

APPLICANT: MR. MFUNISELWA ELIJAH NKOSI

**COURT FOR WHICH CANDIDATE APPLIES: KWAZULU-NATAL
HIGH COURT (DURBAN)**

1. The candidate's appropriate qualifications:

1.1. The candidate holds the following degrees:

1.1.1. B Proc (1988), University of Zululand;

1.1.2. Bachelor of Laws Degree (1990), University of Natal;

1.1.3. The candidate was appointed as an Acting Judge for the KwaZulu-Natal High Courts (for both Durban and Pietermaritzburg) during the years of 2011, 2012, 2015 and 2017;

1.1.4. The candidate has also accepted an invitation by the KZN Judge President to commence a further Acting stint in Durban High Court from 18 January 2021 to 20 March 2021.

1.2. The candidate is therefore appropriately qualified.

1.3. The candidate's career path:

LEGAL

1.3.1. 1990-1991: Paralegal Trainer, Community Law Centre;

1.3.2. 1992-1994: Article Clerk, Shepstone & Wylie Attorneys;

1.3.3. 1994: National Liaison Officer and Adjudication Secretariat, Independent Electoral Commission

- 1.3.4. 1994-1995: Case Coordinator, Community Law Centre;
- 1.3.5. 1994-2014: Member, KwaZulu-Natal Law Society;
- 1.3.6. 1995-1997: Professional Assistant, Shepstone & Wylie Attorneys;
- 1.3.7. 1997-1998: Associate Partner, Shepstone & Wylie Attorneys;
- 1.3.8. 1998-current: Partner, Shepstone & Wylie Attorneys;
- 1.3.9. Director, Shepstone and Wylie Management Company;
- 1.3.10. 2011, 2012, 2015, 2017: Acting Judge, KwaZulu-Natal High Court (Durban and Pietermaritzburg);
- 1.3.11. 2014-Current: Member, Legal Practice Council (KwaZulu-Natal Division);
- 1.3.12. 2021 (18 Jan-20 March): Acting Judge, Durban High Court.

NON – LEGAL

- 1.3.13. 1996: Member of the Voter's Role Revision Court for former Durban Metropolitan Council and Associated Substructure Councils (Part-time), eThekweni Municipality.

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

- 2.1. The candidate has received a Certificate of Good Standing from the Legal Practice Council.
- 2.2. The candidate, as per the certificate, has never been removed from the Roll of Attorneys, nor suspended from practice and has no

proceedings pending by the Council to strike his name from the Roll or suspend him from practice.

2.3. The candidate has been an admitted attorney since 1994 and has sat as an Acting Judge during 2011, 2012, 2015, 2017 and present, with no adverse comments having been received in respect of his character.

2.4. The candidate is therefore 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 male of colour.

3.2. From a race perspective, the candidate's inclusion would better reflect the racial composition of South Africa.

3.3. From a gender perspective, however, there is a need for more female representation on the bench.

3.4. Therefore, the candidate's appointment would enhance the racial demographics of the bench, but not the gender demographics.

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

4.1. The candidate is highly proficient and well-versed in Local Government and Administrative Law, having specialized in these areas since 1995. The candidate is now the Head of the Local Government and Administrative Department for Shepstone & Wylie.

4.2. His specialization involves providing legal service to a wide spectrum of local government and public sector clients;

- 4.3. His key areas of competency include the drafting of legal opinions, policies and legislation, commercial documents and conducting general litigation for public sector clients. His drafting experience included the drafting of: the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act 6 of 2007; Sport bylaws for the Johannesburg Metropolitan Municipal Council; and the adaptation of standard draft bylaws for the Utrecht Municipality in KZN.
- 4.4. Given his specialist knowledge, the candidate was contracted as a Trainer for the International Republican Institute, the KZN Provincial Department, the Centre for Development and Management, SALGA and the University of KwaZulu-Natal (School of Governance). He provided training to councillors, municipal officials and KZN Provincial Departments on Constitutional and Local Government legislative framework and government matters.
- 4.5. The candidate has gained in-depth litigation knowledge as an attorney in several cases, including high profile and landmark cases in the Supreme Court of Appeal and Constitutional Court;
- 4.6. The candidate's scope of legal knowledge is broadened by his former appointments as an Acting Judge in both the Durban and Pietermaritzburg Divisions of the KZN High court, during which he adjudicated on several Civil and Criminal Law matters;
- 4.7. The candidate also published a number of works in the field of law. These include an article in the Mercury Newspaper on the New Rates Act and an article in De Rebus wherein he criticized the majority judgment of a Constitutional Court matter involving the

constitutionality of the Elimination and Prevention of Recurrence of Slums Act.

4.8. The candidate has also referred to the following judgments, which he wrote during his appointment as an Acting Judge and which demonstrate the scope of his knowledge in these areas of law:

4.8.1. *Breakers Share Block Ltd v EThekwini Municipality* (9378/2013) [2015] ZAKZDHC 58 (27 July 2015)

4.8.2. *Dlezi v Road Accident Fund* 2018 JDR 0398 (KZD);

4.8.3. *Haresh Ouderajh v Lalita Singh*

5. **The candidate's commitment to the values of the constitution**

5.1. The candidate's commitment to the values of the Constitution is evident in the following ways:

5.1.1. He has rendered professional assistance as a Paralegal Trainer for the Community Law Centre, where he trained paralegals in rural areas and provided general legal advice to members of rural communities;

5.1.2. He has also committed himself to the training and mentoring of young Black lawyers who have joined Shepstone And Wylie Attorneys. He also renders his professional support to young Black advocates by briefing them often.

5.1.3. The candidate is therefore fervently committed to transformation in the legal sector, social justice, and the facilitation of access to legal services, as mandated by the Constitution.

6. Whether any judgments have been overturned on appeal:

6.1. The candidate lists only one judgment that has been taken on appeal, but which was not overturned on appeal (*Breakers Share Block v eThekweni Municipality*).

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

7.1. The candidate's professional experience began upon completion of his LLB. After serving as an article clerk, he was retained as a Professional Assistant for Shepstone and Wylie Attorneys. He then made his way to being a Partner and the Head of the Local Government and Administrative Law Department in the firm.

7.2. The candidate's legal experience is substantial, having been an attorney in the specialization of Local Government and Administrative Law for more than 20 years and having sat as an Acting Judge for the Durban and Pietermaritzburg High Court on a number of stints (during 2011, 2012, 2015, 2017 and at present).

7.3. The candidate has gained further legal experience (the majority of which consists of quasi-judicial experience) in the following ways, which has considerably broadened the extent of his professional experience:

7.3.1. In 1994 he was seconded by the Community Law Centre to the Independent Electoral Commission in Johannesburg, where he held the position of National Liaison Officer, Adjudication Secretariat. He was involved in the coordination and monitoring of the adjudication tribunal throughout South Africa, in preparation for South Africa's first democratic election in 1994;

- 7.3.2. He delivered papers in local government conferences for 19 years (from 2000 to 2019);
- 7.3.3. He was Chairperson for the Legal Portfolio Committee for SANTA from 1995 to 2012;
- 7.3.4. He was Chairperson for Prayer for Peace from 1998 to 2013;
- 7.3.5. He has been Chairperson for the ML Sultan Foundation since 1998;
- 7.3.6. He was Chairperson for Mbonambi Municipality Audit Committee since from 2008 to 2012;
- 7.3.7. He was a member of the Disciplinary Committee for Westville Boys' High;
- 7.3.8. He was appointed as an independent adjudicator for SARS from 2008 to 2010;
- 7.3.9. He chaired a disciplinary hearing against numerous senior officials of Pfmba Municipality in 2014; and
- 7.3.10. He chaired a Commission of Enquiry for the Financial Services Board in 2003.

8. The candidate's linguistic and communication skills:

- 8.1. The candidate has an excellent command for writing judgments in plain and clear language, making them easily readable and understandable.
- 8.2. The candidate's judgments demonstrate a clear proficiency in the English language. He is also proficient in isiZulu and Afrikaans.

8.3. No adverse comments have been raised in respect of the candidate's communication skills.

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

9.1. The candidate has no reserved judgments outstanding on his name.

10. The candidate's fairness and impartiality:

10.1. An analysis of the candidate's judgments indicates that the candidate carries out his role with the fairness and impartiality it requires;

10.2. The candidate also chaired several enquiries throughout his career, with no adverse comments having been received in respect of his fairness and impartiality.

11. The candidate's independent mindedness:

11.1. No adverse comments have been received.

11.2. An analysis of the candidate's judgments indicates that the candidate has an independent mind.

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

12.1. The candidate has been instructing attorney in a number of cases, which included high profile Supreme Court Appeal and Constitutional Court cases. The candidate has also made a number of court appearances himself as an attorney.

12.2. The candidate has sat as an Acting Judge for several stints.

12.3. The candidate has also written judgments that were neither appealed nor overturned on appeal.

12.4. The candidate can therefore be expected to have well-developed skills in conducting court proceedings.

12.5. Further, no adverse comments have been received regarding his ability to conduct court proceedings.

13. The candidate's administrative ability:

13.1. No adverse comments have been received regarding the candidate's administrative ability.

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

14.1. No adverse comments have been received.

15. The candidate's judicial temperament:

15.1. No unfavourable comments have been received.

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

16.1. The candidate has committed himself to serving the community and advancing human rights in the following ways:

16.1.1. He is a member of the South African National Tuberculosis Association (SANTA);

16.1.2. He is the Chairman of the Board of Trustees for the M L Sultan Foundation;

16.1.3. He is the Chairperson for Praying for Peace, South Africa;

16.1.4. He is a member of the Management Board for the Community Law Rural Development Centre;

- 16.1.5. He is the Chairperson for the Board of Trustees for AKHA Black Economic Empowerment Trust;
- 16.1.6. He is the Chairperson of the Audit Committee for Mbonambi Local Municipality;
- 16.1.7. He was affiliated with a number of political organizations throughout his lifetime, in the pursuit of social justice and community development, in particular: Kwathemba Youth Congress, United Democratic Front, SANSCO (UniZulu) and the UniZulu SRC;
- 16.1.8. He rendered professional assistance as a Paralegal Trainer for the Community Law Centre, where he trained paralegals in rural areas and provided general legal advice to members of rural communities;
- 16.1.9. He has also committed himself to the training and mentoring of young Black lawyers who have joined Shepstone And Wylie Attorneys. He also renders his professional support to young Black advocates by briefing them often.

17. The candidate's potential:

- 17.1. The candidate would, if appointed, strengthen the High Court with both his breadth of legal knowledge and experience and his demonstrable commitment to social and administrative justice.

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

- 18.1. There is a great need for historically disadvantaged groups to be afforded greater representation than that which the judiciary

currently reflects. The candidate's appointment would therefore send a message to the community that the judicial system both recognizes and supports the inclusion of people of Colour in its current dispensation;

18.2. Further, the candidate's appointment would increase the community's confidence in the judiciary's commitment to social and administrative justice. These Constitutional values clearly resonate with the candidate given his several commitments to the community.

18.3. The candidate also displays extensive ability as a legal practitioner and administrator of justice, which would demonstrate to the community that the judiciary is committed to preserving its high standard of competency and expertise.