

*CANDIDATE : MS KHOSI QONDENI HADEBE*

**APPLICANT: KHOSI QONDENI HADEBE**

**COURT FOR WHICH APPLICANT APPLIES: THE KWAZULU-NATAL DIVISION OF THE HIGH COURT**

**1 The candidate's appropriate qualifications**

1.1 The candidate holds the following degrees:

1.1.1 B Proc (University of Zululand) (1982);

1.1.2 LLB (University of Zululand) (1991); and

1.1.3 Advanced Diploma in Labour Law (Rand Afrikaanse Universiteit) (2000).

1.2 In addition to the aforementioned qualifications, the candidate has attended various seminars through the Justice College whilst employed by the Department of Justice as a District and Regional Court Magistrate.

1.3 The candidate is currently a retired Regional Court Magistrate.

1.4 The candidate is appropriately qualified.

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

2.1 The candidate commenced employment with the Department of Justice in Kwazulu-Natal as a clerk during 1979 and remained so employed, "progressing through the ranks" until she resigned as a Regional Court Magistrate in 2016.

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- 2.2 In addition, the candidate has acted as a Judge of the Eastern Cape and Transkei High Courts (Bisho) as well as the Pietermaritzburg and Durban High Courts on no less than eleven occasions.
- 2.3 The Association of Regional Magistrates of South Africa has nominated the candidate and supports her appointment to the bench. The nomination and appointment is further supported by a colleague of the Candidate as well as an attorney of eighteen years' experience.
- 2.4 The candidate is an active member and elder in her Church, the Seventh Day Adventist Church.
- 2.5 The candidate is a fit and proper person.

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

- 3.1 The candidate is a Black woman.
- 3.2 Her appointment would contribute to the transformation of the judiciary from a demographic and gender perspective.

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

- 4.1 The candidate has no experience in administrative, constitutional or labour law.
- 4.2 The candidate presided as a Magistrate in criminal courts from 1995 to 2016 (when she resigned) and her only exposure to civil law during this period appears to have been during her relatively brief appointments as an Acting Judge (on each occasion the acting

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appointment lasted between four and five weeks) on four occasions during the period 3 May 2011 to 15 December 2017.

- 4.3 The candidate therefore has very limited experience in civil law.
- 4.4 The candidate has acted as a Judge of the High Court on a total of eleven occasions from October 2006 to date.
- 4.5 The candidate has not given any indication of cases that she was involved in and which she regards as being significant or otherwise.
- 4.6 Our search of the mainstream law reports evidences that the candidate has no reported judgments and no involvement in any reported judgments.
- 4.7 The only judgments of the Candidate that we could locate other than those attached to the candidate's application to the JSC, are two unreported Jutastat judgments.
- 4.8 The judgments handed down by the Candidate during her terms as an Acting Judge that we have accordingly considered are the following:
- 4.8.1 *Mbuso Patric Shusha v The State* (KZP) Case No: AR541/2016: The candidate sat as a member of an Appeal Bench and wrote the judgment with Lopes J concurring. The Appellant had appealed against his conviction and sentence by a Regional Court on various charges under section 3 (where life imprisonment was imposed in respect of each count) and section 5 (where ten years was imposed on each count) of the Criminal Law (Sexual Offences and Related Matters)

Amendment Act, 2007. All complainants in the case were younger than 16 years old. One of the grounds upon which the Appellant appealed his conviction and sentence was that the minor complainants had not been properly admonished to tell the truth prior to testifying. The candidate found that the Magistrate had properly admonished all complainants. The candidate further found that the complainants evidence had been consistent in all material aspects and corroborated by the evidence of the school teacher and examining doctor. The candidate also considered the fact that the Appellant elected not to testify in confirming the sentence and conviction of the Appellant and dismissing the appeal.

4.8.2 *Eugene Nel NO v B Luthuli NO & 3 Others* (KZP) Case No. 11281/2011: The candidate wrote the judgment sitting as a court of first instance. In issue before her was whether or not the Respondents ought to be compelled to discover certain documentation in the proceedings. The Applicant, as liquidator of Amadwala Trading 51 CC, sought to investigate certain dispositions made to the Respondents (First to Third Respondents being cited as trustees of a trust) in the two years' preceding and during the nine months following the commencement of the winding-up proceedings. The Applicant requested certain documentation for such purpose. The candidate considered the relevant provisions of the Insolvency Act (section 26) and the Companies Act, 1973, identified and summarised the issues as they appeared in the main action, considered the case authorities on point and

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ordered the Respondents to furnish certain of the documents requested in the Applicant's Rule 35(3) Notice.

4.8.3 *Ridhwaan Osman NO & 8 Others v Azad Khan t/a Zain's Scrap Yard (KZP) Case No: AR492/2015*: The candidate sat as a member of an Appeal Bench and wrote the judgment with Poyo Dlwati J and Gordon AJ concurring. The Appellants were trustees of a trust which owned a certain immovable property. They sought an order ejecting the Respondent from the property. The Respondent opposed the application on the basis that he did not occupy the property which formed the subject matter of the application and furthermore that the Appellants had not proved their ownership of the property occupied by him, or their right to evict him from it. The Appellants attempted to cure the numerous difficulties facing them in the case when filing their replying affidavit. The candidate concluded that the onus of proving their trusteeship and therefore ownership of the subject property rested squarely on the Appellants and rejected their attempt to supplement their founding affidavit by way of their replying affidavit. Although the second last page of the judgment is missing from the candidate's application (and we have been unable to locate a copy of the judgment through other means) it would appear that the candidate proceeded to dismiss the appeal.

4.8.4 *S v Mhleli Ngcobo & 3 Others Case No: CC137/2009*: The candidate delivered the judgment on conviction and

sentencing of four accused charged with murder. A transcript of the judgments, including a substantial portion of the evidence adduced in mitigation of sentence, is annexed to the candidate's application and comprises some 238 pages. Both judgments are lengthy. Accused 4, who was married to the deceased, had approached Accused 3 with a plot to murder the deceased. Accused 3 had procured the "assistance" of accused 1 and 2 to carry out the deed for a fee. Having found all four Accused guilty of murder, one of the issues that the candidate had to determine in sentencing was whether or not she should depart from imposing minimum sentences due to the alleged ill-health of Accused 2 and 3. The candidate referred to various reported judgments providing guidance on the exercise of her discretion, particularly in the context of ill-health of a convicted persons, and sentenced Accused 1, who pulled the trigger and killed the deceased, to 20 years' imprisonment, Accused 2, who transported Accused 1 to the crime scene, to 18 years' imprisonment, Accused 3, who had befriended the deceased and his family and who had introduced the perpetrators (Accused 1 and 2) to the deceased's property, given them access to his home and afforded them the opportunity to take the deceased's life, to life imprisonment and Accused 4, the deceased's wife who had orchestrated the murder, to life imprisonment.

4.8.5 *S v Khumalo* 2017 JDR 0409 (KZP): The candidate sat as a member of an Appeal Bench hearing an appeal against conviction and sentence of three accused from the

Magistrate's Court. She concurred in a judgment not written by her. The Appellants appealed against their convictions and sentences for the crimes of assault with intent to do grievous bodily harm and malicious damage to property. They were convicted of both crimes on the doctrine of "common purpose" and sentenced to imprisonment for a period of three years. The Third Appellant's appeal was successful with his conviction and sentence being set aside. The First and Second Appellants' appeals were partially successful with their convictions on assault with intent to do grievous bodily harm being reduced to assault common and their convictions on malicious damage to property being set aside. Their sentence was reduced from a three year custodial sentence to a wholly suspended sentence of six months.

- 4.8.6 *S v Magubane* 2017 JDR 0434 (KZP): The candidate sat as a member of an Appeal Bench hearing an appeal against sentencing from the Magistrate's Court. She concurred with the judgment not written by her. The accused was convicted of rape and three counts of house robbery with intent to rob and robbery. The appeal was successful with the Appeal Court reducing the total sentence of thirty-nine years' imprisonment to an effective period of fifteen years' imprisonment.

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

- 5.1 The candidate appears to have no constitutional law practice and has not been involved in any important constitutional cases.

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

6.1 We have been unable to establish whether any of the candidate's judgments have been overturned on appeal.

6.2 The candidate refers in her application only to the matter of S v Mhleli Ngcobo and the fact that her conviction and sentence of Accused 2 and 3 was upheld on appeal.

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

7.1 The candidate commenced employment with the Department of Justice in Kwazulu-Natal as a clerk during 1979. During the period 1979 to 1995 she progressed from a court interpreter to prosecutor, legal planner and then a Magistrate.

7.2 During the period 1994 to 2000 she served as an Assistant Head of Department and Head of Department at Umzumbe Magistrate's office. From 2000 to 2002 she served as an additional Magistrate in the Durban Magistrate's Court and from 2002 to 2005 acted as a Regional Magistrate in the Umlazi and Pinetown Magistrates' Courts.

7.3 From 2005 to 2016 she served as a Regional Court Magistrate in the Pinetown Magistrate's Court, retiring in 2016.

7.4 In addition to her permanent appointments with the Department of Justice, the candidate has acted as a Judge of the Eastern Cape and Transkei High Courts (Bisho) as well as the Pietermaritzburg and Durban High Courts on no less than eleven occasions.

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

8.1 The candidate's judgments are in English and she is proficient in the language. Save for the judgment in the matter of *S v Mhleli Ngcobo* (which is a transcription of the candidate's judgment rather than the written judgment itself), the candidate's judgments are well written.

8.2 The candidate indicates that she is proficient in both the Zulu and Afrikaans languages as well.

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

9.1 The candidate signed her application on 27 November 2017. At the time of signing the application, the candidate had three reserved judgments outstanding, such judgments having been reserved on 17 October 2017, 1 November 2017 and 14 November 2017. It is unclear to us whether these reserved judgments have now been delivered.

9.2 At the time of signing her application, the judgment in the matter of *Airwaves (Pty) Ltd v Cane Time Manufacturers* had been outstanding for a period of six weeks.

9.3 The candidate's judgment in the matter of *Shusha v S* was delivered almost 3 months after the appeal was argued.

9.4 The candidate's judgment in the matter of *Osman v A Khan* was delivered 5 months after the appeal was argued.

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

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10.1 Our review of the candidate's judgments gives no reason to doubt her fairness and impartiality.

**11 The candidate's independent mindedness**

11.1 No adverse comments regarding the candidate's independent mindedness have been noted.

11.2 No dissenting judgments appear to have been written by her.

11.3 On each occasion where the candidate wrote a judgment on appeal, the judgment was concurred with.

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

12.1 We are not aware of any circumstances that would give rise to doubt regarding the candidate's ability to conduct court proceedings.

**13 The candidate's administrative ability**

13.1 The candidate has practiced as a judicial officer, more particularly a Magistrate, for a period of approximately twelve years prior to her resignation in 2016.

13.2 We have no reason to doubt her administrative ability.

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

14.1 We are unaware of any circumstances that give doubt to the candidate's integrity and ethical behaviour.

**15 The candidate's judicial temperament**

15.1 No concerns appear from the judgments we have considered.

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

16.1 The candidate's CV evidences that she has been involved in varying capacities with numerous different "forums", conferences and workshops from 1988 to 2005.

16.2 These included the candidate's involvement in addressing vulnerable groups on sexual offences, peer learning relating to law, race and gender, being a delegate at the Conference of the International Association of Judges on "Judicial Backlogs and the Solutions in your Country", social context training for Magistrates in developing skills for effective delivery with specific relevance to law, race and gender and acting as a facilitator for peer training on law, race and gender, as well as being involved in the launch of an information kit on children's rights.

**17 The candidate's potential**

17.1 The candidate is an experienced judicial officer.

17.2 The candidate however has very limited experience in civil law and seemingly no experience in any other field of law other than criminal law (where she has extensive experience).

17.3 During her numerous appointments as an Acting Judge, she has not been involved in any reported cases or matters of major significance or complexity.

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

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- 18.1 The candidate is an upstanding retired Magistrate who has been actively involved in seminars, workshops and other training programs during her time as an employee of the Department of Justice.
- 18.2 This must be weighed against the limited litigation experience the candidate has in civil matters and absence of any experience in constitutional, administrative and labour law matters.

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

### **Reported decisions**

None.

### **Unreported decisions**

*Mbuso Patric Shusha v The State (KZP)* Case No: AR541/2016

*Eugene Nel NO v B Luthuli NO & 3 Others (KZP)* Case No. 11281/2011

*Ridhwaan Osman NO & 8 Others v Azad Khan t/a Zain's Scrap Yard (KZP)* Case  
No: AR492/2015

*S v Mhleli Ngcobo & 3 Others* Case No: CC137/2009

*S v Khumalo* 2017 JDR 0409 (KZP)

*S v Magubane* 2017 JDR 0434 (KZP)

### **Judgments upheld on appeal**

*S v Mhleli Ngcobo & 3 Others* Case No: CC137/2009 in respect of Accused 2 and  
3

### **Judgments overturned on appeal**

None reported.

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