

CANDIDATE: **ADVOCATE CJ VAN DER WESTHUIZEN SC**

COURT FOR WHICH CANDIDATE APPLIES: **GAUTENG DIVISION**

**1 The candidate's appropriate qualifications**

1.1 The candidate holds *Bachelor of Arts* (BA) and *Bachelor of Laws* (LLB) degrees from the University of Pretoria, which he obtained in 1979 and 1982 respectively.

1.2 The candidate was admitted as an Advocate of the High Court of South Africa on 31 July 1984.

1.3 The candidate furthermore completed a course on quick arbitration procedure under the auspices of the Arbitration Foundation of South Africa in the year 2000.

1.4 The candidate also completed a certificate in the introduction to Biotechnology: from DNA isolation to Protein Production at Warwick University in the year 2001.

1.5 The candidate is appropriately qualified.

**2 Whether the candidate is a fit and proper person**

2.1 The candidate has had a long career as a member of the Pretoria Bar and numerous acting appointments to the Gauteng High Court Pretoria.

2.2 There is no basis not to conclude that he is a fit and proper person for judicial appointment.

3 **Whether the candidate's appointment would help to reflect the racial and gender composition of South Africa**

3.1 The candidate is a white male and his appointment would not do so.

4 **The candidate's knowledge of the law, including constitutional law**

4.1 The candidate has listed 6 cases of significance in which he has appeared as counsel. The cases were argued at the Supreme Court of Appeal and were all intellectual property cases. The candidate indicates that the bulk of his practice has been in the area of intellectual property and the candidate's knowledge in this area of the law appears to be of a very high level.

4.2 A total number of 51 unreported judgments authored by the candidate were analysed for the purposes of understanding the candidate's grasp of the law.

4.3 The majority of the judgments relate to civil matters and particularly motion court matters and Road Accident Fund ("RAF") trials.

- 4.4 In the case of *Motha v Road Accident Fund* the candidate grappled with the issue of duty of support flowing from a customary law context and rightly accepted that the African customary law context does not preclude a claim for loss of support.
- 4.5 The candidate has also presided over criminal appeals and bail appeals.
- 4.6 In *Mvibi v The State* the candidate increased the sentence of an accused person after *mero motu* requesting written reasons from the parties why the court should not impose a harsher sentence. The candidate (with another judge concurring) then increased the sentenced even after counsel for the accused attempted to withdraw the appeal against sentence.
- 4.7 In the case of *D v P* concerning the best interests of a minor child, the candidate had to address the question of whether a parent's right to "eke out a living" in the place of their choosing trumps the interests of the child which should always be paramount.
- 4.8 Although no proper constitutional challenge was brought on behalf of one of the parent concerned; the candidate was alive to the inherent constitutional questions involved in light of the submissions made.

4.9 Although the candidate did not present an extensive and exposition of the constitutional issues involved; he nevertheless dealt with the matter along accepted constitutional principles.

4.10 Further evidence of some grasp of constitutional law was demonstrated by the candidate in the case of *South African National Editors Forum and others v Black First, Land First and Andile Mngxitama* where he had to decide on the granting of a final interdict against intimidation and assaults against journalists.

4.11 It is apparent from the unreported judgements that the candidate has good knowledge of a wide area of law notwithstanding the speciality of his private practice.

## 5 **The candidate's commitment to the values of the Constitution**

5.1 Based on at least the two judgments analysed and mentioned above, the candidate displays a commitment to the values of the Constitution. The candidate also states that he is committed to those values. There is no reason to doubt the statement.

## 6 **Whether any judgments have been overturned on appeal**

6.1 The candidate has had three judgements taken on appeal. One of these, in the field of company law, resulted in a reported

judgement from the Supreme Court of Appeal, *Barry v Clearwater Estates NPC and Others* 2017 (3) SA 364 (SCA). In a unanimous judgment the SCA upheld the candidate's judgement.

6.2 In relation to the other two matters, both appeals to the full bench of Gauteng Division Pretoria, one is pending the other has been rendered academic.

## 7 **The extent and breadth of the candidate's professional experience**

7.1 The candidate has been in the legal profession for more than 30 years and has been exposed to a wide variety of legal matters but has shown a deep interest for intellectual property law.

## 8 **The candidate's linguistic and communication skills**

8.1 The candidate has produced well-structured and clearly written judgments in English. The candidate does not indicate what his proficiency is in any other language.

## 9 **The candidate's ability to produce judgments promptly**

9.1 There is no indication, from the judgments analysed, that the candidate has failed to deliver any judgment within a few months.

## 10 **The candidate's fairness and impartiality**

- 10.1 Based on the judgments analysed it appears that the candidate is fair and impartial and applies the law without fear or favour.

## 11 **The candidate's independent mindedness**

- 11.1 Based on the judgements analysed the candidate appears to be independent minded.

## 12 **The candidate's ability to conduct court proceedings**

- 12.1 The candidate's numerous acting appointments indicate that he is proficient and experienced in conducting court proceedings.

## 13 **The candidate's administrative ability**

- 13.1 The candidate displays good administrative ability displayed especially in the delivery of prompt judgments.

## 14 **The candidate's reputation for integrity and ethical behaviour**

- 14.1 No comments have been received in this regard. There is no reason to doubt the candidate's integrity.

## 15 **The candidate's judicial temperament**

15.1 No comments have been received in this regard.

16 **The candidate's commitment to human rights, and experience with regard to the values and needs of the community**

16.1 The candidate has been involved in the mentoring of young advocates from previously disadvantaged backgrounds as an indication of his commitment in this regard.

17 **The candidate's potential**

17.1 The candidate at over 30 years of experience has the potential to bring a wealth of experience to the bench.

18 **The message that the candidate's appointment would send to the community at large**

18.1 The message that would be sent by the candidate's appointment would be that many years' service to the legal profession and the judiciary through numerous acting appointments are valued.

## **ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

### **Reported decisions**

1. *Barry v Clearwater Estates NPC and Others* 2017 (3) SA 364 (SCA)

### **Unreported decisions**

1. *T v T* (33933/2015) [2017] ZAGPJHC 50 (3 March 2017)
2. *Hlabathi v S* (A144/17) [2017] ZAGPPHC 268 (7 April 2017)
3. *D v P* (82527/2016) [2016] ZAGPPHC 1078 (15 December 2016)
4. *V v T* (37420/13) [2015] ZAGPPHC 120 (18 February 2015)
5. *Mvimbi v S* (A609/14) [2015] ZAGPPHC 43 (2 February 2015)
6. *S v Maahman* (SS72/2003) [2003] ZAWCHC 94 (1 April 2003)
7. *S v Sithole* (SS73/2003) [2003] ZAWCHC 93 (31 March 2003)
8. *Sithole v Minister of Police* (10692/15) [2017] ZAGPJHC 94 (16 March 2017)



9. *Griffiths v Minister of Police* (15/27028) [2017] ZAGPJHC 51 (3 March 2017)
10. *Motswiane v Road accident Fund* (14249/2015) [2017] ZAGPPHC 386 (24 April 2017)
11. *S v Malesa and Another* (A7/17) [2017] ZAGPPHC 12 (20 January 2017)
12. *Motha v Road Accident Fund* (40852/2015) [2016] ZAGPPHC 559 (23 June 2016)
13. *Mundalamo v Road Accident Fund* (45540/2015) [2016] ZAGPPHC 453 (1 June 2016)
14. *Lategan v Road Accident Fund* (29505/2015) [2016] ZAGPPHC 431 (10 June 2016)
15. *F v Road Accident Fund* (54766/12) [2015] ZAGPPHC 65 (6 February 2015)
16. *S G Gateway Services v Roesstorff* (39907/15) [2017] ZAGPJHC 96 (30 March 2017)
17. *Mulder v Botha NO and Others* (39490/2016) [2016] ZAGPPHC 654 (4 August 2016)

18. *Absa Bank Limited v Miloushev and Another* (24321/2012) [2017] ZAGPJHC 99 (24 March 2017)
19. *Synthesis Projects CC v SBTJ Properties CC* (32497/2016) [2017] ZAGPJHC 67 (10 March 2017)
20. *Lubbe NO v Compensation Commissioner and Others* (96764/2015) [2017] ZAGPPHC 287 (15 June 2017)
21. *Brown and Others v Morkel and Others* (80731/16) [2016] ZAGPPHC 1150 (28 October 2016)
22. *Stewarts and Lloyds Holdings (Pty) Ltd v Rautenbach* (6559/2016) [2016] ZAGPPHC 799 (9 September 2016)
23. *Endeto Engineering CC v Bezuidenhout and Another* (59474/2016) [2016] ZAGPPHC 713 (17 August 2016)
24. *Moditlo Estate Homeowners' Association (NPC) v Venter* (28796/2015) [2016] ZAGPPHC 644 (4 August 2016)
25. *Motor Industry Bargaining Council v Botha and Another* (34198/2013) [2016] ZAGPPHC 615 (10 June 2016)
26. *Chiloane obo MPM v Road Accident Fund* (31119/2014) [2016] ZAGPPHC 614 (13 June 2016)

27. *Mercedes Benz Financial Services v Roussouw et al* (71519/2015)  
[2015] ZAGPPHC 960 (13 November 2015)
28. *Klein Dumpie CC and Others v Jaments Enterprise (Pty) Ltd*  
(75134/2016) [2017] ZAGPPHC 336 (2 June 2017)
29. *Potgieter and Others v Blyvoor Gold (Pty) Ltd and Others* (80516/16)  
[2016] ZAGPPHC 1109 (3 November 2016)
30. *JHL Services and Consulting (Pty) Ltd v Maroos and Another*  
(93219/15) [2016] ZAGPPHC 1087 (18 November 2016)
31. *Tuffsan Investments 1088 (Pty) Ltd v Sethole and Another* (22826/2015)  
[2016] ZAGPPHC 653 (4 August 2016)
32. *Vilakazi v MEC of the Department of Health, Mpumalanga*  
(21185/2008) [2016] ZAGPPHC 409 (10 June 2016)
33. *Tagana and Another v Firstrand Bank Limited and Others*  
(67930/2015) [2016] ZAGPPHC 313 (6 May 2016)
34. *Ngcobo v Standard Bank of SA Limited and Another* (57807/2013)  
[2016] ZAGPPHC 269 (4 May 2016)

35. *BT Monareng Construction CC and Another v Emalahleni Local Municipality* (21010/2011) [2015] ZAGPPHC 724 (18 September 2015)
36. *Changing Tides 17 (Pty) Ltd v Dilley and Others* (35357/2009) [2015] ZAGPPHC 60 (11 February 2015)
37. *Warricker NO and Others v Master of the High Court, Johannesburg* (28265/15) [2017] ZAGPJHC 74 (14 March 2017)
38. *South African National Editors Forum and Others v Black First Land First and Others* (23897/17) [2017] ZAGPJHC 179 (7 July 2017)
39. *South African Property Owners Association v Minister of Trade and Industry and Others* (66068/2016) [2016] ZAGPPHC 1148 (29 November 2016)
40. *Theuns Jordaan Productions (Pty) Ltd and Another v Afrikaans is Groot (Pty) Ltd* (80584/16) [2016] ZAGPPHC 963 (27 October 2016)
41. *BMW South Africa (Pty) Ltd v Commissioner of the South African Revenue Service* (35006/2016) [2016] ZAGPPHC 913 (21 October 2016)

42. *South African Diamond Producers Organisation v Minister of Minerals and Energy NO and Others* (98085/2007) [2016] ZAGPPHC 817 (6 September 2016)
43. *Tube-Mech Services (Pty) Ltd v Heritage Plant Hire and Civil Construction CC* (88531/2014) [2015] ZAGPPHC 1060 (3 September 2015)
44. *Randjesfontein Country Estates Limited and Others v Masoom Trading Solutions (Pty) Ltd and Others* (43706/14) [2015] ZAGPPHC 199 (20 February 2015)
45. *Milk South Africa v W J Jordaan t/a Pegamoo Dairy and Another* (73422/13) [2015] ZAGPPHC 91 (17 February 2015)
46. *Laser Transport Group (Pty) Ltd and Another v Minister, Department of International Relations and Cooperation and Others* (93389/15) [2016] ZAGPPHC 1047 (15 December 2016)
47. *MMTNB General Trading (Pty) Ltd v Evaton Fuels CC t/a BP Evaton North and Others* (72636/2015) [2016] ZAGPPHC 802 (9 September 2016)
48. *Any of the Occupiers of the Property known as Portion 110 of the Farm Bultfontein 533 JQ v Conrad Alexander Starbuck NO and Another* (2007/15) [2017] ZAGPPHC 491 (15 June 2017)

49. *Drywonder (Pty) Ltd and Another v Carpet Dryclean CC and Others;*  
*in re: Carpet Dryclean CC and Another v Drywonder (Pty) Ltd and*  
*Another* (75564/2015) [2017] ZAGPPHC 323 (15 June 2017)

50. *VDH Holdings (Pty) Ltd and Another v Minister of Police and Another,*  
*In re: Minister of Police and Another v VDH Holdings (Pty) Ltd and*  
*Another* (46483/16) [2016] ZAGPPHC 1183 (30 November 2016)

51. *Net1 Applied Technologies South Africa and Others v Chief Executive*  
*Officer of the South African Social Security Agency and Others;*  
*Finbond Mutual Bank v Chief Executive Officer of the South African*  
*Social Security Agency and Others; Smart Life Insurance Company*  
*Limited v Chief Executive Officer of the South African Social Security*  
*Agency and Others* (43557/16; 46024/16; 46278/16; 47447/16) [2017]  
ZAGPPHC 150 (9 May 2017)

### **Judgments upheld on appeal**

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