

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

Candidate: Ms Elzanne Mureen Jonker

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 Stellenbosch, (1999)
- LLB, University of Stellenbosch, (2001)

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

- admitted as an attorney and notary public in 2004
- admitted as a conveyancer in 2007

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

- Small Claims Court Commissioner (since 2009)

2. The candidate's integrity and ethics
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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 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 woman.

4. The maximum period the candidate could serve if appointed

4.1. At the time of the interviews, the candidate will be approximately 48 years and 8 months old. If appointed, the candidate would be eligible to complete a period of up to 21 years and 3 months' of active service as a judge.

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

5.1. There is nothing in the candidate's CV to suggest that she is not committed to the Constitution's values. Feedback from some colleagues at the Bar indicate that she has endeavoured to consider race and gender diversity when briefing counsel. In her questionnaire, the candidate confirms that she has deliberately briefed black juniors, particularly black woman juniors, to help them gain exposure, experience, and professional connections. The candidate also reports that she is engaged in extramural and community activities, such as lecturing candidate attorneys through the LEAD programme and chairing a trust for the benefit of a primary school, all of which comport with the Constitution's values.

6. The candidate's knowledge of the law, including constitutional law
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6.1. The candidate is an experienced attorney with a well-rounded understanding of the law, particularly in civil law and litigation. The candidate has as good an understanding of constitutional law as any attorney. She has extensive experience in this field of law – having acted as a lead or instructing attorney in a number of high-profile cases involving important questions of constitutional law, including matters before the Supreme Court of Appeal and the Constitutional Court. She also has experience in other areas of the law, such as administrative law (judicial review in general), insurance, contract (credit agreements), and family law.

6.2. The reviewers have considered the judgments annexed to the candidate's latest application, together with two further full bench judgments delivered since the nomination was submitted. The candidate has authored three full court appeal judgments. In *Maynard v Carrick Wealth (Pty) Limited* [2026] 2 All SA 78 (WCC), the full court (per Jonker AJ, Sher J and Mangcu-Lockwood J concurring) dismissed an appeal against the refusal of an application to halt debarment proceedings under section 14 of the Financial Advisory and Intermediary Services Act 37 of 2002. It held, on the

facts before it, that the financial services provider was under a duty to initiate the debarment process, a duty that could not be compromised by a settlement agreement, and that an ulterior motive had not been established on the papers. The judgment is reported in the All South African Law Reports and has been noted in the financial services industry press. In *Greef NO and Another v GPP Properties CC and Another* [2026] ZAWCHC 213 (per Jonker AJ, Mantame J and O'Brien AJ concurring), the full court dismissed an appeal against the upholding of an exception, in a judgment that addressed the distinction between *facta probanda* and *facta probantia* in pleading and the Subdivision of Agricultural Land Act 70 of 1970.

- 6.3. In *Louis v Arts Foundation* [2026] ZAWCHC 339 – a full bench appeal heard on special leave granted by the Supreme Court of Appeal, penned by the candidate (Goliath DJP and Mantame J concurring) and delivered on 29 June 2026, after her nomination was submitted – the court addressed the personal delictual liability of company directors for pure economic loss, holding that the existence of a legal duty is a question of law for the court, not displaced by a pleader's admission of a 'duty of care'; one director's appeal was dismissed and the other's upheld. The candidate also sat on the full bench that delivered the joint judgment in *Commissioner for the South African Revenue Service v Meiring Citrus (Pty) Ltd* (A161/2025, 26 June 2026), upholding an appeal by SARS and holding that a structured 'self-insurance' product did not constitute a contract of insurance in law and that the purported premium was not deductible under section 11(a) of the Income Tax Act 58 of 1962.
- 6.4. At first instance, in *Pabar (Pty) Ltd v Azoteq (Pty) Ltd* [2026] ZAWCHC 128, the candidate dismissed a contractual claim after trial, applying the *Stellenbosch Farmers' Winery* approach to resolving factual disputes and the established principles governing when negotiations acquire contractual force. She subsequently dismissed the application for leave to appeal against that judgment ([2026] ZAWCHC 208). In *Plattekleof Saagmeule CC v Swellendam Plase (Pty) Ltd and Another* [2026] ZAWCHC 11, she dismissed a delictual claim for veld fire damage on the basis that the plaintiff failed to prove that the defendants occupied or controlled the land when the fire started. Taken together, these judgments demonstrate a sound working knowledge of the law across a range of fields, including financial services regulation, tax, contract, delict, and civil procedure.

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

- 7.1. The candidate has disclosed in her questionnaire (completed on 3 June 2026) that none of her judgments had been taken on appeal, and that she is not aware of any appeal or of the result of any appeal.
- 7.2. As far as could be ascertained, no judgments of the candidate have been upheld or overturned on appeal, and no appeal court has commented on any judgment of the candidate.

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

- 8.1. The candidate has been an attorney for over 20 years. Much of this time has been spent in the litigation department of her law firm. She has served as director of her law firm for over 15 years. She is active in the Tygerberg Attorneys Association. Overall, she is an experienced legal practitioner. The candidate has also served as a Small Claims Court Commissioner since 2009. Although her practice is primarily in the superior courts, she has litigated in the Magistrates' Court, where she has conducted trials and appeared in motion court matters. She has represented litigants in primarily civil proceedings; she also has some experience in criminal matters. Moreover, a few colleagues who support her application comment favourably on her competency as an instructing attorney.
- 8.2. Since her last interview, the candidate has gained considerable judicial experience. According to her questionnaire, she has acted in the Western Cape Division of the High Court on five occasions: 15 to 30 April 2025; 21 July to 5 September 2025; 7 to 9 October, 19 November and 3 December 2025; 19 January to 27 March 2026; and 23 April and 13 to 14 May 2026. She has been acting this term since 24 August 2026. While acting, she sat in full bench appeals and reviews in both civil and criminal matters, presided over unopposed motion court and urgent court, and was allocated civil trials, opposed motions, Road Accident Fund matters, case management rolls, criminal appeals, mental health reviews, and an automatic bail appeal. In the first term of 2026, she presided over a criminal trial on charges including murder, attempted murder, and robbery with aggravating circumstances, delivering judgment on conviction on 13 May 2026; sentencing proceedings were set down to commence on 18 June 2026.

9. The candidate's linguistic and communication skills

- 9.1. The candidate's judgments are written in English.
- 9.2. The candidate's judgment-writing skills are good. She appears able to identify the issues and cut to the crux of the case easily. Her judgments are lucid and show that she can articulate herself well in writing. The candidate's judgments considered by the reviewers, which include three full-court judgments she penned (one of which is reported in the All South African Law Reports), confirm this assessment.

10. The candidate's ability to produce judgments promptly
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- 10.1. In her questionnaire (completed on 3 June 2026), the candidate disclosed one reserved judgment: she is the scribe in a full bench appeal in which final argument was heard on 14 May 2026 and judgment was reserved. She also disclosed, as a partly-heard matter, that sentencing proceedings in the criminal trial she presided over were set down to commence on 18 June 2026.
- 10.2. As far as could be ascertained at the time of completing this review, none of the candidate's judgments had been outstanding for more than three months. The full bench judgment, which was reserved on 14 May 2026 and in which the candidate was the scribe, was delivered on 29 June 2026 (*Louis v Arts Foundation*), some six weeks after final argument.
- 10.3. Of the judgments penned by the candidate and considered by the reviewers, none appears to have been handed down more than three months after the hearing. The judgments annexed to the candidate's latest application were delivered promptly: for example, the trial judgment in *Pabar (Pty) Ltd v Azoteq (Pty) Ltd* was delivered less than two weeks after the conclusion of argument, and the application for leave to appeal in that matter was decided two days after it was heard. A senior member of the Bar who appeared in that matter has, in comments submitted on the candidate's application, specifically remarked on the very short time within which both judgments were produced and handed down.

11. The candidate's ability to conduct court proceedings fairly, efficiently, and effectively
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- 11.1. The reviewers received no adverse comments from colleagues regarding the candidate's ability to conduct court proceedings fairly, efficiently and effectively.

Counsel who nominated the candidate recorded that, having appeared before her while she was acting, they observed her running an efficient court and found her firm yet fair-minded.

- 11.2. The candidate's latest application has also received favourable comments from senior members of the bar: her nominators include senior counsel, and, in comments submitted for consideration in this review, a silk who appeared before her in both the trial and the application for leave to appeal in *Pabar (Pty) Ltd v Azoteq (Pty) Ltd* commended the quality of the judgments as clear proof of the candidate's competence, ability and judicial temperament, and remarked on the thoroughness, expedition and general competence she exhibited throughout the matter.

12. The candidate's independent-mindedness

- 12.1. The candidate has, in her capacity as an instructing attorney, litigated extensively against the government (both the Executive and the National Assembly) in politically charged cases. In all these cases, she has represented the Democratic Alliance. In her questionnaire, she discloses, in the interests of transparency, that the Democratic Alliance – a political party represented on the JSC – is a client of the firm she represents in litigation; she records that she is not, and has never been, a member of any political organisation.
- 12.2. The said association with the DA notwithstanding, there is, in general, 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. The candidate's activities and professional experience indicate that she is a competent administrator.

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

- 14.1. The candidate is an experienced and well-rounded legal practitioner. At 48 years old, she is young enough to grow and develop into a fine judge, who may even be considered for elevation to senior judicial positions in the future, given her age and potential. Consequently, her appointment will send a message that suitably experienced younger

candidates can make a meaningful contribution through more than 20 years of service as a judge.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Giles Alexander Power Maynard v Carrick Wealth (Pty) Limited* [2026] 2 All SA 78 (WCC) (A75/2025, 4 March 2026) (full court: Jonker AJ, Sher J and Mangcu-Lockwood J concurring)

Unreported judgments

2. *Uptown Trading 803 (Pty) Ltd t/a Waterloo Plumbing v Ziningi Properties (Pty) Ltd* (13414/24) [2025] ZAWCHC 360 (7 August 2025)
3. *Redefine Properties Limited v Masiqhame Trading 224 t/a TNT Projects and Another* (4851/2022) [2025] ZAWCHC 375 (22 August 2025)
4. *Webram Four (Pty) Ltd v Transformation Capital Group (Pty) Ltd and Others* (7742/2021) [2025] ZAWCHC 390 (27 August 2025)
5. *Sovereign Trust (Channel Islands) Limited v Hennig* (2970/20 ; 2971/20 ; 2972/20) [2025] ZAWCHC 398 (3 September 2025)
6. *Plattekloof Saagmeule CC v Swellendam Plase (Pty) Ltd and Another* (20182/2021) [2026] ZAWCHC 11 (9 January 2026)
7. *Pabar (Pty) Ltd v Azoteq (Pty) Ltd* (18777/18) [2026] ZAWCHC 128 (18 March 2026)
8. *Pabar (Pty) Ltd v Azoteq (Pty) Ltd* (Leave to Appeal) (18777/18) [2026] ZAWCHC 208 (8 May 2026) (a subsequent petition to the Supreme Court of Appeal was dismissed)
9. *Willem de Sanders Greef NO and Another v GPP Properties CC and Another* (A196/2025) [2026] ZAWCHC 213 (11 May 2026) (full court: Jonker AJ, Mantame J and O'Brien AJ concurring)
10. *Commissioner for the South African Revenue Service v Meiring Citrus (Pty) Ltd* (A161/2025; IT 46080) (WCC, 26 June 2026) (full bench: joint judgment of the court; Saldanha J, Lekhuleni J and Jonker AJ)
11. *Louis v Arts Foundation* (A57/25; A56/25) [2026] ZAWCHC 339 (29 June 2026) (full bench: Jonker AJ, Goliath DJP and Mantame J concurring)

Judgments upheld on appeal

12. N/A

Judgments overturned on appeal

13. N/A

Academic writings

14. N/A