

# Johannes Jacobus van der Merwe

## QUALIFICATIONS

Admitted as Advocate  
1995

B Juris  
University of  
Potchefstroom 1985  
5 A- levels

Bachelor of Laws (LL.B)  
University of South  
Africa 1995  
2 A- levels

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South African Citizen

Gender:

Male

Contact Details:

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## SUMMARY

Sound theoretical knowledge of and extensive practical experience in the fields of private and public law, with proven management and leadership experience.

## SKILLS

**Oral and Written Communication;**  
Analytical and Logical Reasoning;  
Research,  
Theoretical knowledge and Analysis;  
Organization and Teamwork; and  
Leadership.

Diploma in Human Rights (cum laude)  
Rand Afrikaans University 1997

Master of Laws (LLM) Public Law (cum laude)  
North-West University 2003

Master of Laws (LLM) Labour Law  
North-West University 2006

Delegation as Private Prosecutor by the National Prosecuting Authority 2009

Certificate: Municipal Finance  
University of the Witwatersrand 2015

#### OTHER TRAINING

Various short training courses, including:

Legal Liability Training (OHS Act) 2016

Computer Courses  
EXPERIENCE

#### Currently:

During 2022 I successfully completed pupillage at the Pietermaritzburg Bar of Advocates and passed the General Bar of South Africa's National Examinations.

I have been practising as an advocate for my own account since January 2023.

#### The Pietermaritzburg City Council and its legal successor, the Msunduzi Municipality : 1992 - 2021

I commenced my career at the Pietermaritzburg City Council on 1 December 1992 and in the capacity of Assistant Legal Advisor. Whilst my formal job duties, as then reflected on my job description centered only around the criminal prosecution of all contraventions of legislation administered by the Municipality, it quickly widened in scope to include all the disciplines relevant to a legal advisor employed in the local government sphere.

In 1997 I was promoted to Legal Advisor. Following the most recent restructuring of the Msunduzi Municipality in 2013, I was placed in the substantive post of Chief Legal Advisor.

During 2011 to June 2016, I was seconded to the post of Senior Manager: Legal Services and subsequent to that, I acted in the post of Senior Manager: Legal Services, until 30 April 2019 and again in December 2019. Effectively, therefore, I served as Legal Manager for approximately 8 years at the Msunduzi Municipality.

Following the permanent appointment of a Senior Manager: Legal Services with effect from January 2020, I decided to leave the Municipality at the end of April 2021 as there were no further prospects of promotion or growth for me.

Unless expressly indicated otherwise, the duties described below were all performed by me during my entire stay at the Msunduzi Municipality.

Effectively, therefore, I served as legal advisor to the Msunduzi Municipality and its predecessor for almost 29 years.

My duties comprised the following:

1. Providing legal advice to the Mayor, Speaker, Council, its committees, the Municipal Manager, Heads of Departments and other

staff members on all legal issues pertaining to the Municipality. A few examples would hopefully give some perspective on the vast array of issues I dealt with:

1.1 Advice to the Council on the validity of the Municipal Manager's Employment Contract; 1.2 Advice to the Council on disciplinary issues pertaining to senior managers and the legal validity of the processes followed in relation thereto; 1.3 Advice to the Council on various issues pertaining to the interpretation and application of the Rules of Order and the processes followed at its meetings, 1.4 Advice to the Speaker in applying and enforcing the Code of Conduct for Councillors as contained in the Local

Government:Municipal Systems Act, 32 of 2000;

1.5 Advice to Deputy and the Chief Information Officer on various requests for access to information as contemplated in the Promotion of Access to Information Act, 2 of 2000;

1.6 Advice to the Chief Finance Officer on the application and interpretation of all financial legislation for local government, including the Local Government :Property Rates Act, 6 of 2004; 1.7 Advice to the Municipal Manager on all aspects pertaining to the sale of municipal immovable property as regulated by the Local Government:Municipal Finance Management Act, 56 of 2003, the Supply Chain and Asset Transfer Regulations;

1.8 Advice to the Municipal Manager and Ministerial Representative on the appointment of Acting Municipal Managers; 1.9 Advice to the Municipal Manager and his senior management team on the legality of procuring banking services from VBS Bank; 1.10 Various advices on the constitutionality of various enactments, including the erstwhile Town Planning Ordinance;

1.11 Advice to the former Health Officer on the legality of the dispensation of medicines at the municipality's health clinics; 1.12 Advices to the former Chief Engineer on the interpretation and application of various types of engineering contracts, including various editions of the GCC; 1.13 Advices to the Town Planning Unit and other decision makers on the interpretation and application of the Spatial Planning and Land Use Management Act,6 of 2013; 1.14 Advice to the Chief Traffic and Security Officer on various aspects relating to the involvement of a private company in the administration sand prosecution of Traffic Offences;

1.15 Advice to the Water Services authority in its contractual claim against Umgeni Water.

**2. The drafting, vetting and reviewing of contracts, notices and other legal instruments:**

My experience in negotiating, drafting and reviewing of contracts and other legal instruments covers all conceivable areas within which local government is required to conclude binding relationships, whether with legal or natural persons, and whether commercial in nature or not. A few examples are the following:

2.1 The drafting and vetting of sale, development and service agreements for various major developments in Pietermaritzburg, including the Midlands Liberty Mall, the Cascades Shopping Centre, subsequent extensions thereto and the Victoria Country Club (Multi million Rand contracts);

2.2 The drafting of a contract with SANRAL to effect changes and approvals to the N3 -Highway, (R67 million),

2.3 Drafting numerous Service Level Agreements with serviceproviders in terms of the Supply Chain Regulations, including for example, the installation of the SAP - financial system (R90 million), the appointment of Fujitsu in relation to a financial system for the municipality, Pay@ and Cocre08 to enable consumers to pay their bills at shopping outlets, provision of security services, the appointment of various engineers, town planners, legal service providers, IT -experts and other disciplines;

2.4 Numerous donation, lease and exchange agreements;

2.5 Various agreements with organs of state in their interaction with the Municipality, for example, with Umgeni Water for the supply of water and treatment of effluent; housing and funding agreements with the Province in relation to the construction of houses for the poor,

2.6 The drafting and vetting of an agreement with the Trans-Caledon Tunnel Authority, Umgeni Water, the Department of Water

Affairs and other municipalities for the construction of the Hazelmere Dam and other water works;

2.7 Various construction contracts;

2.8 The drafting and vetting of tender specifications and conditions of contract, in all disciplines within local government.

**3. The drafting and reviewing of bylaws and policies:**

I have extensive experience in the drafting of local government legislation. The Municipality embarked on a complete review project of

all of its bylaws in 2013 and since then, approximately 33 bylaws have either been reviewed or drafted *de novo*. Examples include:

- 3.1 The Wayleaves Bylaws, which regulate the activities of licensees in terms of the Electronic Communications Act, 36 of 2005, - companies which utilise municipal property to install fibre optic cabling;
- 3.2 The Credit Control and Debt Collection Bylaws;
- 3.3 The Water Services Bylaws;
- 3.4 The Electricity Bylaws;
- 3.5 The Advertising and Signage Bylaws;
- 3.6 Drafting of the Delegations Framework;
- 3.7 The Telecommunications Infrastructure Bylaws which regulate the erection of telecommunication masts.

4. The undertaking and management of civil litigation and arbitrations :

My experience in civil litigation also spans over 30 years. I have been involved and case managed many major cases involving the municipality, in the form of interdicts and action proceedings, whether as applicant, respondent, plaintiff or defendant. A few examples include:

- 4.1 An arbitration with Umgeni Water in relation to its charges to the Municipality. This case was arbitrated by the Department of Water

Affairs and was decided in favour of the Municipality. (Approx. R67 Million);

- 4.2 Numerous town planning Court applications to enforce the provisions of the Municipality's planning bylaws, land use scheme and the provisions of the Spatial Planning and Land Use Development Act,
- 4.3 Cases against security services providers in relation to the alleged overcharging for services;
- 4.4 Cases against major industrial effluent producing - companies which polluted or otherwise transgressed the laws relating to the unlawful discharge of untreated effluent;
- 4.5 Cases against electronic licensees in relation to their destruction of municipal infrastructure when laying fibre optic cables, one of which ended in the Constitutional Court;
- 4.6 The defending of numerous claims by service chargers for services allegedly rendered in a number of different

disciplines, including IT services, construction companies and housing companies;

4.7 The defending of delictual claims against the Municipality based on the alleged negligence of the Municipality in respect of electrical surcharges, stormwater damage, and potholes;

4.8 The institution of interdicts to prevent the continued erection or occupation of illegal buildings;

4.9 The institution of interdicts to prevent illegal strikes by employees.

## **5. Criminal Litigation**

My duty as Municipal Prosecutor commenced in 1992 when I was appointed by the Pietermaritzburg City Council to prosecute offences of legislation it was responsible for. Such duties also continued after the establishment of the Msunduzi Municipality in terms of the Local Government: Municipal Structures Act, 117 of 1998. As prosecutor, I was duly delegated by the former Attorney General and the Director of National Prosecutions.

I drafted summonses in terms of s54 of the Criminal Procedure Act, 51 of 1977, and undertook all duties necessary to prosecute such criminal cases in Court. I also ensured that the Chief Magistrate determined the required admission of guilt fines in terms of the Criminal Procedure Act.

During my stay as Prosecutor, I was responsible for the prosecution of all offenders, including major companies, developers and business interests.

## **6. Training and Legal Information**

I have provided training, either through formal or informal programmes, to officials on a vast array of legal enactments, including the Promotion of Administrative Justice Act, 3 of 2000, the Criminal Procedure Act, 51 of 1977, the Spatial Planning and Land Use Management Act, the Promotion of Access to Information Act, 2 of 2000 and various municipal bylaws.

I have provided training to aspirant (and refresher training to existing) Peace Officers on the Criminal Procedure Act, the law of evidence, and constitutional law to facilitate their certification by the SAPS in terms of the Criminal Procedure Act. Such aspirant Peace Officers attended a week long- course, and had to pass a three hour examination paper to facilitate their appointment. I was also responsible for the drafting of all

training material utilised for such training on all the modules covered during the training.

As part of my duties, I also disseminated information on new legislative developments and important cases to my colleagues, and where necessary, interpreted and guided on their implementation and application.

#### **7. Labour Issues: Disciplinary Hearings**

I have served as both Prosecutor and Chairperson on behalf of the municipality in a number of disciplinary hearings. I have also provided advice on a number of aspects pertaining to Collective Agreements applicable to the Municipality and the Labour Relations Act, 66 of 1995. I further provided advice on investigations undertaken and the evidential value of aspects thereof to those responsible for such investigations so as to direct the investigations with the view of focussing on all the elements of a potential charge or civil claim.

#### **8. Supply Chain Issues**

I have served on all the Bid Committees during my tenure with the Municipality and have provided extensive advice on the improvement and legality of bid specifications and the proper evaluation and adjudication of municipal tenders. I have also subsequently served as an Appeals Presiding Officer to hear and decide objections and appeals by aggrieved bidders as contemplated in terms of regulation 50 of the Supply Chain Regulations.

#### **9. Management Duties and Award**

During my 8 years as Acting Senior Manager I was responsible for all duties associated with such position, including the setting and achievement of the monthly, quarterly and yearly performance targets within the allocated legal budget, staff management, pro-active risk management and inputs into other strategic management documents like the IDP, the budget, the Service Delivery and Budget Implementation Plan and the Annual Report.

In 2016, I was designated as the best Level 3 Senior Manager within the Municipality and the Legal Services unit also won a Service Excellence Award for being the best unit within the Municipality.

**Vanderbijlpark City Council : Senior Legal Administrative Officer 1990-1992**

My duties included overseeing the compilation of the Voters Roll, the translation of bylaws and other documents from Afrikaans into English and vice versa, and managing the Secretariat, Typing Pool, Building Maintenance and Cleansing Staff. (30 Staff Members). I was also responsible for compiling and managing the Departmental Budget. Lastly, I was responsible for managing the implementation of occupational health and safety protocols in the department and provided legal inputs into complex reports to the Council.

**Transvaal Provincial Government | Legal Administration Officer 1987 - 1990**

Stationed both in Johannesburg and Pretoria, my duties included the rendering of legal advice to the Provincial Government and local authorities, the drafting of provincial legislation and agreements, and the undertaking of investigations into and prosecution of the alleged misconduct of municipal Councillors and Officials. In 1987, I received an award from the Administrator for the role I played in promoting housing in the then black urban areas.

**REFEREES**

**The following persons may be contacted as referees:**

- 1. Adv. Anton Fleming: Practising Advocate:**
- 2. Adv. Yoga Moodley: Practising Advocate:**
- 3. Mr. Mduduzi Mbokazi: Former Colleague:**
- 4. Mr Illan Lax: Practising Attorney:**
- 5. Mr Anthony Waldhausen: Chairperson: Msunduzi Association of Residents, Ratepayers and Civics:**
  
- 6. Mr Bertus Appel: Practising Attorney**
- 7. Mr Rienus Niemand: ACDP:**