

APPLICANT: ADVOCATE CAROL SILINDILE SIBIYA (DLUDLA)

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

1. The candidate's appropriate qualifications

1.1. The candidate holds the following qualifications:

1.1.1. B Proc Degree (1997) - University of Natal (Durban)

1.1.2. Bachelor of Laws Degree (1998) - University of Natal
(Durban)

1.1.3. Advanced Certificate in Child Law (2000) – University of
Pretoria

1.2. The candidate is appropriately qualified.

Career path

1.3. The candidate has the following legal experience:

1.3.1. Acting Judge of the KZN Provincial Division,
Pietermaritzburg –

1.3.1.1. 12 November 2018 – 14 December 2018;

1.3.1.2. 03 June 2019 – 28 June 2019;

1.3.2. Criminal trial assessor

1.3.3. Practising Advocate (2009 – present date);

- 1.3.4. Member of the KwaZulu-Natal Society of Advocates (2009 – present date);
- 1.3.5. Pupillage (2008);
- 1.3.6. Admission as an Advocate.
- 1.3.7. Road Accident Fund Claims handler (2002 - 2007);
- 1.3.8. Road Accident Fund Senior Claims handler (2000 - 2002);
- 1.3.9. Admission as an attorney (09 December 1999);
- 1.3.10. Articles of clerkship (April 1998 – December 1999);
- 1.3.11. Practical legal training (1998).
- 1.3.12. Chairperson at an internal appeal of a disciplinary inquiry for a KwaZulu-Natal all boys private school (July 2019);
- 1.3.13. Oral examiner for the National Bar Examinations for KwaZulu-Natal, Bhisho and Transkei (2018 – 2019);
- 1.3.14. Member of the Pupilage subcommittee of the Society of Advocates of KwaZulu-Natal (2018 – 2019);
- 1.3.15. Chairperson of the Advocate Magazine subcommittee of the Society of KwaZulu (2016 – present date);
- 1.3.16. Pupil mentor to a pupil advocate;
- 1.3.17. Member of the Bar Council of the Society of Advocates of KwaZulu-Natal (2011 – 2013).
- 1.4. The candidate has the following non-legal experience:

- 1.4.1. Non-executive board member of Sinosiza Siyaphambili (NGO) (2014 – present date);
- 1.4.2. Non-executive board member and Deputy-Chairperson of Dube Tradeport Corporation (2012 – 2017);
- 1.4.3. Trustee of the Adams College of Education Trust (2010 – present date);
- 1.4.4. Member of the Law Students Council, University of Natal, Durban (1997);
- 1.4.5. Member of One Life Church

2. Whether the candidate is a fit and proper person

- 2.1. The candidate was admitted as an Attorney of the High Court of South Africa on 09 December 1999;
- 2.2. She became a member of the Society of Advocates, KwaZulu Natal in 2009;
- 2.3. The KwaZulu-Natal Law Society has issued a letter of good standing for the candidate dated 26 November 2020;
- 2.4. No adverse comments have been received regarding the candidate;
- 2.5. There is no reason to doubt that that the candidate is a fit and proper person.

3. Whether appointment would help reflect the racial and gender composition of South Africa

- 3.1. The candidate is a black female;

3.2. Appointment of the candidate would transform the composition of the bench from both a racial and gender perspective.

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

4.1. The candidate has a wide range of practical experience, varying from civil and criminal law, medical negligence, environmental law, labour law, constitutional law and customary law.

4.2. The candidate has noted that her primary area of interest is constitutional law.

4.3. In the nomination letter by the two Senior Counsel, they praise the candidate's legal acumen.

4.4. The candidate has listed three judgments in respect of matters she heard as an Acting Judge which demonstrate her knowledge of the law, one of which dealt with a constitutional issue.

4.5. The judgement delivered by the candidate was taken on appeal and went as far as the Constitutional Court. The Constitutional Court confirmed the candidate's views on equality; however, it did not confirm the Order as it held that the candidate should have interpreted the section constitutionally, rather than striking down the section.

4.6. The candidate listed the following significant cases that she has appeared in which display her good knowledge of the law, including constitutional law:

4.6.1. *Savoi and Others v NDPP* [2013] 3 All SA 548 (KZNP); *Savoi and Others v NDPP and Another* 2014 (5) BCLR 606 (CC) – The candidate successfully opposed an application to declare

a provision in the Prevention of Organised Crimes Act unconstitutional.

4.6.2. *Ramuhovhi and Others v President of the Republic and Others* 2018 (2) SA 1 (CC) – The case dealt with the validity of certain sections of the Customary Marriages Act;

4.6.3. *SB Zulu and Others v STM Zulu and Another* 9485/11 (Pietermaritzburg) – This was an urgent application deal with rights over a deceased person’s body.

5. **The candidate’s commitment to the values of the Constitution**

5.1. A number of the candidate’s matters deal with constitutional issues and she has appeared in the Constitutional Court.

5.2. In her judgment in *Independent Institute of Education (Pty) Ltd v The KZN Law Society* (attached to the application), she dealt with the constitutional issue of inequality. The two Senior Counsels commend the candidate for her contribution to the jurisprudence through this matter.

5.3. The Senior Counsels also state that the candidate is committed to the Rule of Law and the Bill of Rights;

5.4. None of the candidate’s judgments or any publicly available information which suggests that the candidate is not committed to the values of the Constitution.

6. Whether any judgments have been overturned on appeal

- 6.1. The candidate's judgment in Independent Institute of Education (Pty) Ltd v The KZN Law Society was taken on appeal (see 5.5 above).
- 6.2. On appeal, the Constitutional Court confirmed the candidate's views on equality; however, it did not confirm the Order as it held that the candidate should have interpreted the section constitutionally, rather than striking down the section.

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

- 7.1. The candidate has a wide range of practical experience in a wide and diverse range of matters.
- 7.2. Her professional experience spans over 21 years in the legal profession.
- 7.3. The candidate frequently appears in court and has done so in various courts.
- 7.4. The candidate has served as an Acting Judge in two sessions.

8. The candidate's linguistic and communication skills

- 8.1. The candidate has indicated that she proficient in IsiZulu and English, and she is able to read Afrikaans.
- 8.2. From the candidate's judgments, she demonstrates good English language skills, writing in plain language, making them easy to read.
- 8.3. No adverse comments have been raised about the candidate's communication skills.

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

- 9.1. There is no adverse indication from the judgements analysed that the candidate has failed to deliver any judgment within a few months.
- 9.2. The candidate has no reserved judgments that are still outstanding.

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

- 10.1. No adverse comments have been received.
- 10.2. Based on the candidate's performance as an acting judge, she appears to carry out her role with the fairness and impartiality it requires. In particular, her judgment in *Independent Institute of Education (Pty) Ltd v The KZN Law Society*, she correctly decided that there was no conceivable basis for unequal treatment in similarly situated students of the law.
- 10.3. The candidate also notes her judgment in a matter regarding a widow in a customary marriage against the "civil" spouse.

11. **The candidate's independent mindedness**

- 11.1. An analysis of the candidate's judgments show that she has an independent mind.
- 11.2. No adverse comments have been received.

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

- 12.1. The candidate indicated that she frequently appears in court which indicates that she is experienced in court proceedings.

- 12.2. She has sat as an Acting Judge on two occasions at the KwaZulu-Natal Provincial Division. This demonstrates that she has the knowledge and ability to conduct court proceedings (see 2.1 above).
- 12.3. There is nothing to indicate that the candidate is unable to conduct court proceedings efficiently.
- 12.4. No adverse comments have been received.

13. The candidate's administrative ability

- 13.1. The recommending Senior Counsels note the candidate's willingness to put in long hours to complete her work to ensure that the case presented in court is one that can withstand rigorous scrutiny.
- 13.2. The candidate has been a pupil mentor to pupil advocates with the Society of Advocate of KwaZulu-Natal (see 2.16 above) which requires administrative competence to successfully execute.
- 13.3. 14.2. No adverse comments have been received regarding the candidate's administrative ability.

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

- 14.1. The candidate's application is supported by a letter of good standing by the Society of Advocates of KwaZulu-Natal (see 3.4 above).
- 14.2. The recommending Senior Counsels state that they have the highest regard for the candidate as she goes about her practice with a profound sense of ethic, decency and courtesy to all, and that they admire her work ethic. They also comment that she is a highly respected advocate.
- 14.3. No adverse comments have been received.

15. **The candidate's judicial temperament**

15.1. The candidate exhibited a good judicial temperament in her acting appointments where she has exercised the necessary compassion, sensitivity and commitment to equality in heard matters, for example:

15.1.1. *Independent Institute of Education (Pty) Ltd v The KZN Law Society* (see 6.2 above);

15.2. As an Acting Judge, the recommending Senior Counsels describe the candidate as having a composed court demeanour and as someone who treats all those who have appeared before her with respect, dignity and courtesy. Her colleagues have enjoyed appearing before her.

15.3. The recommending Senior Counsels cite her personality and temperament as calm, polite and with quiet dignity which are qualities that make her suitable for judicial office.

15.4. 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 displayed a service to the bar, her colleagues and the general community.

16.2. The candidate has been of service to our profession, particularly the bar, in various roles at the bar:

16.2.1. She has been a pupil mentored to a pupil advocate (see 2.16 above);

16.2.2. Member of the Pupilage subcommittee of the Society of Advocates of KwaZulu-Natal (see 2.16 above).

16.3. The candidate has been of service to her colleagues by:

16.3.1. Intervening with the office of the State Attorney and assisting junior counsels that were not getting briefed and those whose fees were taking a long time to be settled;

16.3.2. Assisting junior members by sharing chambers with them at no cost, giving them exposure to attorneys and assisting them in briefs.

17. **The candidate's potential**

17.1. The candidate has the potential to bring 20 years of experience in various legal roles to the bench (see 2.1 – 2.11 above);

17.2. The Senior counsels state that the candidate will be a stellar addition to the KwaZulu-Natal bench, bringing a solid legal mind to continue the development of our law and to guide the unfolding of our democracy.

17.3. She will transform the bench from both a racial and gender perspective.

17.4. The candidate has the potential further grow as a lawyer and become a good judge if she is elevated to the bench.

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

18.1. Appointment of the candidate would send a message that years of service to legal profession is valued.

- 18.2. Her appointment will make it publicly clear and encourage other black female legal professionals that hard work and service to the profession will lead to success.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED**Reported decisions**

Savoi and Others v NDPP [2013] 3 All SA 548 (KZNP);

Savoi and Others v NDPP and Another 2014 (5) BCLR 606 (CC);

Ramuhovhi and Others v President of the Republic and Others 2018 (2) SA 1 (CC).

Unreported decisions

SB Zulu and Others v STM Zulu and Another 9485/11 (Pietermaritzburg)

Judgments upheld on appeal

None

Judgments overturned on appeal

None