

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

Candidate: Michael Walter Janisch SC

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:

- BA, University of Cape Town (1989)
- LLB, University of Cape Town (1991)
- LLM, University of Regensburg, Germany (1993)
- H Dip Tax, University of Witwatersrand (1995)

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

- admitted as an advocate in 1999
- conferred senior counsel status in 2015
- recommended for conferment of senior status in 2013

1.3. The candidate has acted in the following roles:

- Acting Judge (approximately 21 weeks)

2. The candidate's integrity and ethics
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2.1. No circumstances are known to the reviewers that suggest 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 of the bench
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3.1. As far as could be ascertained, there are currently 32 permanent judges of the Western Cape Division of the High Court, Cape Town:

- 12 black women (6 African, 6 Coloured)

- 14 black men (6 African, 6 Coloured, 2 Indian)
- 4 white women
- 2 white men

3.2. According to the questionnaire, the candidate is a white man.

4. The maximum period the candidate could serve if appointed

4.1. At the time of the interviews, the candidate will be approximately 58 years and 2 months old. If appointed, the candidate would be eligible to complete a period of up to 15 years of active service as a judge.

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

5.1. As a practitioner, the candidate played a significant role in engaging black and woman counsel on tax matters, an area of practice in which briefing patterns have historically been strongly skewed in favour of white men. The candidate has ensured that counsel working with him are meaningfully involved in all aspects of the litigation, in particular the drafting of pleadings and heads of argument, and preparation for hearings.

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

6.1. The candidate has written thorough and closely reasoned judgements in many areas of law. During his recent stint as an acting judge, the candidate penned numerous judgements that demonstrate familiarity with a range of law and practice.

6.2. *Cellucity (Pty) Ltd v Phillipson – Garcia and Others* 2025 (3) SA 170 (WCC) – The judgment demonstrates comprehensive legal knowledge by:

- Correctly applying the concept of quasi-vindictory claims, which is crucial when the property's ownership or exact boundaries might be in dispute, but a sufficient connection exists to warrant protection.
- Understanding and articulating the principles underpinning interim interdicts, notably the differing standards for proving intention to dissipate assets.
- The judgment's clear distinction that quasi-vindictory claims dispense with the subjective intention requirement demonstrates a sophisticated grasp of precedent and legal theory.
- Exercising judicial discretion prudently by denying relief to those without a

demonstrated nexus to the stolen funds, thereby respecting the limits of the court's equitable jurisdiction and avoiding unjustified restraint.

- Recognising the policy interest in preserving assets to prevent defendants from frustrating claims for the recovery of misappropriated property, and underscoring confidence in the law's capacity to protect proprietary interests without requiring proof of fraudulent intent.

6.3. *Badenhorst v De Kork* 2025 (4) SA 540 – The judgment clearly illustrates:

- The application of the reckless trading doctrine, under which directors or controlling persons are held personally liable when trading irresponsibly through a company.
- The principle that a company's separate legal personality does not provide absolute immunity and can be disregarded where the company is used to evade debts.
- Protection of creditors' rights by ensuring full recovery of the principal debt with interest and costs, not simply a nominal victory.
- The importance of substance over form, enabling courts to look beyond the corporate structure to the transaction's true nature and the parties' conduct.
- The candidate demonstrates comprehensive knowledge of the law on the liability of individuals who abuse the corporate form through reckless trading. The court's analysis applied established company law principles that protect creditors and prevent the misuse of companies as debt shields. The case reinforces the judiciary's willingness to impose personal liability for reckless trading in commercial dealings while ensuring full monetary relief, including interest and costs. This judgment safeguards the integrity of commercial transactions and holds controlling individuals accountable when they disregard their fiduciary duties and statutory limits on trading responsibility.

6.4. *Christopher Joseph Kelly v Rental Housing Tribunal and another*, WCC No. 15008/23

– The candidate's legal knowledge is demonstrated through a nuanced analysis spanning statutory interpretation, administrative law review, and contract law. The key elements include:

- Clarification of the Tribunal's legal limits: The candidate critiques the Tribunal's

broader interpretation of its powers, noting that it erred by extending "*unfair practice*" to cover general unfairness without grounding its decision in specific statutory or regulatory provisions of the Rental Housing Act or the Western Cape Regulations. This highlights the candidate's understanding that "*unfair practice*" has a circumscribed statutory meaning and cannot be based merely on equity or general fairness in the absence of enabling provisions.

- Detailed statutory interpretation: The candidate unpacks relevant statutory provisions, particularly section 13 of the Rental Housing Act and paragraph 4(1)(d) of the unfair practices regulations, to support a finding that the landlord breached a clear statutory duty to repair the pool training unit.
- Engagement with precedent on administrative review: By referring to PAJA's grounds for review and explaining how the Tribunal's reasoning contravened the law (by taking irrelevant considerations and misunderstanding its statutory mandate), the candidate demonstrates knowledge of administrative justice principles.
- Balanced reasoning on consumer protection law: The analysis assesses the applicability of the Consumer Protection Act, distinguishing between ad hoc leasing by private individuals and leasing in the ordinary course of business, thereby demonstrating the candidate's ability to evaluate whether a statutory regime applies.
- Contractual interpretation in context: Applying the Endumeni principle, the candidate draws on the factual matrix and the parties' communications to interpret contractual terms, rejecting the landlord's narrow reading of the lease and focusing on the genuine intention and the context surrounding the lease's conclusion.
- Judicial remedies insight: The candidate recognises the court's power under PAJA section 8(1) to substitute findings where appropriate but notes the limits on substituting the quantum of rental remission absent a detailed application of the statutory factors under section 13(5), recommending remitting that issue to the Tribunal.

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 1 judgment has been taken on appeal, and the

reviewers found a further 1 judgment of the candidate that has been taken on appeal. On appeal, 2 judgments have been upheld and 2 have been overturned. 0 appeals remain to be decided.

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

7.2.1. *Giles Alexander Power Maynard v Carrick Wealth (Pty) Limited 2026 2 All SA 28 (WCC) in The Western Cape High Court*

- The court held that Carrick Wealth was both entitled and obliged under the Financial Advisory and Intermediary Services (FAIS) Act framework to initiate debarment proceedings upon becoming aware of information indicating a potential disqualifying breach by Maynard. The court further held that Maynard was not entitled to a final interdict preventing Carrick Wealth from conducting those proceedings.
- The court found that Maynard failed to establish a clear right to restrain the process, failed to demonstrate irreparable harm justifying such an interdict, and had alternative remedies available to address his grievances. Consequently, his application for an interdict was dismissed with costs.

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

7.3.1. *Commissioner for SARS v Meiring Citrus Pty Ltd Case No A161/2025 TCC No. IT 46080*

- *In Commissioner for SARS v Meiring Citrus Pty Ltd*, Case No A161/2025, TCC No. IT 46080, the court found that the R9.6 million claimed by Meiring Citrus was not deductible under section 11(a) of the Income Tax Act because it was not expenditure actually incurred and, alternatively, was capital in nature.
- Additionally, the court confirmed that the assessment was not barred by prescription under sections 99(1)(a) and 99(2)(a) of the Tax Administration Act. The purported self-insurance arrangement relied on by the taxpayer did not constitute true insurance for tax purposes, entitling SARS to disallow the deduction and to maintain the penalty.

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

8.1. The candidate has been in practice as an advocate at the Cape Bar for 26 years – in

excess of 10 years of that as senior counsel.

- 8.2. The candidate has experience in commercial litigation and administrative law.
- 8.3. Tax law has been his single largest practice area in recent years.
- 8.4. The candidate acted as a judge in the Western Cape Division from October 2024 to December 2024, during which time he was primarily assigned to civil matters. Five of his judgments were reported in the South African Law Reports.
- 8.5. The candidate further acted as a judge at the Western Cape Division from January to March 2026, during which time he heard delictual and matrimonial matters. He also handled a range of criminal work, appeals, and bail proceedings.

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 has delivered comprehensive and well-researched judgments on the matters that he has been seized with and does so in as short a period as possible, in many cases within weeks of the hearing date.
- 10.2. This promotes access to courts.
- 10.3. As far as could be ascertained at the time of completing this review, the candidate had no reserved judgments at the time of completing this review.
- 10.4. Of the 6 judgments of the candidate considered by the reviewers, none were handed down more than three months after hearing.
- 10.5. The candidate has corrected where the hearing date and delivery date were incorrectly recorded.

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

- 11.1. The reviewers received comments from colleagues who have appeared before the candidate indicating that he was found to be well prepared, with a respectful and engaging demeanour and an excellent judicial temperament.

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 for judicial determination, nor that the candidate would be unduly influenced, including by the executive or legislative branches of government.

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

- 13.1. Nothing in the candidate's nomination pack would suggest that the candidate is not a competent administrator. His timely delivery of excellent judgment would indicate that he manages his time well.

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

- 14.1. The candidate combines a strong analytical capacity with industry, thoroughness, attention to detail, and clarity of thought. A key strength is his ability to distil complex legal questions to their essential components and articulate them with precision and clarity.
- 14.2. Appointing this candidate would signal to the general public that judges are fair and respectful towards colleagues and conduct themselves with the utmost integrity.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Cellucity (Pty) Ltd v Phillipson – Garcia* 2025 (3) SA 170 (WCC)
2. *Badenhorst v De Kork* 2025 (4) SA 540 (WCC)

Unreported judgments

3. *Commissioner for SARS v Meiring Citrus Pty Ltd* A161/2025 (Tax Court T46080)
4. *Christopher Joseph Kelly v Rental Housing Tribunal and another* WCC No.15008/23

Judgments upheld on appeal

5. *Giles Alexander Power Maynard v Carrick Wealth (Pty) Limited* [2026] 2 All SA 28 (WCC)

Judgments overturned on appeal

6. N/A

Academic writings

7. N/A