

APPLICANT: (LATE) JUDGE BHEKISISA JEROME MNGUNI

**COURT FOR WHICH CANDIDATE APPLIES: COMPETITION
APPEAL COURT – JUDGE PRESIDENT**

1. The candidate's appropriate qualifications

1.1 the candidate holds the following qualifications:

1.1.1 B Iuris (1987) - University of Zululand, KwaZulu-Natal;

1.1.2 Bachelor of Laws Degree (1991) - University of Zululand,
KwaZulu-Natal.

1.1.3 Certificate in Legislative Drafting (2005) - University of
Johannesburg;

1.2 the candidate is a Judge in the KwaZulu-Natal Division of the
High Court since 2009 and the Competition Appeal Court since
1 June 2018;

1.3 the candidate is appropriately qualified.

1.4 The candidate's career path:

LEGAL:

1.4.1 1990 - 1991, Legal Advisor, University of Zululand Centre
for Legal Services;

1.4.2 1992 - 1994, Article Clerk, Msimang, Rutsch & Company;

- 1.4.3 1994 - 1995, Professional Assistant, Msimang, Rutsch & Company;
- 1.4.4 1995 - 1999, Professional Assistant, Shepstone & Wylie Tomlinson;
- 1.4.5 1999 - 2004, Director, Shepstone & Wylie Tomlinson;
- 1.4.6 2004 - 2008, Director, Tomlinson Mnguni James;
- 1.4.7 April, May - September 2007, Department of Justice and Constitutional Development, Acting Judge: High Court of South Africa, KwaZulu-Natal;
- 1.4.8 August, October - November 2008, Department of Justice and Constitutional Development, Acting Judge: High Court of South Africa, KwaZulu-Natal;
- 1.4.9 2009 – to date, Department of Justice and Constitutional Development - Judge: High Court of South Africa, KwaZulu-Natal;
- 1.4.10 24 January 2016 – 30 April 2016, Office of the Chief Justice - Acting Deputy Judge President: High Court of South Africa, KZN Division;
- 1.4.11 June 2017 - April 2018, Office of the Chief Justice - Acting Judge: Competition Appeal Court;
- 1.4.12 1 June 2018 – to date, Office of the Chief Justice - Judge: Competition Appeal Court;

- 1.4.13 18 January 2021 - 30 June 2021, Office of the Chief Justice;
Acting Judge President Competition Appeal Court.

NON – LEGAL

- 1.4.14 1988 - 1989, Nongoma Hardware, Assistant Manager;
- 1.4.15 1995 - 2008, KwaZulu-Natal Law Society, Member;
- 1.4.16 1995 - 2008 Black Lawyers Association, Member;
- 1.4.17 2014 - to date, Roman Catholic Church - St Vincent De Paul
Society, Treasurer;
- 1.4.18 2017 - 2019, Roman Catholic Church - Parish Pastoral
Council PPC, Chairperson;
- 1.4.19 January 2020 – Sajej, Conducted training for aspirant judges;
- 1.4.20 2010 - 2012 - High Court of South Africa, KwaZulu-Natal
Division, Case Flow Management Committee Member;
- 1.4.21 2010 - 2012, High Court of South Africa, KwaZulu-Natal
Division Human Resources Committee Member;
- 1.4.22 2010 - 2012 High Court of South Africa, KwaZulu-Natal
Division, Appointment of Acting Judges.

2. Whether the candidate is a fit and proper person

- 2.1 The candidate came from humble beginnings. In the early years
of his life he worked as an assistant manager at a hardware store

in Nongoma. He went on to become a director in two reputable law firms in KwaZulu-Natal before being appointed to the Bench in 2009. He acted as the Judge President of the Competition Appeal Court. He was a member of the Black Lawyers association.

2.2 The candidate recently gave a judgment in a highly publicised legal dispute, and despite the media hype the candidate was able to focus fully on the law. A well-reasoned judgment was handed down timeously without delay.

2.3 The candidate's judgments show a commitment to the core values and principles of the South African Constitution and to the interests of justice. An analysis of the candidate's judgments indicates that he performs his judicial role with fairness and impartiality.

2.4 No adverse comments have been received.

2.5 The candidate is 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 black man.

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

3.3 Moreover, the candidate's appointment as the Judge President would enhance the racial demographics of the Competition Appeal Court.

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

4.1 The candidate has eight reported judgments, four judgments were unsuccessfully appealed and one was successfully appealed.

4.2 The judgments demonstrate a wide-ranging legal knowledge, including knowledge of competition law, company law, administrative law and constitutional law, and a commitment to constitutional values.

4.3 The candidate listed the following reported judgments as among his most significant judgments:

4.3.1 Competition Appeal Court judgments

4.3.1.1 *Hosken Consolidated Investments Ltd and Another v Competition Commission* (2017) ZACAC 5; 2018 (4) SA 248 (CAC); (2017) 2 CPLR 519 (CAC);

4.3.1.2 *Geldenhuis and Others v South African Batteries Importers' Association and others* (2018) 1 CPLR 17 (CAC);

- 4.3.1.3 *Siyakhuphuka Investment Holdings (Pty) Ltd v Transnet Soc and another* (2018) ZACAC 4; (2018) 1 CPLR 88 (CAC);
- 4.3.1.4 *Competition Commission v Primedia (Pty) Ltd t/a Ster-Kinekor Theatres and another* (2019) ZACAC 3; (2019) 1 CPLR 165 (CAC);
- 4.3.1.5 *South African Commercial, Catering and Allied Workers Union and others v Massmart Holdings Ltd and Another* (2020) ZACAC 2; 2020 2 CPLR (CAC)564 (CAC); (2020) 10 BLLR 1041 (CAC); (2020) 41 ILJ 2403 (CAC).
- 4.3.2 KwaZulu-Natal Division
- 4.3.2.1 *Mshengu and Others v Msunduzi Local Municipality and others* (2019) ZAKZPHC 52; (2019) 4 All SA 469 (KZP);
- 4.3.2.2 *Business Partners Limited v World Focus 754 CC 2015* (5) SA 525 (KZD); (2015) 4 All SA 294 (KZD);
- 4.3.2.3 *Distell Limited v KZN Wines and Spirits CC* (2016) JOL 36835 (KZD);
- 4.3.2.4 *Victoria Country Club Estate Master Homeowners Association NPC v Goosen* (2020) ZAKZPHC 46; 2020 JDR 1793 (KZP);

4.3.2.5 *Owners of the NYK Isabel and another v Northern Endeavour Shipping Ltd;*

4.3.2.6 *Shembe v Shembe* (2018) ZAKZPHC 45.

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 his judgments.

6. **Whether any judgments have been overturned on appeal**

6.1 The candidate lists four judgments which were unsuccessfully appealed.

6.1.1 *Hosken Consolidated Investments Ltd and Another v Competition Commission* (2017) ZACAC 5; 2018 (4) SA 248 (CAC); (2017) 2 CPLR 519 (CAC);

6.1.2 *Owners of the NYK Isabel and another v Northern Endeavour Shipping Ltd;*

6.1.3 *Shembe v Shembe* (2018) ZAKZPHC 45;

6.1.4 *Sembcorp Siza Water (Proprietary) Ltd v Umgeni Water and others v Mchunu;*

6.2 The following judgment was successfully appealed;

6.2.1 *Giant Concert CC v Minister for Local Government, Housing and Traditional Affairs for the Province of KwaZulu-Natal and others.*

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

7.1 The candidate's practical experience is substantial, spanning 15 years as an attorney and more than 10 years on the Bench. The candidate has a substantial number of reported judgments to his name, which is a considerable achievement.

8. The candidate's linguistic and communication skills

8.1 From the candidate's judgments it is clear that he has excellent English language skills. The candidate uses plain language in his judgments, making them easily understandable.

8.2 The candidate's judgments are clear and can be easily understood by a wide variety of readers, even in circumstances where he is communicating complex concepts.

8.3 His proficiency in other languages is unknown.

8.4 No adverse comments have been raised about the candidate's communication skills.

9. The candidate's ability to produce judgments promptly

9.1 The candidate appears to produce judgement within a reasonable time. At the time of the application only two judgments were outstanding having been reported by the candidate himself.

10. The candidate's fairness and impartiality

10.1 No adverse comments have been received.

10.2 The analysis of the candidate's judgments set out above indicates that the candidate carries out his role with the fairness and impartiality it requires.

11. The candidate's independent mindedness

11.1 No adverse comments have been received.

11.2 The analysis of the candidate's judgments set out above indicates that the candidate has an independent mind.

12. The candidate's ability to conduct court proceedings

12.1 There is nothing to indicate that the candidate is unable to conduct court proceedings efficiently. No adverse comments have been received.

12.2 Having been a Judge since 2009, the candidate can be expected to have developed the skills to conduct court proceedings.

12.3 Members of the Bar have reported that the candidate handles his court well and with proper courtesy to both the legal practitioners and the litigants appearing before him. The experience of the members of the KZN Bar is that the candidate is authoritative, fair and practical in a court setting.

12.4 The candidate writes judgments which are clear and coherent, and where appealed, his judgments are seldom overturned.

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 Favourable reports have been received of the candidate's conduct of himself on the bench.

15.2 The Candidate is a well-respected Judge in the Division in which he serves.

15.3 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 is a treasurer in the Roman Catholic Church and a chairperson of the Parish Pastoral Council. This shows that the candidate is involved in the community where he lives, and he is actively involved in matters of interest to his community.

16.2 The candidate was a member of the Black Lawyers Association.

16.3 The candidate was involved in the training of aspirant judges. His involvement in the training demonstrates his ability and

willingness to share his knowledge with younger and newer judges some of whom are women.

17. The candidate's potential

17.1 The candidate would, if appointed, strengthen the Competition Appeal Court not only with the breadth of his legal knowledge and experience, but also with his commitment to constitutional values.

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

18.1 The candidate's appointment would send a message to the community that Judges who show commitment to the values of the Constitution and to substantive justice are valued.

18.2 The candidate's ability as a judge is admirable considering his humble beginnings. His commitment to the values of the Constitution, his breadth and depth of legal knowledge in Competition Law, which is considered a specialised area of law, is commendable. He will be an asset to the Competition Appeal Court if he is appointed.