordinator for civil matters for the Western Cape Regional Division from December 2015 to December 2021, and as Acting Regional Court President of the Western Cape, chaired the Regional Efficiency Enhancement Committee between August 2017 and 2020. These roles suggest the candidate has sound managerial and administrative abilities.
- 13.2. The candidate's completion of a doctorate and three masters degrees while holding full-time judicial office, alongside his extensive voluntary training and mentorship commitments, indicates an ability to balance competing personal, professional, and voluntary commitments without apparent detriment to the timeous delivery of his judgments.

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

- 14.1. The candidate was born in Graskop, Mpumalanga, and rose from candidate attorney, legal advisor, prosecutor and attorney through nearly two decades in the magistracy to the High Court bench and the Military Court, accumulating a doctorate and multiple Masters degrees along the way.
- 14.2. His appointment would send a message that sustained hard work, lifelong learning, and service in the lower courts are valued pathways to specialist appellate office, and would affirm the advancement of African judges within the senior judiciary.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Steyn v Registrar of Medical Schemes* 2021 (3) SA 551 (WCC)
2. *School Governing Body, Paarlzicht Primary School v MEC for Education, Western Cape and Others* [2021] 2 All SA 241 (WCC)
3. *S v Lenting and Others* 2023 (2) SACR 409 (WCC)
4. *Todd v Magistrate, Clanwilliam and Others* 2023 (1) SACR 481 (WCC)
5. *RS v JPS* 2024 (6) SA 609 (WCC)
6. *S v Lorenzi* 2025 (1) SACR 421 (WCC)
7. *S v RVR* [2026] 1 All SA 559 (WCC)
8. *Cape Gate (Pty) Ltd v Competition Tribunal and Others* (276/CAC/Oct25) [2026] ZACAC 3 (1 June 2026)
9. *Public Protector of South Africa v Speaker of the National Assembly and Others* 2023 (4) SA 205 (WCC); [2023] 1 All SA 256 (WCC) (full court: Nuku J, Francis J and Lekhuleni J), with the refusal of leave to appeal, (8500/2022) [2022] ZAWCHC 222 (3 November 2022)
10. *Davids v S* (4222/2021) [2022] ZAWCHC 146; [2022] 4 All SA 67 (WCC); 2022 (2) SACR 544 (WCC) (28 July 2022)
11. *Van Zyl N.O obo A.M v MEC for Health, Western Cape Provincial Department of Health* (A138/2021) [2022] ZAWCHC 133; [2023] 1 All SA 501 (WCC) (4 July 2022)

Unreported judgments

12. *Davids and Others v Hassam* (A193/20) [2020] ZAWCHC 159 (16 November 2020)
13. *Pedro v S* (WCC, 15 April 2021)
14. *Turner and Another v Ntintelo and Another* (A 248/22) [2023] ZAWCHC 51 (8 March 2023)
15. *Something Different Concepts and Shows CC and Another v South African Securitisation Programme (RF) Ltd and Others* (A200/2023) [2024] ZAWCHC 103 (19 April 2024)

16. *Bergriviers Boerdery v Pietersen and Others* (200/2021)[2024] ZAWCHC 161 (3 June 2024)
17. *Ramela v Cooper NO and Others* (2025-055130) (WCC, 5 May 2025)
18. *City of Cape Town v Johannes Rooyen and Another* (A23/2025) [2025] ZAWCHC 507 (31 October 2025)
19. *Lambarey and Another v Lambarey NO and Another (Appeal)* (A155/2025) [2026] ZAWCHC 366 (22 July 2026)
20. *Maree and Others v Moravian Church of South Africa and Another* (1091/2020; 15254/2023) [2026] ZAWCHC 383 (3 August 2026)

Judgments upheld on appeal

21. *Steyn v Registrar of Medical Schemes* 2021 (3) SA 551 (WCC) upheld in *Swanepoel NO v Profmed Medical Scheme* [2024] ZACC 23
22. *Public Protector of South Africa v Speaker of the National Assembly and Others* 2023 (4) SA 205 (WCC); [2023] 1 All SA 256 (WCC) upheld in *Democratic Alliance and Another v Public Protector of South Africa and Others* [2023] ZACC 25; 2024 (3) SA 1 (CC)

Judgments overturned on appeal

23. *African Transformation Movement v Speaker of the National Assembly and Others* [2021] 2 All SA 757 (WCC) overturned in *African Transformation Movement v Speaker of the National Assembly and Others* [2021] ZASCA 164; 2022 (4) SA 409 (SCA)
24. *Todd v Magistrate: Clanwilliam and Others* 2023 (1) SACR 481 (WCC) overturned in *Todd v Magistrate: Clanwilliam and Others* [2025] ZASCA 185 (4 December 2025)
25. *Bergrivier Boerdery (Pty) Ltd v Pieterse and Others* (200/2021) [2024] ZAWCHC 161 (3 June 2024) overturned in part in *Bergrivier Boerdery (Pty) Ltd v Pieterse and Others* (A303/2024) [2026] ZAWCHC 246 (19 May 2026)

Academic writings

26. LLM (Family Law): *The Constitutionality of the Civil Union Act 17 of 2006* (2016), University of Pretoria.
27. The candidate's published articles were not included in the nomination pack and were not independently available to the reviewers.