

CANDIDATE: JUDGE FIKILE EUNICE MOKGOHLOA

CANDIDATE: JUDGE FIKILE EUNICE MOKGOHLOA

COURT FOR WHICH CANDIDATE APPLIES: SUPREME COURT OF APPEAL

1. The candidate's appropriate qualifications

1.1. The candidate obtained the following degrees:

1.1.1. B.Juris from University of Northwest in 1987;

1.1.2. LLB from University of Northwest in 1990.

1.2. The candidate worked in the following positions in the legal field:

1.2.1. Professional assistant and thereafter as partner at Hack, Stupel & Ross Attorneys from 1993 to 1999;

1.2.2. Acting District and Acting Regional Court Magistrate for the period July 2001 to February 2006;

1.2.3. Acting Judge in the Northern Cape Division and KwaZulu-Natal Division for the period June 2006 to November 2008;

1.2.4. Judge in the KwaZulu-Natal Division and the Limpopo Division for the period November 2008 to June 2016;

1.2.5. Deputy Judge-President, Limpopo Division for the period July 2016 to date;

CANDIDATE: JUDGE FIKILE EUNICE MOKGOHLOA

1.2.6. Acting Judge in the Supreme Court of Appeal for the period June 2017 to November 2017, June 2018 to November 2018 and December 2018 to March 2019;

1.2.7. Deputy Chairperson for the Rules Board for Courts of Law for the period June 2016 to date.

1.3. The candidate is thus appropriately qualified and experienced for appointment as a judge of the Supreme Court of Appeal.

2. Whether the candidate is a fit and proper person

2.1. No adverse comments were received in respect of the candidate.

2.2. When considering the candidate's work experience as set out in paragraph 1.2 above, the candidate is viewed as a fit and proper person to be appointed to the Supreme Court of Appeal.

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. The Supreme Court of Appeal bench currently composes 22 Justices of Appeal, of whom 15 are men (5 white, 6 black, 3 Indian and 1 coloured) and 7 are women (5 black, 1 white and 1 Indian).

3.3. The appointment of female candidates to senior positions in the judiciary currently lags behind the goal of equal gender representivity, and the candidate's appointment would therefore further this end.

4. The candidate's commitment to the values of the constitution

- 4.1. The candidate garnered extensive experience in the legal field over a period of approximately twenty-five years. During this period the candidate practised as an attorney, presided in both the Magistrates' and Regional Courts and sat as a Judge in various provincial divisions. The candidate's experience is then rounded off with her acting appointments in the Supreme Court of Appeal.
- 4.2. During this period the candidate was exposed to both criminal and civil matters and obtained extensive knowledge about different aspects of the law.
- 4.3. The candidate's judgments serve to properly illustrate her extensive exposure to the happenings in all tiers of the countries' courts. Her judgments are not written in the abstract but evidently from the perspective of a person fully apprised and knowledgeable of all the diverse and different legal challenges that play out in the different levels of our courts.
- 4.4. The candidates' experience then seemingly reflects in her judgments that succeed in effortlessly incorporating and interweaving constitutional principles.
- 4.5. The candidate thus not only possesses a well-established knowledge of the law, including constitutional law, but also the capacity to translate that knowledge into persuasive well-written judgments.

5. The candidate's knowledge of the law, including constitutional law

The candidate shows a marked commitment to the values of the Constitution. The following extracts from the candidate's curriculum vitae serve to illustrate this –

- 5.1. The candidate practiced in a semi-rural area, Winterveldt, where she served people from previously disadvantaged communities;
- 5.2. During her years of practice the candidate took on cases involving constitutional and socio-economic rights without being paid for her services. This is further supported by the nomination letter of Adv Mokhare SC that records that the candidate dedicated her practice to the upliftment of the rural communities;
- 5.3. Whilst sitting as a Judge the candidate mentored and trained female attorneys through SAWLA and IAWJ, organisations of which she formed part since 2015.

6. Whether any judgments have been overturned on appeal

- 6.1. The candidate has delivered numerous judgments over a period of time of which only three were overturned on appeal.
- 6.2. The candidate lists the following judgments that were successfully appealed against:
 - 6.2.1. *J Pillay v The State* (739/10) [2010] ZASCA 111 (1 June 2011) – the appeal was upheld and the sentence imposed by the trial court (Mokgohloa J) was set aside. The appeal court remitted the

CANDIDATE: JUDGE FIKILE EUNICE MOKGOHLOA

matter back to the trial court to impose sentence afresh after obtaining further evidence.

6.2.2. *Green Africa Container Depot (Pty) Ltd v Perfect Innovations* 146 CC [2015] JOL 33419 (KZP) –The appeal court exercised its discretion and amended the order granted by the court a quo (Mokgohloa J) in respect of the date from which interest would run on the judgment debt. The appeal was otherwise dismissed with costs.

6.2.3. *Sher and Another v Vermaak* [2014] JOL 32477 (KZP) – The appeal was upheld. The appeal court found that the court a quo (Mokgohloa J) erred in finding that certain statements made about the Respondent in a letter were defamatory.

6.3. We are not aware of any other judgments that were overturned on appeal.

7. The extent and breadth of the candidate’s professional experience

7.1. The candidate’s professional experience is set out above under paragraph 1.

7.2. The candidate’s experience ranges from Attorney, Magistrate and Regional Court Magistrate, Judge in numerous provincial divisions and Acting Judge in the Supreme Court of Appeal. The candidate thus built up extensive professional experience over a period of time.

7.3. The candidate’s position of Deputy Chairperson of the Rules Board for Courts of Law serves to strengthen her professional experience

8. The candidate's linguistic and communication skills

8.1. The candidate's judgments are well structured and are set out in a logical manner.

8.2. The judgments considered show that the candidate has the ability to: -

8.2.1. summarise the material facts in a particular matter;

8.2.2. determine the disputed issues;

8.2.3. apply the relevant principles of law to the material facts;

8.2.4. consider relevant case law; and

8.2.5. Articulate her reasoning clearly and persuasively.

8.3. The candidate's judgments are written in a style that is clear, concise and easy to comprehend.

8.4. Those judgments considered all displayed that the candidate fully understood the relevant factual and legal issues of the matter at hand. Those issues are properly ventilated in the judgment in a manner and style that is remarkably easy to read and understand. The judgments are insightful, to the point and without unnecessary or unrequired embroidering.

9. The candidate's ability to produce judgments promptly

9.1. The candidate stated that there are no reserved judgments still outstanding.

CANDIDATE: JUDGE FIKILE EUNICE MOKGOHLOA

9.2. From the judgments attached to the application and those reported, it appeared that judgments are normally handed down within a period of three months. One matter was noted where judgment was reserved for a period of just over four months.

9.3. It thus appears that the candidate has the ability to deliver judgments promptly.

10. The candidate's fairness and impartiality

10.1. Those judgments considered uniformly evince a sense of fairness and impartiality.

10.2. There is nothing in the application or the candidate's judgment that would suggest that the candidate will not act fairly and impartially.

11. The candidate's independent mindedness

11.1. There is nothing in the application or the candidate's judgments that may suggest that the candidate will not act independently.

12. The candidate's ability to conduct court proceedings

12.1. The candidate's relevant history reflects her exposure not only to proceedings in the High Court but also to the Magistrate's Court where less experienced practitioners, and article clerks, would have appeared in front of her.

12.2. The candidate's involvement with the Rules Board would only serve to assist her proficiency in interpreting and applying the Magistrate's Court Rules as well as the Uniform Rules of Court.

13. The candidate's administrative ability

13.1. The candidate's administrative capability is illustrated by the fact that whilst serving as a Judge, she simultaneously served as the Deputy Chairperson of the Rules Board as well as a board member and a member of organisations outside the legal profession.

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

14.1. The candidate is well respected and is known as a person of integrity.

15. The candidate's judicial temperament

15.1. The candidate can be described as composed, with a well-balanced judicial temperament. The candidate diligently displays a willingness to properly consider both sides of an argument.

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 judgment evinces a clear understanding and application of constitutional principles.

16.2. Having practised in a semi-rural area, the candidate is well-aware of the challenges faced by the historically disadvantaged communities. In addressing the latter challenges the candidate acted pro bono on behalf of impoverished individuals. The candidate attended to the training and mentoring of female attorneys in particular court practice, sharing her experience as a practising lawyer.

CANDIDATE: JUDGE FIKILE EUNICE MOKGOHLOA

17. The candidate's potential

17.1. The candidate previously served as an Acting Judge in the Supreme Court of Appeal and thus already illustrated her potential to serve as a permanent Judge.

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

18.1. The candidate is a black woman and her appointment to the Supreme Court of Appeal will serve to send a positive message to society at large.

CANDIDATE: JUDGE FIKILE EUNICE MOKGOHLOA

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

TM v ZJ 2015 (5) SA 71 (KZN)

The MEC for Human Settlement & Public Works of the Province of KwaZulu-Natal and Others v Ethekwini Municipality and Another (3329/2013; 9189/2013) [2015] ZAKZDHC 69 (20 August 2015)

Greater Tzaneen Municipality v Bravospan 252 CC (238/2015) [2016] ZALMPPHC 17 (19 August 2016)

Gobela Consulting CC v Makhado Municipality (778/2012) [2017] ZALMPPHC 10 (8 June 2017)

T obo Minor v Road Accident Fund (1322/2016) [2017] ZALMPPHC 13 (29 June 2017)

Botha N.O. and Another v The National Director of Public Prosecutions (920/2017) [2018] ZASCA 146 (22 October 2018)

CTP Limited and Another v Director-General Department of Basic Education and Another (447/2018) [2018] ZASCA 156 (20 November 2018)

AV v CV 2011 (6) SA 189 (KZP)

FirstRand Bank v Raheman & Another 2012 (2) SA 418 (KZD)

TM v ZJ 2016 (1) SA 71 (KZD)

CANDIDATE: JUDGE FIKILE EUNICE MOKGOHLOA

The Palace Shareblock Ltd v Lavender Moon Trading 157 CC t/a the Copper Chimney [2009] JOL 24373 (KZD)

Ledwaba v Monyepao and others (HCAA06-2017) [2018] ZALMPPHC 61 (25 April 2018)

J Pillay v The State (739/10) [2010] ZASCA 111 (1 June 2011)

Green Africa Container Depot (Pty) Ltd v Perfect Innovations 146 CC [2015] JOL 33419 (KZP)

Sher and another v Vermaak [2014] JOL 32477 (KZP)