

CANDIDATE: JUDGE BULELWA MYRA PAKATI

CANDIDATE: JUDGE BULELWA MYRA PAKATI

**COURT FOR WHICH APPLICANT APPLIES: EASTERN CAPE LOCAL
DIVISION, PORT ELIZABETH**

1. The candidate's appropriate qualifications:

- 1.1 Dip Juris from the University of Transkei, now known as Walter Sisulu University (1986);
- 1.2 BJuris from the Walter Sisulu University (1988);
- 1.3 LLB from Walter Sisulu University (1990);
- 1.4 The candidate is appropriately qualified.

2. Whether the candidate is a fit and proper person:

- 2.1 The candidate presently holds a permanent appointment as a Judge of the Northern Cape Division of the High Court, Kimberley having been appointed to this position on 22 May 2012.
- 2.2 The candidate was previously employed by the Department of Justice in various positions, the last of which was in the position of Regional Magistrate.

CANDIDATE: JUDGE BULELWA MYRA PAKATI

2.3 She currently holds the position of Judge of the Northern Cape Division of the High Court in Kimberley and as such there is no reason to find that the candidate is not fit and proper.

2.4 During her tenure as Judge and, more particularly, at her interviews with the Judicial Services Commission in 2017 and again in 2019 as a prospective candidate for the position of Deputy Judge President of the Northern Cape Division of the High Court in Kimberley she was criticised for conduct not becoming of a judicial officer.

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 candidate has already been appointed to the bench and consequently her transfer to the Eastern Cape won't impact on the current composition of the South African bench. It will, however, impact on the racial and gender composition of the Eastern Cape bench.

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

4.1 A scrutiny of the cases cited by the candidate in which she presided over reveals that the candidate's knowledge and experience of the law is sound.

4.2 Notwithstanding the above, she has been criticised at her JSC interviews for making fundamental errors in her judgements which have far reaching consequences.

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

5.1 The candidate has held membership of various legal organisations which have had a strong impact on transformation in the legal profession.

5.2 She is currently a member of the International Association of Women Judges: S A Chapter and is the provincial co-ordinator of the association for the Northern Cape.

5.3 The candidate's conduct in the Brooks matter 2019 (1) SACR 103 (NCK) which terminated in an application being sought for her recusal from the matter which was granted and which ultimately culminated in a permanent stay of the prosecution against all accused persons. This conduct was contrary to the values enshrined in the Constitution.

6. Whether any judgments have been overturned on appeal:

6.1 According to the candidate's application the candidate has had four Judgments overturned on appeal which are as follows:

6.1.1 Blue Dust 7 CC and Another v Leungo Construction Enterprises CC and Four Others: Case No. 1835/2011;

6.1.2 The MEC for Transport NC Province and Two Others v Greenpoint Taxi Association: Case No. 2002/10;

6.1.3 A Jacobz v K Southey and Another: Case No. 724/14;

6.1.4 E Smous v The State: Case No. 29/14.

CANDIDATE: JUDGE BULELWA MYRA PAKATI

6.2 A further judgement not disclosed in her application which was overturned on appeal to the full bench of the division is the matter of Superkolong (Pty) Ltd. v Gemcore (Pty) Ltd. [1451/2010] [2016] ZANCHC 55 (29 July 2016) leave to appeal to the Full Bench of the Division was granted by the Supreme Court of Appeal.

6.3 In the matter of Links v MEC, Department of Health, Northern Cape Province (1870/2012) [2014] ZANCHC 17 (15 August 2014), an appeal to the full bench the candidate concurred with the Judgment of Kgomo J P. This Judgment was successfully appealed against to the Constitutional Court and is reported at 2016 (4) SA 414 CC. This judgement was also not disclosed by the candidate in her application.

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

7.1 Although the Applicant's nomination by the International Association of Women's Judges state that the Applicant is also an admitted attorney of the High Court. This does not reflect from the Applicant's application as the extent and breadth of the Applicant's professional experience prior to her appointment is limited to the Department of Justice, the Applicant having held the following positions in the Department of Justice:

7.1.1 administrative clerk;

7.1.2 legal assistant;

7.1.3 Magistrate second leg:

CANDIDATE: JUDGE BULELWA MYRA PAKATI

- 7.1.4 Magistrate third leg (re-designation of rank)
- 7.1.5 Lecturer, Justice College;
- 7.1.6 Magistrate, Brakpan;
- 7.1.7 Magistrate, Head of Office, Maclear;
- 7.1.8 Senior Magistrate;
- 7.1.9 Regional Magistrate prior to her current position as Judge of the High Court, Kimberley, Northern Cape from 22 May 2012.
- 7.2 The Applicant's professional experience is, therefore, all limited to the Department of Justice and the office of the Chief Justice and thus her experience prior to taking up her current position was mainly in criminal law. It is also noteworthy that the majority of her reported decisions on Safflii are criminal matters.
- 7.3 What is of concern is that the Applicant has on two occasions in 2017 and 2019 applied for the position of Deputy Judge President in the Northern Cape Division of the High Court of South Africa and on both occasions her application has been unsuccessful.
- 7.4 This begs the question of whether the candidate is suited to the position of Judge in the Eastern Cape Division of the High Court, Port Elizabeth when the candidate has clearly demonstrated aspirations of higher positions on the Bench which are currently not available in the Eastern Cape.

8. The candidate's linguistic and communication skills:

8.1 Having regard to the candidate's Judgments attached to her application, the candidates linguistic and communication skills are good.

9. The candidate's ability to produce judgments promptly:

9.1 The Applicant appears to experience difficulty in producing judgments promptly in that, according to the Applicant's application, she currently has seven outstanding judgments ranging from 14 February 2019 to the latest reserved on 20 June 2019. They are as follows:

9.1.1 Kathu Primary and Another v the Head of the Department of Education, NC & Four Others: Case No. 308/2018 Seodin Primary School & Five Others: Case No. 561/18 which was reserved on 14 February 2019;

9.1.2 2 SAFFY LBNO and 2 Others v Minister of Public Works and 3 Others: Case No. 1227/2018, reserved on 8 March 2019;

9.1.3 Njema Papers v The State: Case No. CA&R 23/18 reserved on 6 May 2019;

9.1.4 Batlharo Baga Phadima & Another v Premier Northern Cape and 3 Others: Case No. 1050/2016; reserved on 17 May 2019;

9.1.5 Visagie K v Hotazel Manganese, Case No. 1814/17, reserved on 7 June 2019;

CANDIDATE: JUDGE BULELWA MYRA PAKATI

9.1.6 Moreeng T & Minister of Police, Case No. 1420/17, reserved on 20 June 2019 and

9.1.7 D T Leeuw v The State: Case No. CA&R 6/2019 which date the aforesaid Judgment was reserved on has not been stipulated by the Applicant in her application.

9.2 The length of time that the majority of her judgements have been outstanding as listed above, raise concern as they fall foul of the rule that all judgement are to be delivered within 3 months of the date upon which they were reserved.

10. The candidate's fairness and impartiality:

10.1 The Applicant's conduct in the Brooks matter, as aforementioned, casts doubt on the candidate's impartiality and fairness to the matters before her.

11. The candidate's independent mindedness:

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

12. The candidate's ability to conduct court proceedings:

12.1 The candidate was criticised in her JSC interviews in both 2017 and 2019 for making fundamental mistakes with far-reaching consequences in her Judgments.

CANDIDATE: JUDGE BULELWA MYRA PAKATI

12.2 She was, furthermore, criticised that in appeal matters her judgements gave little or no guidance to the Magistrate.

12.3 Furthermore, the candidate has been criticised for not informing legal representatives involved in Brooks et al trial of her dilemma and potential conflict of interest which led to the permanent stay of the prosecution against all the accused persons.

13. The candidate's administrative ability:

13.1 At her JSC interview in 2019 the candidate acknowledged that although she had acted in the position of Deputy Judge President of the Northern Cape Division for one term, she had not attended to any of the administrative duties expected or required of the Deputy Judge President.

13.2 Furthermore, she has a number of outstanding Judgments which raise questions regarding her administrative ability.

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

14.1 In light of the criticism levelled at the candidate at both her JSC interviews for the position of Deputy Judge President and, in particular, the criticism with regard to her conduct in S v Brooks, questions have been raised on the candidate's behaviour.

15. The candidate's judicial temperament:

15.1 Various concerns regarding the candidate's judicial temperament have been raised at both her aforementioned interviews for the position of Deputy Judge President of the Northern Cape Division.

15.2 Furthermore, the candidate's interaction with her colleagues which led to the necessity for mediation by Hlope, JP also raise concerns regarding the candidate's judicial temperament.

15.3 There is, therefore, reason to doubt that the candidate has the required judicial temperament to take up a judicial appointment in the Eastern Cape, Port Elizabeth.

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

16.1 The candidate shows a commitment to human rights and has been involved in community projects which reflect from her curriculum vitae and application.

17. The candidate's potential:

17.1 The candidate has disclosed that she has been under psychological treatment in the past and still uses anti-depressants, if and when required, which may impact on her ability to sit as a Judge in the Port Elizabeth High Court as the latter Court is a busier court than her present court. She will furthermore have more colleagues to deal with and more interpersonal relationships to navigate and, accordingly, there

CANDIDATE: JUDGE BULELWA MYRA PAKATI

is concern whether the candidate's is suitable for appointment to the Bench in Port Elizabeth.

17.2 The Applicant has held a permanent appointment as a Judge of the Northern Cape Division of the High Court since 2012, as aforementioned, and recently interviewed for the position of Deputy Judge President of the Northern Cape. The Applicant, therefore, has already expressed an interest in taking up the position of Deputy Judge President. No such vacancies currently exist in the Eastern Cape division.

17.3 The candidate furthermore advances no reasons for her application to the Eastern Cape Division after 7 years in the Northern Cape Division and her two unsuccessful attempts for appointment to the DJP position in the latter division neither what has occurred in her circumstances to necessitate the change.

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 will send a positive message to the community at large.

18.2 The candidate does not state any reasons for her wanting to move from the Northern Cape Division of the High Court to Port Elizabeth.

CANDIDATE: JUDGE BULELWA MYRA PAKATI

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

S v J G S (3/2006) [2011] ZANHC 29 (30 September 2011, Bokati A J as she then was

Leeuw v S (CA&R 40/2018) [2019] ZANHC 32 (8 August 2019)

Stefaans v S (CA&R 40/2108) [2019] ZANHC 4 (25 February 2019)

Magawu v S (CA&R 28/2018) [2018] ZANHC 71 (2 October 2018)

S v Mathibe (K/S13/15) [2015] ZANHC 13 (15 May 2015)

Louw v Westbank, a division of First Rand Bank Ltd. (905/2018) [2019] ZANHC 12 (22 March 2019)

S v Mtshali (16/2012) [2013] ZANHC 2 (19 February 2013)

Boshoff v The State (CA&R 51/14) [2015] ZANHC 56 (23 February 2015)

S v Siff (K/S2/15) [2015] ZANHC 11 (18 April 2015)

Minister of Safety & Security v Boo (1402/2008) [2014] ZANHC 20 (23 May 2014)

S v Lombaard (CA&R 62/12) [2013] ZANHC 1 (8 February 2013)

S v Cloete (K/S33/18) [2019] ZANHC 6 (29 January 2019)

Oliphant N.O. v Oliphant & Others (48/2107) [2018] ZANHC 3 (16 January 2018)

CANDIDATE: JUDGE BULELWA MYRA PAKATI

Mtshoeu v Smith (CA&R 107/16) [2017] ZANHC 30 (11 April 2017)

Jacobs v Southey & Others (724/14) [2015] ZANHC 12 (24 April 2015)

Malan v Minister of Defence (691/2011) [2014] ZANHC 10 (5 September 2014)

ABSA Bank Ltd. v Shikwambana (2370/15) [2016] ZANHC 3 (10 June 2016)

*Kibedo v Minister of Safety & Security & Another (CA&R 76/13) [2014] ZANHC
23 (31 October 2014)*

Unreported decisions

No unreported decisions could be located.

Judgments upheld on appeal

*Motlalepula Elias Selemela v The Premier of the Northern Cape: Case No.
1912/2009*

Judgments overturned on appeal

*Superkolong (Pty) Ltd. v Gemcore (Pty) Ltd. [1451/2010] [2016] ZANHC 55 (29
July 2016) Judgment granted with leave of the Supreme Court of Appeal to the
Full Bench of the Division against Pakati J's Judgment. (This Judgment was
not disclosed by the candidate.)*

*Links v MEC, Department of Health, Northern Cape Province (1870/2012) [2014]
ZANHC 17 (15 August 2014). She concurred with the Full Court Judgment of
Kgomo J P. (This Judgment was successfully appealed against.)*

CANDIDATE: JUDGE BULELWA MYRA PAKATI

*Blue Dust 7 CC and Another v Leungo Construction Enterprises CC & 4 Others:
Case No. 1835/2011;*

*The MEC for Transport NC Province & 2 Others v Greenpoint Taxi Association:
Case No. 2002/10;*

A Jacobz v K Southey & Another: Case No. 724/14;

E Smous v The State: Case No. 29/14.