

JSC INTERVIEW ROUND: APRIL 2022

CANDIDATE: SANDISWA (MICKEY) MFENYANA

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

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 in Legal Aspects of e-commerce, Energy Law and Air, Space and Telecommunications (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 and, in particular, to the Eastern Cape Division.

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

- 3.1. There are currently 8 full time judges on the Eastern Cape Local Division, Gqeberha bench, comprising (as far as could be ascertained):

- 3.1.1. 1 black woman (African);
- 3.1.2. 2 black men (African);
- 3.1.3. 2 white women; and
- 3.1.4. 3 white men.

3.2. The candidate is a black woman.

4. The candidate's commitment to the values of the constitution:

- 4.1. The candidate's commitment to the constitution is reflected in her judgments and particular the judgment of *Makana Unity League v Makana Municipality*.
- 4.2. Furthermore, the candidate's commitment is reflected in the positions she has previously held, including at the Human Rights Commission and Centre for the Study of Violence and Reconciliation.
- 4.3. In addition, she has held the position of secretary in the South African Woman Lawyers Association and is a member of the Appeal Board for Social Development and Transport Appeals Tribunal.

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

- 5.1. The candidate has a broad range of knowledge of law and particularly in civil litigation. Her broad range of knowledge and experience is reflected in her judgments.

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 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.
- 7.8. The candidate is a member of the Transport Appeals Tribunal.
- 7.9. The candidate has been a member and secretary of the South African Women Lawyers Association.

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 and concise and reflect a thorough knowledge of the pleadings and evidence and appropriately apply the correct legal principles.

8.3. The candidate's judgments are written in clear and concise language and address the issues of fact and principles of law in a logical and well-reasoned manner which makes the judgments accessible and understandable by both practitioners and lay persons.

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

9.1. The candidate's judgments reflect that they are delivered promptly and 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.

10.2. Legal practitioners who appear before her are confident that their respective clients will receive a fair hearing.

11. The candidate's independent mindedness:

11.1. The candidate is independent and has earned the respect and praise of all the 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 timeously 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.

12.3. All comments received from counsel who have appeared before her regarding the candidate's demeanour in court have been positive.

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.

14.2. The candidate is well-known for her integrity and ethical behaviour.

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.

15.4. Legal practitioners' comments received reveal great respect for the candidate.

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 Gqeberha division due to the retirement of two very senior judges and, in the broader context, to the Eastern Cape Division where numerous judges have retired and been elevated in the last few years.

17.3. The candidate's potential to make a meaningful contribution to the Gqeberha division and Eastern Cape division is invaluable.

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.

- 18.2. The candidate has proved to be of exceptional ability during her periods of acting in the Eastern Cape Division and her appointment is universally recommended.

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))