

VACANCY: JUDGE OF THE SUPREME COURT OF APPEAL

Candidate: Judge Esther Johanna Sophia Steyn

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:

- BLuris, University of South Africa (1984);¹
- LLB, University of the Western Cape (UWC) (1992); and
- LLM, University of Cape Town (UCT) (1999).

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

- admitted as an advocate in 1993.

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

- Magistrate from 1987 to 1990; and
- Judge of the High Court (KwaZulu-Natal Division) on 1 January 2009.

1.4. The candidate has acted in the following roles:

- Judge in the High Court (Cape Provincial Division, Cape Town) (approximately 28 weeks);
- Judge in the High Court (Northern Cape Division, Kimberley) (approximately 8 weeks);
- Judge in the Electoral Court (from 1 May 2024 – 31 December 2025 or June 2026);²

¹ There is a discrepancy between the dates contained in the candidate's application form and CV. The application form states that she obtained her BLuris degree in 1984, while her CV states that it was obtained in 1983. The application form states that she obtained her LLB in 1992, while her CV states that she obtained it in 1994.

² There is a discrepancy between the dates contained in the candidate's application form and CV. Section 6 of the application form states that the candidate acted as a judge in the Electoral Court from 1 May 2024 to 31 December 2025, while her CV states that she acted as a judge in the Electoral Court from May 2024 to June 2026.

- Judge of the Supreme Court of Appeal (“SCA”) (approximately four terms);
- Deputy Judge President of the High Court (KwaZulu-Natal Division) (approximately 9 weeks).

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 of the bench

- 3.1. As far as could be ascertained, there are currently 23 permanent justices of the Supreme Court of Appeal:
- 9 black women (6 African, 2 Coloured, 1 Indian)
 - 7 black men (3 African, 3 Coloured, 1 Indian)
 - 3 white women
 - 4 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 64 years and 1 month old and will have completed a period of approximately 17 years and 9 months of service as a judge. If appointed, the candidate would be eligible to serve as Justice of the Supreme Court of Appeal for a period of up to 5 years and 10 months.

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

- 5.1. The candidate has displayed a commitment to the values of the Constitution in her professional and personal life.
- 5.2. In her application, the candidate has listed eight journal articles or book chapters that address the rights of accused persons and convicted prisoners, the values of the Constitution, and the impact of laws and practices on constitutional rights.
- 5.3. Projects that the candidate has undertaken or has been involved in also demonstrate her commitment to constitutional values. For example:

- On behalf of the Attorney-General (1992 to 1995), the candidate chaired various fora, notably the Rape Forum and the Juvenile Justice Forum.
- The candidate submitted a memorandum to the Justice Portfolio Committee in 1996, chaired by Adv De Lange, which critiqued draft bail legislation and its constitutionality.
- In 1998, the candidate chaired a task team, appointed by Police Commissioner G Daniëls of the East Metropole, Western Cape. The team collected and dealt with sensitive information relating to murders in the area of Oceanview and Manenberg. The investigation lasted for five weeks and four Pagad members were arrested after completion of the project.
- In 1998, the candidate was the convener of the Criminal Offences Task Team responsible for drafting the criminal offences contained in the Prevention of Organised Crime Act 121 of 1998.
- In 2004, while working in academia, the candidate spearheaded a pilot project to arrange for all law students to voluntarily participate in community service. Through the project, UCT law students provided services to a number of NGOs, including the Treatment Action Campaign, Business Place and NICRO. Community service thereafter became part of the LLB Programme.
- From 2002 to 2004, the candidate served as a commissioner on the Jali Commission, a presidential commission established to investigate systemic corruption, maladministration, violence, and intimidation in the Department of Correctional Services. Her work on this project highlighted a commitment to Section 12 and Section 35 of the South African Constitution, which guarantee detainees the right to conditions consistent with human dignity and freedom from cruel, inhuman, or degrading treatment. The commission's final report was tabled in parliament and disclosed to the public in 2006.

6. The candidate's knowledge of the law, including constitutional law
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- 6.1. It is clear from the candidate's judgments and academic writings that she has a good knowledge of the law, including constitutional law.
- 6.2. The candidate has expertise in relation to the constitutional rights of accused persons in criminal matters. This is evident from her academic career (as a Senior Lecturer in

the Department of Criminal Justice at UCT and UWC from 1996 to 2007), the papers she has presented and her academic writings. Her academic writings include:

- *Plea Bargaining in SA: current concerns and future prospects* (2007) 20 SACJ 206-219, in which the candidate considers the benefits of plea bargaining for accused persons, victims of crime and the criminal justice system, as well as the challenges posed by the manner in which plea bargaining is used (including the impact of the unequal use of plea bargaining in respect of wealthy versus indigent accused persons).
- *Pre-trial detention: its impact on human rights* (2001) Law Democracy and Development 209-219, in which the candidate argues that draconian bail measures do not affect crime and do not improve the criminal justice system. The candidate considers the right of an accused person to freedom and the constitutional limitations on that right.
- *Witnesses in South Africa: The Stepchildren of the Criminal Justice System* E Steyn (May 1999), being the candidate's thesis submitted for her Masters in Law, University of Cape Town, in which the candidate considers the treatment and vulnerability of witnesses in the criminal justice system. This includes a consideration of the pre-trial treatment of witnesses, the treatment of witnesses in the witness box, bail and the implications for witnesses, witnesses in the context of rape trials and child witnesses.

6.3. The candidate's knowledge of, and experience in, criminal law make her a good candidate for the SCA, which has relatively few judges who previously specialised in criminal law.

6.4. The treatment of the candidate's judgments on appeal is addressed in section 7 below.

6.5. The candidate's efficiency in the delivery of judgments is addressed in section 10 below.

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

7.1. The candidate has disclosed that nine judgments have been taken on appeal. On appeal, four judgments have been upheld, and five judgments have been overturned.

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

- *Body Corporate of the Inyoni Rocks Cabanas Scheme No. SS1/1978 v Croxford Corporate Trading 7 (Pty) Ltd* [2009] ZAKZPHC 85 (15 December 2009), upheld in *Croxford Trading 7 (Pty) Ltd and Another v The Body Corporate of the Inyoni Rocks Cabanas Scheme no ss1/1978* (174/10) [2011] ZASCA 27 (18 March 2011). This case concerned a developer's 'right of extension' under section 25(5) of the Sectional Titles Act 95 of 1986 ("STA"). The provision requires the construction of a scheme in stages and mandates a developer intending to add a further phase or phases to a sectional title development to reserve the right to extend the scheme when applying to the local authority for the sectional plan to be registered.
 - In the High Court, the candidate granted the declaratory relief sought by the body corporate and dismissed the developer's case.
 - The appeal turned on the interpretation of the Act. The SCA held that the developer had disposed of its unit in the scheme after the 1993 Amendment took effect and ceased to have an interest in the common property. Thereafter, it impermissibly sought to transfer its right of extension to the appellant (Croxford Trading) by notarial deed of cession, which it could not do because the existence or exercise of a right of extension was dependent on its continued ownership of the relevant unit. The SCA found that the High Court had been correct to grant the declaratory order to the body corporate and that the appeal had to fail.
- *Msunduzi Municipality v Dark Fibre Africa (RF) (Pty) Ltd* [2014] ZAKZPHC 23 (14 April 2014), upheld in *Msunduzi Municipality v Dark Fibre Africa (RF) (Pty) Ltd* (20119/2014) [2014] ZASCA 165 (1 October 2014). In this case, the candidate dismissed an application in the High Court to interdict the respondent company from conducting construction work on municipal land.
 - In dismissing the application, the candidate had followed the decision of the SCA in *MTN (Pty) Ltd v SMI Trading CC* 2012 (6) SA 638 (SCA) and found that the respondent did not require permission from the municipality to exercise its rights under section 22 of the Electronic Communications Act 36 of 2005. The candidate also found that the municipality had not made out a proper case for review of the respondent's decision to commence construction.

- In dismissing the appeal, the SCA found that the application had been misconceived in that it was based on an erroneous interpretation of the Act, and that the consent of a public authority was required before a licensee could take the action envisaged by section 22. The SCA further found that no case had been made out for a review of the decision in terms of PAJA. Although a public authority would be entitled to challenge the manner in which a licensee takes the action contemplated in section 22, where it does not comply with the ‘applicable law’, this had not been challenged in this case.
- *Extreme Dimensions 121 (Pty) Ltd v Body Corporate of Marina Sands* [2018] ZADZPHC 69; 2018 JDR 1399 (KZP); [2018] JOL 40313, upheld in *Body Corporate of Marina Sands v Extra Dimensions 121 (Pty) Ltd* (2019) ZASCA 161. The case concerned a Full Court judgment written by the candidate sitting in an appeal against the judgment of Masipa AJ (as she then was), with the leave of the SCA to that court.
 - After calling for supplementary heads from the parties to address an issue whether the resolution passed modifying the owner’s liability for levies was *ultra vires* the Act and therefore void, the Full Court upheld the appeal, set aside the order of Masipa AJ and substituted it with an order (i) declaring invalid the special resolution of the body corporate that resolved to modify the members’ liability for levy contributions of the Marine Sands Sectional Scheme and (ii) declaring invalid the amendments to the scheme’s conduct rules.
 - The appellant petitioned the SCA for special leave to appeal the full court's judgment. On appeal to the SCA, the matter turned on the interpretation of section 32(4) of the STA and particularly the meaning of the expression ‘adversely affected’ in the *proviso* of the section.
 - The SCA found that, in the context of a resolution to modify an owner’s liability for levies, an owner whose liability for levies increases *is* adversely affected by such a resolution. That being so, the SCA held that the clear intention of the legislature is that the written consent of such a member must be obtained, so as to observe the *audi* rule and to prevent

a diminution of property rights being imposed on a minority by the majority.

- It followed that the resolution was *ultra vires* the act and void, and that the consequent amendment to the conduct rules is likewise void. On this basis, the SCA found that the appeal to the full court by the respondent ought to have succeeded. The appeal was dismissed.
- *State v Pravandran Perumal* (unreported case number CC44/2009), in respect of which an appeal against conviction was refused by the SCA in 2014 (by Justices Leach JA and Mathopo AJA, SCA Petition No. 844/13) and was dismissed by the Constitutional Court on 04 August 2014 (Case No. CCT 83/14). The SCA refused leave to appeal against the sentences imposed on 22 April 2026 (Case No. 124/26, per Justices Baartman JA and Mooki AJA). The reviewers were unable to locate copies of these judgments and orders.

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

- *Van Vuuren v eThekweni Municipality* [2016] ZAKZDHC 8 (19 February 2016), overturned on appeal in *Van Vuuren v eThekweni Municipality* 2018 (1) SA 189 (SCA). This case considered whether a municipality should be liable for its failure to control access to or supervise the use of a water slide at its pool.
 - The SCA upheld the appeal. Navsa JA observed that “*Counsel before us were agreed that the court below had misidentified the issue to be addressed. It will be recalled that Steyn J considered the following to be the issue to be adjudicated: '(W)hether a parent exercising parental control over a child can legally expect of a local authority to either share in the duty of parental control or usurp the duty and responsibility.' Counsel agreed that the primary issue was, rather, whether there was a legal duty on the part of the Municipality to supervise and control access to the slide.*”
- *Ahoobaker NO and others v Serengeti Rise Body Corporate and Another* 2015 (6) SA 200 (KZD), overturned on appeal in *Serengeti Rise Industries (Pty) Ltd and Another v Aboobaker NO and Others* 2017 (6) SA 581 (SCA). This case concerned an application by and on behalf of property owners to review and set aside decisions of the eThekweni Municipality to rezone a neighbouring property and to approve

building plans deviating from the original approved plans of a building. These decisions enabled the developer to increase the size of the building by more than 500% and its height from four storeys to nine at the time of the application. The applicants challenged the rezoning process and approval of the deviation plan, and its fairness, as administrative action in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). Steyn J granted the relief sought, which included that the part of the building that was illegal should be demolished.

- The SCA held that the candidate's order was unsustainable. It noted that, although the High Court found in its reasons that the rezoning and deviation approvals were invalid and should be set aside, it made no order(s) to that effect. The court granted a remedy of a consequential nature without granting the primary relief sought.
- However, the consequential relief depended on the rezoning and plan approval being reviewed and set aside. Until set aside, they remained valid and had legal effect. The building complied with the Municipality's extant building and zoning approvals. The demolition order was thus incompatible with those extant decisions. The SCA also held that the High Court's order lacked clarity and certainty.
- *Snowy Owl Properties 284 (Pty) Ltd v Mziki Shareblock Ltd* [2017] ZAKZPHC 3 (10 February 2017), overturned on appeal in *Snowy Owl Properties 284 (Pty) Ltd v Mziki Share Block Ltd* [2023] ZASCA 2 (19 January 2023). The applicant sought an interdict against the respondent from traversing on its land. The respondent raised a point *in limine* that the arbitration clause in a registered servitude ousted the jurisdiction of a court of law to adjudicate interdictory relief. The candidate upheld the point *in limine* and dismissed the application on the basis that the dispute should have been referred to arbitration.
 - The candidate's judgment was overturned on appeal to a full bench. The full bench held that the relief sought before the court *a quo* was an interdict and "could not be impugned by the court *a quo* as being merely couched in interdictory terms".
 - As such, the relief sought did not fall within the scope of the arbitration clause.

- *S v Croeser* (unreported), overturned in part on appeal in *Croeser v S* (unreported Case No: AR70/2013 August/September 2014).³
- *Hume Housing v Hibiscus Coast Municipality* [2013] ZAKZDHC 76 (13 September 2013), overturned on appeal in *Hume Housing v Hibiscus Coast Municipality* 2015 JDR 0721 (KZP). This matter concerned a special plea of *res judicata*. The respondent argued that the court was asked to decide matters already decided by Koen J in an earlier judgment (in which he interpreted an order previously made by Vahed J). The candidate held that, if the special plea of *res judicata* was not upheld, she would have to consider the same order (Vahed J's order) that Koen J had found to be ambiguous. Steyn J found that the same cause of action had been brought before her, upheld the special plea and dismissed the claim with costs.
 - On appeal, a full bench overturned the candidate's judgment, on the basis that upholding the special plea of *res judicata* would cause hardship and injustice to the affected parties. In this respect, the Full Bench observed that: "*issue estoppel 'should be considered on a case-by-case basis and deviation from the three fold requirements of res judicata should not be allowed when it is likely to give rise to potentially unfair consequences in the subsequent proceedings.'* ... *It is trite, that unless carefully circumscribed, the defence of rei judicata is capable of producing great hardship and even positive injustice to individuals. I am of the view that upholding the plea rei judicata in the present action would be tantamount to denying the appellant the opportunity to prove the compensation amount as claimed.*"
 - The SCA held that the full bench was correct to uphold the appeal against the candidate's judgment, which had upheld a special plea of *res judicata*. It recognised the potential for unfairness in applying *res judicata* in a manner that effectively forecloses a party's right to have a substantive claim determined.

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The reviewers were unable to find the judgments *a quo* or on appeal.

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

- 8.1. The candidate commenced her career as a clerk of the Criminal and Civil Court (1980 – 1983).
- 8.2. She was appointed as a prosecutor at the District Court (1984 – 1986).
- 8.3. She was appointed as a District Court Magistrate in 1987 and served in that capacity until 1990. She was appointed Senior Prosecutor for the Goodwood and Wynberg Courts in 1991 and served in that capacity until 1995.
- 8.4. The candidate entered academia in 1996 and served as Senior Lecturer in the Department of Criminal Justice at UCT and UWC (1996 to 2007). The candidate lectured criminal law.
- 8.5. The candidate's professional history shows that she has a particular interest and expertise in criminal law. This is underscored by the candidate's academic writings from this period, discussed above in section 6.
- 8.6. In 2008, the candidate was appointed as an acting judge in the Cape Provincial Division and the Northern Cape Division.
- 8.7. In 2009, the candidate was appointed as a Judge in the KwaZulu-Natal Division. The candidate's subsequent appointments as an acting judge in the Electoral Court and the SCA, and as the Acting Deputy Judge President in the High Court (KwaZulu-Natal Division) are detailed in paragraph 1.4 above.
- 8.8. The candidate's appointments, acting stints, and projects such as the Jali Commission have demonstrated her knowledge and expertise in other areas of law, including constitutional and public law, as well as commercial and specialist litigation, e.g. the electoral courts.

9. The candidate's linguistic and communication skills

- 9.1. The majority of the candidate's judgments and published academic journal articles are written in English.
- 9.2. The judgments and other writings considered by the reviewers indicate that the candidate's linguistic and communication skills are more than adequate.

10. The candidate's ability to produce judgments promptly
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- 10.1. The candidate indicated that two 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, one of these judgments was still outstanding and has been outstanding for more than three months:
- *Miganu Investment Holdings (Pty) Ltd v Africa Wide Investment Holdings (Pty) Ltd* (078/25): the candidate's application does not specify the date that the matter was heard, but the SCA's Bulletin 2 of 2026 indicates that the matter was enrolled for hearing by the SCA on 20 May 2026. At the date of this review, judgment has not yet been handed down.
- 10.3. Of the 16 judgments of the candidate considered by the reviewers, seven were handed down more than three months after hearing (but within 6 months).

11. The candidate's ability to conduct court proceedings fairly, efficiently, and effectively
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- 11.1. The reviewers are of the view that the candidate is able 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.
- 12.2. The reviewers surveyed a number of judgments in which the candidate sat on multi-judge panels in the SCA, Electoral Court and full court. The reviewers found only one judgment in which there was a dissent (*SA Board for Sheriffs v Seboka* [2026] ZASCA 109). In that instance, Steyn J concurred with the majority.

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

- 13.1. The candidate's administrative abilities appear to be very good.

- 13.2. From 1992 to 1995, the candidate managed the prosecutor's offices of the Goodwood and Wynberg Courts, where 38 prosecutors reported to her, all of whom required her supervision and guidance. Her duties included managing staff, inspecting their administrative work, and supporting their training and development.
- 13.3. The candidate has served either as a member or convenor on many High Court committees, including those that deal with budget oversight, criminal case management, judicial training and the appointment and supervision of acting judges.
- 13.4. The candidate has served as Chair of the KZN Provincial Integrated Justice Forum (February 2011 to December 2012)
- 13.5. The candidate has served as the Vice-Chair of the National Council of Correctional Services. The Minister of Justice and Correctional Services appointed the candidate as Vice-Chair.
- 13.6. Since January 2018, the candidate has alternated with DJP Nhlangulela as (2015 – 2019).
- 13.7. The candidate chaired a task team, appointed by Police Commissioner G Daniels of the East Metropole, Western Cape. The team collected and dealt with sensitive information relating to murders in the areas of Oceanview and Manenberg.
- 13.8. The candidate was appointed as the convener of the Criminal Offences Task Team, responsible for drafting the criminal offences contained in the Prevention of Organised Crime Act 121 of 1998.
- 13.9. The candidate assisted with the training of judges in 2012, 2013, 2014, 2023 and 2024.
- 13.10. These appointments and activities suggest that the candidate has extensive administrative experience and ability.

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

- 14.1. Appointing the candidate would increase the representation of women, especially academics, on the SCA bench. Appointing a candidate with a history of public service (including service on the bench) and an extended academic career would send a positive message to the public about the values judges should embody.
- 14.2. The candidate would also bring criminal law capacity to the SCA bench, which would send a positive message to the public.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *S v Mchunu and Another* 2025 (1) SACR 257 (KZP)
2. *Naidoo v Regional Magistrate for Durban Magistrates' Court, Mr M Maharaj and Another* 2017 (2) SACR 244 (KZP) (23 May 2017)
3. *Hassody Katha v Primathie Pillay N.O. and Others* 2026 (1) SA 382 (SCA) (18 July 2025)
4. *Durdoc Centre Body Corporate v Singh* 2019 (6) SA 45 (KZP)

Unreported judgments

5. *Bliss Brands (Pty) Ltd v Colgate-Palmolive (Pty) Ltd and Others* (Case no: 1498/2024); *Colgate-Palmolive Company and Another v Bliss Brands (Pty) Ltd* (Case no: 79/2025) [2026] ZASCA 106
6. *Le Roux NO and Another v Nelson Mandela Bay Municipality* 2025 JDR 3862 (SCA)
7. *Van Niekerk v FirstRand Bank Ltd* 2025 JDR 5402 (SCA)
8. *African Economic Freedom v Electoral Commission of South Africa* 2024 JDR 2106 (EC)
9. *Umkhonto Wesizwe Political Party v Electoral Commission of South Africa Others* 2024 JDR 4583 (EC)

Judgments upheld on appeal

10. *The Body Corporate of the Inyoni Rocks Cabanas Scheme No. SSI/1978 v Croxford Corporate Trading 7 (Pty) Ltd* [2009] ZAKZPHC 85 (15 December 2009)
11. *Msunduzi Municipality v Dark Fibre Africa (RF) (Pty) Ltd* [2014] ZAKZPHC 23 (14 April 2014)
12. *Extreme Dimensions 12l (Pty) Ltd v Body Corporate of Marina Sands* [2018] ZADZPHC 69 (24 August 2018)

Judgments overturned on appeal

13. *Van Vuuren v eThekweni Municipality* [2016] ZAKZDHC 8 (19 February 2016) overturned in *Van Vuuren v eThekweni Municipality* 2018 (1) SA 189 (SCA)

14. *Ahoobaker NO and Others v Serengeti Rise Body Corporate and Another* 2015 (6) SA 200 (KZD) overturned in *Serengeti Rise Industries (Pty) Ltd and Another v Aboobaker NO and Others* 2017 (6) SA 581 (SCA)
15. *Snowy Owl Properties 284 (Pty) Ltd v Mziki Shareblock Ltd* [2017] ZAKZPHC 3 (10 February 2017) overturned in *Snowy Owl Properties 284 (Pty) Ltd v Mziki Share Block Ltd* [2023] ZASCA 2 (19 January 2023)
16. *Hume Housing v Hibiscus Coast Municipality* [2013] ZAKZDHC 76 (13 September 2013) overturned in *Hume Housing v Hibiscus Coast Municipality* 2015 JDR 0721 (KZP)

Academic writings

17. E Steyn 'Pre-trial detention: its impact on human rights' (2001) Law Democracy and Development 209-219
18. E Steyn 'S v Manguanyana 1996 (2) SACR (E) - Die beperking van regsverteenwoordiging 'n hersenskim?' (1997) 10 SACJ 94
19. E Steyn Unpublished LLM thesis chapter 5 - *The trauma of rape survivors in the criminal justice system in S v Sangweni* 2010 (1) SACR 419 (KZP)
20. E Steyn 'Plea Bargaining in SA: current concerns and future prospects' (2007) 20 SACJ 206-219