

CANDIDATE : JUDGE YVONNE THOKOZILE MBATHA

APPLICANT: JUDGE YVONNE THOKOZILE MBATHA

COURT FOR WHICH APPLICANT APPLIES: SUPREME COURT OF APPEAL

1 The candidate's appropriate qualifications

1.1 The candidate holds the following academic qualifications:

1.1.1 BProc – University of Zululand (1983).

1.2 The candidate is appropriately qualified.

2 Whether the candidate is a fit and proper person

2.1 The candidate has been a sitting judge of the High Court of South Africa, KwaZulu-Natal Division, since June 2011. The reviewers have no reason to believe that she would not be able to fulfil her role as an Appeal Court Judge.

2.2 The candidate was an Acting Judge of the Supreme Court of Appeal from December 2016 to November 2017.

2.3 No adverse comments have been received.

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

3.1 Currently, the SCA comprises of twenty-two permanent Judges. Five are black women, eleven are black men, one is a white woman and five are white men.

3.2 It is apparent, therefore, that while strides have been taken to address racial representivity, the Court is not representative of either the racial or gender composition of South Africa. In particular, gender representivity still lags behind. While a positive step was taken in the appointment of a black woman as the President of the SCA, there remains a significant gender imbalance in the ranks of permanent Judges of the SCA.

3.3 The candidate is a black woman and her appointment would therefore assist in reflecting the gender and racial demographics of the Republic.

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

4.1 A reading of the candidate's judgments indicates that she has a comprehensive knowledge and grasp of the law.

4.2 Her judgments furthermore evidence a depth of understanding and consideration of the law. The candidate appears to have written 57 judgments and concurred in a further 36, of which only 6 appear to have been taken on appeal.

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

CANDIDATE : JUDGE YVONNE THOKOZILE MBATHA

5.1 The judgments of the candidate indicate that she has a sufficient understanding of the Constitutional values and principles. The candidate appears to be committed to the values of the constitution.

5.2 No negative comments or reports have been received in this regard.

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

6.1 *Sonwabo Magazi & Another v the State* (CC96/2011) partly overturned only on sentence in case AR 233/2016.

The Full Bench confirmed the conviction and sentence save that it directed that certain sentences were to run concurrently.

6.2 *Breakers Share Block Ltd v eThekweni Municipality* (9378/2013) [2015] ZAKZDHC 58 (27 July 2015) overturned on appeal in *eThekweni Municipality v Breakers Shareblock Limited* (42/2016) [2016] ZASCA 140 (29 September 2016)

The SCA found that the candidate's finding that a specific definition in the contract is vague and unclear is incorrect and that particular definition should be interpreted sensibly and in a businesslike manner within the context of the particular contract.

6.3 *Central Authority For The Republic of South Africa v N* (1876/2014) [2015] ZAKZDHC 1 (7 January 2015), overruled on appeal in *N v Central Authority for the Republic of South Africa* (AR 571/15) [2016] ZAKZPHC 43 (10 May 2016)

The judgment dealt with the return of a minor child to Northern Ireland in terms of the provisions of The Hague Convention on the

CANDIDATE : JUDGE YVONNE THOKOZILE MBATHA

Civil Aspects of International Child Abduction 1980. The appeal court specifically mentioned that its conclusion should not be interpreted as a critique of the reasoning of the court *a quo* but that it had to take other factors into consideration, due to the dilatory tactics of the appellant and the time lapse between the judgment of the court *a quo* and the hearing by the appeal court. Paramount in the latter's decision was the fact that the minor had by then resided for more than four years in SA and had become established in SA.

6.4 *S v Pillay* (AR 115/10) [2012] ZAKZPHC 48 (8 August 2012) overturned in *Pillay v S* (453/15) [2016] ZASCA 26 (18 March 2016)

An appeal from the Regional Court in which the candidate concurred. The SCA found that the trial court had misdirected itself in her evaluation of a child witness who was also a single witness. The candidate had concurred in the High Court judgment which confirmed the appellant's conviction in the Regional Court.

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

7.1 Before being appointed to the bench, the candidate practised as an attorney for over 23 years. During her years in practice she also served not only on professional bodies but also charitable entities and community organisations.

7.2 During her time in practice she served on an *ad hoc* basis as a legal advisor to the Newcastle Municipality.

7.3 She served on the following Board and Committees:

7.3.1 chairperson of uThukela Water Board;

CANDIDATE : JUDGE YVONNE THOKOZILE MBATHA

7.3.2 councillor of the KZN Law Society and the Law Society of South Africa; and

7.3.3 commissioner of the Newcastle Small Claims Court.

8 The candidate's linguistic and communication skills

8.1 The judgments of the candidate indicate an excellent use of the English language and are commendably brief and clear.

9 The candidate's ability to produce judgments promptly

9.1 The candidate produces judgments on average within 61 days. Eleven judgments have taken more than three months to produce, with four of those having taken over a year.

10 The candidate's fairness and impartiality

10.1 The judgments are a model of fairness and impartiality. No negative comments or reports have been received in this regard.

11 The candidate's independent mindedness

11.1 The candidate has shown herself to be independently minded. This is evidenced by the dissenting judgments produced by the candidate.

12 The candidate's ability to conduct court proceedings

12.1 No negative comments have been received in this regard.

13 The candidate's administrative ability

13.1 The candidate, as a former practising attorney, board member and executive member, clearly has the administrative ability commensurate with the position she is applying for.

14 The candidate's reputation for integrity and ethical behaviour

14.1 The candidate seems to take being a judge very seriously. She has been quoted as saying: "*Good ethics are paramount and should be second nature to a judicial officer.*"

15 The candidate's judicial temperament

15.1 The candidate seems to be able to cope with the stresses of being a judge. No negative 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 commitment of the candidate to be involved in, not only the relevant professional bodies, but also charitable organisations, indicates that she understands and adheres to human rights and community cohesion.

17 The candidate's potential

17.1 The candidate appears to have potential that will serve her appointment in the SCA well.

CANDIDATE : JUDGE YVONNE THOKOZILE MBATHA

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

18.1 That the South African judiciary is serious about transformation in the judiciary to portray the actual portrait of South Africa. That the judiciary is taking into high consideration the potential of black women to succeed in upholding the rule of law in the administration of justice.

CANDIDATE : JUDGE YVONNE THOKOZILE MBATHA

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Mahaeane v Anglogold [2017] 3 All SA 458 (SCA); 2017 (6) SA 382 (SCA)

Unreported decisions

C Septoo obo J M Septoo & another v The Road Accident Fund (058/2017) [2017]
ZASCA 164

Gcaza v The State (1400/16) [2017] ZASCA 92

Ndlovu v S (925/2016) [2017] ZASCA 26

Llale v S (663/2016) [2017] ZASCA 049

Harrielall v University of KwaZulu-Natal (493/2016) [2017] ZASCA 25

Judgments upheld on appeal

EThekweni Municipality v Mounthaven (Pty) Ltd (1985/2014) [2015] ZAKZDHC
78

Moodley v Kenmont School and Others (828/2010) [2012] ZAKZDHC 23

Standard Bank of South Africa v Lorenzo Builders (Pty) Ltd and Others
(4689/2009) [2014] ZAKZDHC 28

S v Sonwabo Magazi & Another (CC96/2011)

Judgments overturned on appeal

S v Pillay (AR 115/10) [2012] ZAKZPHC 48

CANDIDATE : JUDGE YVONNE THOKOZILE MBATHA

Breakers Share Block Ltd v eThekweni Municipality (9378/2013) [2015]
ZAKZDHC 58

Central Authority For The Republic of South Africa v N (1876/2014) [2015]
ZAKZDHC 1

CANDIDATE : JUDGE YVONNE THOKOZILE MBATHA