

APPLICANT: MS LINDIWE RUSI

**COURT FOR WHICH CANDIDATE APPLIES: EASTERN CAPE
DIVISION, MTHATHA**

1. The candidate's appropriate qualifications

1.1. B Juris, May 1997, Walter Sisulu University (University of the Transkei);

1.2. LLB, May 1999, Walter Sisulu University (University of the Transkei);

1.3. LLM, May 2005, UNISA.

2. Whether the candidate is a fit and proper person

2.1. The candidate holds a certificate of good standing from the Magistrate's Commission.

2.2. There are no disciplinary charges pending against the candidate.

2.3. The candidate does not have criminal charges against her.

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

3.1. Yes, the candidate is a black female and her appointment will assist the racial and gender composition of the bench.

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

4.1. The candidate appears to have extensive experience and knowledge of criminal law matters.

4.2. The candidate's litigation experience did not include administrative- or constitutional law.

4.3. The candidate's experience in civil matters appears limited.

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

5.1. As lecturer between 2002 – 2006 and as Legal Aid attorney between 2006 – 2009, the candidate was actively involved in community outreach programs wherein they held legal advice sessions and presentations, covering areas such as family law, domestic violence, children's law, employment law, customary law, divorce law, maintenance law, the criminal justice system and constitutional matters.

5.2. The outreach programs were held once a month and the candidate assisted to uphold the values of the Constitution by providing legal access to communities.

6. Whether any judgments have been overturned on appeal

6.1. Judgments written by the candidate as an acting judge have not been overturned on appeal.

6.2. The candidate disclosed one judgment in which leave to appeal is pending.

6.3. There are no details available as to judgments written as a magistrate which may have been overturned on appeal.

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

7.1. The candidate was a Legal Aid attorney for three years.

7.2. The candidate served as a Magistrate for eleven years, at district court and later at regional court level.

7.3. The candidate has served as an acting judge during 2021, for a period of two months (13 April 2021 – 15 May 2021; 18 May 2021 – 18 June 2021) and was invited to act from 19 July 2021 – 18 September 2021 (the third court term). Note that the candidate in her curriculum vitae states that she acted for two terms, which ought not to be confused with two court terms.

8. The candidate's linguistic and communication skills

8.1. The reported judgments are adequately reasoned and written and the candidate demonstrated adequate linguistic and communication skills.

9. The candidate's ability to produce judgments promptly

9.1. The candidate provided a list with eight outstanding judgments during the two months' of holding the acting position, the longest of which has been outstanding since 6 May 2021. This delay falls foul of the three month-rule.

9.2. The candidate attributes the delay to her preferring to do her own typewriting.

9.3. The delay is possibly further attributed to the candidate's lack of relevant experience in civil matters, as all outstanding judgments relates to civil disputes.

9.4. The candidate has produced five reported judgments (on SAFLII) which all appear to have been delivered within reasonable time from the hearing thereof.

10. The candidate's fairness and impartiality

10.1. Appears to be appropriate and no complaints of bias received.

11. The candidate's independent mindedness

11.1. The candidate is committed to appropriately researched and reasoned judgments.

12. The candidate's ability to conduct court proceedings

12.1. Ample experience in the lower courts should give the candidate a good appreciation of appropriate court conduct. The candidate's period of acting on the Bench is however limited.

13. The candidate's administrative ability

13.1. The candidate's administrative ability is likely hampered by her reluctance to delegate administrative functions, such as typing. Also, in her curriculum vitae there is a chronological gap between 2018 and 2021. It appears that the candidate is still employed as a magistrate, however her work experience is only detailed until 2018.

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

14.1. No formal complaints were received regarding the candidate's integrity and ethical behaviour.

15. The candidate's judicial temperament

- 15.1. The candidate is committed to fairness to the parties, both represented and unrepresented, and exhibits an open-minded judicial temperament.

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 to the community outreach programmes is commendable.

17. The candidate's potential

- 17.1. The candidate is relatively young and she has potential for growth and meaningful contribution to the judiciary. She has ample experience as a criminal district court magistrate but lacks relevant civil experience to be elevated at this stage.

- 17.2. The candidate would benefit from more experience in civil matters to hone her skills.

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

- 18.1. The candidate's appointment would advance race and gender transformation in the Eastern Cape.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

S v Madolwana (CC10/2021) [2021] ZAECGHC 62 (8 July 2021)

OG v ZG (2059/21) [2021] ZAECMHC 22 (10 June 2021)

Booi v Wesley Pretorius & Associates (1212/2020) [2021] ZAECMHC 19 (29 June 2021)

Yaphi v S (CA&R: 176/2020) [2021] ZAECGHC 60 (1 June 2021)

Mxotwa v The Municipal Manager, King Sabata Dalindyebo Local Municipality and Another (2193/2021) [2021] ZAECMHC 20 (27 May 2021)

Unreported decision

None available.

Judgments upheld on appeal:

None available.

Judgments overturned on appeal:

None available.