

APPLICANT: MS SANDISWA (MICKEY) MFENYANA

**COURT FOR WHICH CANDIDATE APPLIES: EASTERN CAPE
DIVISION OF THE HIGH COURT, GRAHAMSTOWN**

1 The candidate's appropriate qualifications

1.1 B.Juris (University of KwaZulu Natal);

1.2 LLB (University of KwaZulu Natal);

1.3 LLM (University of Pretoria);

1.4 Various certificates (University of South Africa, University of Pretoria and University of Witwatersrand).

2 Whether the candidate is a fit and proper person

2.1 The candidate is a fit and proper person to be appointed as a judge of the High Court of South Africa.

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's appointment would help to reflect the racial and gender composition of South Africa.

3.3 The Grahamstown High Court will only have one woman judge after the retirement of the Honourable Justice Roberson and accordingly the candidate's appointment will contribute positively to the racial and gender composition of South Africa in the Grahamstown division.

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

4.1 The candidate has a broad range of knowledge of law and particularly in civil litigation.

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

5.1 The candidate's commitment to the constitution is reflected in her judgments and particular the judgement of Makana Unity League v Makana Municipality.

6 Whether any judgments have been overturned on appeal

6.1 One of the candidate's judgments has been overturned by the Supreme Court of Appeal.

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

7.1 The candidate has extensive professional experience and has held diverse positions in law, as set out below.

7.2 The candidate was the Legal Officer at the Human Rights Commission and Law Society of Northern Provinces;

7.3 The candidate was the Compliance/Review Officer of the National Intelligence Agency;

7.4 The candidate was the Senior Investigator at the National Intelligence Agency (Internal Security).

7.5 The candidate is the Director at the law firm, Mfenyana Attorneys.

7.6 The candidate has been a Research Fellow at the Centre for the Study of Violence and Reconciliation.

7.7 The candidate has been a member and chairperson of the appeal board on Social Development and Gauteng Provincial Legislature.

8 The candidate's linguistic and communication skills

8.1 The candidate's linguistic and communication skills are excellent.

8.2 The candidate's judgments are clear, concise and reflect a thorough knowledge of the pleadings and evidence and she appropriately applies the applicable legal principles.

9 The candidate's ability to produce judgments promptly

9.1 The candidate's judgments reflect that they are delivered within four months of reserving judgment.

10 The candidate's fairness and impartiality

10.1 The candidate is fair, objective and impartial to all litigants and legal representatives.

11 The candidate's independent mindedness

11.1 The candidate is independent and has earned the respect of legal practitioners who have appeared before her.

12 The candidate's ability to conduct court proceedings

12.1 The candidate's ability to conduct court proceedings has been commended. The candidate's court starts promptly and she is in

complete control over proceedings even when senior legal practitioners are involved.

- 12.2 The candidate shows respect and courtesy to all legal practitioners who appear before her.

13 The candidate's administrative ability

- 13.1 The candidate has evidenced excellent administrative ability as evidenced in her timeous production of judgments.

14 The candidate's reputation for integrity and ethical behaviour

- 14.1 The candidate's reputation for integrity, ethics, independence and objectivity is untarnished.

15 The candidate's judicial temperament

- 15.1 The candidate's judicial temperament is excellent, and has been positively commended by those who have appeared before her.

- 15.2 The candidate has evidenced sound legal instinct, good research skills and an excellent work ethic.

- 15.3 The candidate has also shown great humility.

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 commitment is reflected in the diverse positions which she has held and is also reflected in the judgments which she has handed down.

17 The candidate's potential

17.1 The candidate has excellent potential.

17.2 The candidate will be 49 years of age when appointed and be able to remain a judge for a period of 20 years. This will be of significant value to the Grahamstown bench as three of the most senior judges have retired or been elevated in the last 18 months.

17.3 The candidate has significant potential to make an invaluable, meaningful contribution to the Grahamstown Bench.

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

18.1 The appointment of the candidate will send the message to the community at large that an independent minded judicial officer, who is a black woman, has been appointed based on merit and can greatly contribute to the administration of justice.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Centre For Child Law and Others V Minister of Basic Education And others 2020
(3) SA 141 (ECG)

S v Toni 2020 (1) SACR 369 (ECG)

Unreported Decisions

In addition to the judgments submitted by the candidate the following judgments have been reviewed:

Mlatsha v Msweli 2020 JDR 0051 (ECB) (on appeal bench)

Kulati v Minister of Police 2020 JDR 0217 (ECP)

Moerane v Buffalo City Metropolitan Municipality 2020 JDR 0313 (ECG) (on appeal bench)

Member of the Executive Council for Health, Eastern Cape Province v XM 2020 JDR 0463 (ECB)

Zitumane v Mtshayeni 2020 JDR 0479 (ECB)

Van Rensburg v Van Rensburg 2020 JDR 0481 (ECG)

Veyitshile v MEC for Health, EC Province 2020 JDR 0521 (ECB)

Wardle v The Minister of Police 2019 JDR 0447 (ECP) (on Appeal Bench)

Nqinileyo v Minister of Police 2019 JDR 0611 (ECB)

Ntlangeni v Minister of Police 2019 JDR 0612 (ECP)

Tetani v Buffalo City Metropolitan Municipality 2019 JDR 2284 (ECG)

Judgments upheld on appeal:

S v Zide (appeal dismissed S v Zide 2018 JDR 0413 (ECM))

Judgments overturned on appeal:

DL obo AL v MEC Health, Eastern Cape (appeal upheld Member of the Executive Council for Health, Eastern Cape v DL obo AL (117/2020) [2021] ZASCA 68 (3 June 2021)