

JSC INTERVIEW ROUND: APRIL 2022

CANDIDATE: ADVOCATE ROBIN GEORGE MOSSOP SC

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

1. The candidate's tertiary qualifications, professional admissions and honours:

1.1. The candidate holds the following qualifications:

1.1.1. Bachelor of Arts Degree (1979 – 1981) – University of Natal, Durban, KwaZulu-Natal; and

1.1.2. Bachelor of Laws Degree (1982 – 1984) – University of Natal, Durban, KwaZulu-Natal.

1.2. The candidate is appropriately qualified.

2. The candidate's integrity and ethics:

2.1. The candidate is a person of integrity with a reputation for ethical behaviour.

3. Whether the candidate's appointment would help to achieve an appropriate racial and gender composition on the bench:

3.1. There are currently 26 full time judges on the KwaZulu-Natal bench comprising (as far as could be ascertained):

- 3.1.1. 10 black women (5 African, 4 Indian, 1 Coloured);
- 3.1.2. 10 black men (4 African, 3 Indian, 3 Coloured);
- 3.1.3. 1 white woman; and
- 3.1.4. 5 white men.

3.2. The candidate is a white man.

4. Career path:

The candidate has the following legal experience:

- 4.1. acting judge of the KZN Provincial Division, Pietermaritzburg:
 - 4.1.1. 22 February– 26 March 2021;
 - 4.1.2. 18 January 2021 – 19 February 2021;
- 4.2. acting judge of the KZN Local Division, Durban over the periods –
 - 4.2.1. 5 October– 6 November 2020;
 - 4.2.2. 2 – 27 March 2020;
 - 4.2.3. 7 October– 8 November 2019.
- 4.3. Single day acting judge of the KZN Provincial Division, Pietermaritzburg hearing criminal appeals (30 June 2016);
- 4.4. senior counsel (12 December 2015 – present date);
- 4.5. Small Claims Court Commissioner (2002 – present date);

- 4.6. junior counsel (1 July 1996 - 12 December 2015)
- 4.7. member of the KwaZulu-Natal Society of Advocates (1996 – present date);
- 4.8. criminal trial assessor (June 1996);
- 4.9. pupillage (January – May 1996);
- 4.10. admission as an advocate (11 December 1995)
- 4.11. criminal trial assessor (November – December 1995)
- 4.12. district criminal court magistrate (1991 – 1995);
- 4.13. regional court prosecutor (1990 – 1991);
- 4.14. district court prosecutor (1990);
- 4.15. corporate legal advisor (1989 – 1990);
- 4.16. professional assistant (1989);
- 4.17. admission as an attorney (28 August 1989)
- 4.18. member of the Natal Law Society (1987 – 1990);
- 4.19. Articles of clerkship (1987 – 1988);
- 4.20. national military service (1985 – 1986).

The candidate has the following non-legal experience:

- 4.21. administrative head of Umhlanga Chambers;

- 4.22. member of the Umhlanga Chambers Executive Committee;
- 4.23. member of the LPC's Disciplinary Panel for advocates;
- 4.24. assisting the Society of Advocates with specific projects;
- 4.25. convenor of the Complaints' Committee of the Society of Advocates of KwaZulu-Natal (2017 – present date);
- 4.26. pupil advocate mentor to seven pupils; and
- 4.27. member and head of magistrates' social club, Club Four.

5. Fit and proper person:

- 5.1. The candidate was admitted as an Attorney of the High Court of South Africa on 28 August 1989.
- 5.2. He was a member of the Natal Law Society (1987 – 1990).
- 5.3. The candidate was admitted as an Advocate of the High Court of South Africa on 11 December 1995.
- 5.4. He became a member of the Society of Advocates, KwaZulu Natal in 1996.
- 5.5. The candidate attained Senior Counsel status on 12 December 2015.
- 5.6. The KwaZulu-Natal Law Society has issued a letter of good standing for the candidate dated 4 November 2020.
- 5.7. No adverse comments have been received regarding the candidate.

5.8. There is no reason to doubt that that the candidate is a fit and proper person.

6. **Whether appointment would help reflect the racial and gender composition of South Africa:**

6.1. The candidate is a white man.

6.2. Appointment of the candidate would not transform the composition of the bench from a racial or gender perspective.

7. **Knowledge of the law, including constitutional law:**

7.1. The candidate has a comprehensive and substantial range of practical experience over his long career, with a diverse practice of criminal and civil matters, and has appeared in a wide variety of courts and divisions.

7.2. In the nomination letter by a senior counsel at the KZN Bar, the candidate's knowledge of the law and implementation of constitutional imperatives is commended. The senior counsel also mentions that the candidate has a variety of judgments reported in the law reports to his credit as counsel and delivered as an acting judge, and further praises the candidate's high level of scholarship that the candidate has demonstrated in many aspects of his legal practice.

7.3. In nominating the candidate for an award, ProBono.Org positively commented on the candidate's valuable institutional knowledge.

7.4. The candidate has listed three judgments in respect of matters he heard as an acting judge and in which he displays a good knowledge of the law.

- 7.5. None of the candidate's judgments has been taken on appeal.
- 7.6. The candidate listed the following significant cases in which he has appeared which display his wide-ranging legal practice, including constitutional law:
- 7.6.1. *Ngidi v The State* (SCA) AR 642/200 – The candidate appealed this matter in order to preserve the accused's constitutional right to freedom where he was innocent;
- 7.6.2. *Lombard v Droprop CC and Others* 2010 (5) SA 1 (SCA) – The case dealt with the procedural aspect of the appropriate time when a request for a referral to oral evidence should be made;
- 7.6.3. *Monteagle Consumer Group Limited v Balcomb and Others* (3302/19P) [2019] ZAKZPHC 67 (3 October 2019) – The case involved a consideration of competing principles of the constitutional right to engage in free economic activity and the principle of *pacta sunt servanda* which the candidate successfully balanced in his client's favour;
- 7.6.4. *LDM Consulting v South African Road Agency Society Ltd (SANRAL)* (1490/17) [2017] ZAKZPHC 8 (7 March 2017) and *Natal Zoological Gardens (Pty) Ltd and Others v Ezemvelo KZN Wildlife and Others* (5945/09) [2009] ZAKZPHC 38 (13 August 2009) – The cases deal with interpretation and the candidate knowledgeably applied the intent rule of interpretation.

8. **Commitment to the values of the Constitution:**

- 8.1. Although the candidate has not appeared in the Constitutional Court, he notes that constitutional issues have been raised in some matters in which he has been involved and he has accordingly engaged with constitutional issues at this level.
- 8.2. In the candidate's judgment in *Naidoo and Another v Dent and Others* (attached to the application), the candidate highlights the need to infuse constitutional values, including ubuntu, to the law (para 50), and applies them in his judgment.
- 8.3. The candidate's long service in the Small Claims Court, has been recognised by the then Minister of Justice and Constitutional Development, Mr JT Radebe MP. This service displays his commitment to the constitutional value of access to justice.
- 8.4. In nominating the candidate for an award, ProBono.Org also states that the candidate firmly believes in the constitutional imperatives that enshrines the right of all persons to have access to the courts.
- 8.5. Over the years, the candidate has appeared in *in forma pauperis* matters and acted on a *pro deo* and *pro bono* basis.
- 8.6. Apart from his remunerated appointments as an acting judge, the candidate acted at no cost to the State in order to reduce the backlog of appeals in 2016 (see 3.3 above).

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

9. Judgments by the candidate overturned on appeal:

9.1. None of candidate's judgments has been taken on appeal.

9.2. The candidate notes that in one matter, an application for leave to appeal to the Supreme Court of Appeal was made, but the application was not completed, and appears to have been abandoned.

9.3. The candidate has no judgments that have been overturned on appeal.

10. Extent and breath of professional experience:

10.1. The candidate has a substantial array of practical experience in a wide and diverse range of matters.

10.2. He has legal experience in various roles, including practice as an attorney, prosecutor, magistrate, advocate, commissioner, and acting judge.

10.3. The candidate has appeared in various courts and divisions.

10.4. His professional experience spans over 35 years in the legal profession.

11. Linguistic and communication skills:

11.1. From the candidate's judgments, he demonstrates very good English language skills.

- 11.2. The candidate's judgments are in plain language, making them easy to read.
- 11.3. The candidate does not mention his proficiency in other languages.
- 11.4. No adverse comments have been raised about the candidate's communication skills.

12. Ability to produce judgments promptly:

- 12.1. There is no adverse indication from the judgments analysed that the candidate has failed to deliver any judgment within a few months.
- 12.2. The candidate delivered the judgment in *Naidoo and Another v Dent and Others* in good time. Considering the nature of the matter, circumstances required all the facts and information to be before the court and to reflect in the judgment:

Matter was heard: 08/10/2019

Judgment was delivered: 08/11/2019.

- 12.3. The candidate has no reserved judgments that are still outstanding.
- 12.4. The candidate brought a partly-heard matter to the commission's attention. He explained that he heard the matter in the final week of his acting session in November 2020 and the time allocated for the trial was clearly insufficient; however, knowing that it could not be finalised within the allocated time, he commenced with it in the interest of justice and with the hope of a settlement. The candidate went as far as offering to sit longer hours during the allocated time or to accommodate the

matter in his first scheduled acting appointment the following year, first term of 2021. Due to the unavailability of counsel, the matter was adjourned for a further ten (10) days of evidence, commencing on 16 August 2021.

13. Fairness and impartiality:

- 13.1. No adverse comments have been received.
- 13.2. Based on the candidate's performance as an acting judge, he appears to carry out his role with the fairness and impartiality it requires.
- 13.3. The candidate also notes his well-developed sense of fairness as a significant attribute to the law and pursuit of justice in South Africa.

14. Independent mindedness:

- 14.1. An analysis of the candidate's judgments show that he has an independent mind.
- 14.2. No adverse comments have been received.

15. Ability to conduct court proceedings:

- 15.1. The candidate's competence to conduct court proceedings is displayed by the numerous occasions he has been nominated, offered, requested and promoted into positions of judicial office where he served as:
 - 15.1.1. an acting judge six times in the KwaZulu-Natal local and provincial division (see 2.1 – 2.3 above);
 - 15.1.2. a criminal court trial assessor (see 2.8 above);

- 15.1.3. a commissioner of the small claims court (see 2.5 above);
 - 15.1.4. a district criminal court magistrate (see 2.12 above).
 - 15.2. The candidate's indication that he frequently appears in the court as his practice includes trial work, indicates that he is proficient and experienced in conducting court proceedings.
 - 15.3. His positions as a District and Regional Court prosecutor demonstrate his knowledge of how court proceedings are conducted (see 2.13 – 2.14 above).
 - 15.4. There is nothing to indicate that the candidate is unable to conduct court proceedings efficiently.
 - 15.5. No adverse comments have been received.
16. **Administrative ability:**
- 16.1. The candidate notes that he is the *de facto* administrative head of Umhlanga Chambers (see 2.21 above).
 - 16.2. The candidate has volunteered as an advocacy trainer, lecturer, mentor and oral examiner for pupil advocates with the Society of Advocate of KwaZulu-Natal (see 2.8 – 2.10 above) which requires administrative competence to successfully execute.
 - 16.3. Post-admission as an attorney, the candidate held a position as professional assistant (see 2.16 above), which is a role that involves efficient and effective administration skills.

- 16.4. The candidate stated that he was in charge of, and ran the Magistrates' social club, Club Four (see 2.28 above).
- 16.5. The candidate believes in proper and thorough preparation and notes his habit of going to work early each day and not leaving until the work he has set himself to do is completed.
- 16.6. No adverse comments have been received regarding the candidate's administrative ability.

17. Reputation for integrity and ethical behaviour:

- 17.1. The candidate's application is supported by a letter of good standing by the Society of Advocates of KwaZulu-Natal.
- 17.2. A junior member observed that the candidate commands respect from his colleagues.
- 17.3. No adverse comments have been received.

18. Judicial temperament:

- 18.1. The candidate has exhibited a good judicial temperament in his acting appointments where he has exercised the necessary compassion, sensitivity and open mindedness in matters heard, for example:
 - 18.1.1. In the interest of justice where the matter concerned a minor, he extended his service to assist the minor on an urgent basis;
 - 18.1.2. In the candidate's judgment in *Naidoo and Another v Dent and Others* (attached to the application), he expressly asserts the need for an appropriate measure of compassion (para 49), ubuntu (para

50), empathy to litigants (para 51) and mindfulness (para 57) in dealing with the matter.

18.2. The candidate's judicial temperament of commitment to equality is displayed in his long and ongoing service in the Small Claims Court and has been recognised by the then Minister of Justice and the ProBono.Org (see 6.4 – 6.5 above).

18.3. No unfavourable comments have been received.

19. **Commitment to human rights, and experience with regard to the values and needs of the community:**

19.1. The candidate has displayed a service to the bar, his colleagues and the general community.

19.2. The candidate has been of service to his colleagues particularly, in times of need:

19.2.1. He has represented, advised and acted for numerous advocates free of charge in matters in which they have become involved as litigants;

19.2.2. He has acted free of charge when representing attorneys at disciplinary hearings instituted against them, by their professional governing body;

19.2.3. He has supported his colleagues at a time of bereavement by attending funerals and providing their families with meals so that there is one less burden on the colleagues.

- 19.3. A junior member notes the candidate's passion for assisting newly admitted junior advocates displayed in his acts of:
- 19.3.1. Assisting his former pupil advocate through a 7-month financial difficulty without an expectation of repayment;
 - 19.3.2. Allowing a newly qualified advocate to occupy his chamber in Durban Central rent free for 6 months, paying his group contribution and thereafter, securing a place at the Umhlanga Chambers and giving him a complete set of office equipment.
- 19.4. The candidate has served the needs and shown his commitment to the general community in his service:
- 19.4.1. In participation in the charitable feeding scheme, run by the Denis Hurley Centre, by contributing time, labour and ingredients on a monthly basis to provide a simple meal for ninety people;
 - 19.4.2. In the Small Claims Court for the past 18 years even after being accorded senior counsel status (see 2.5 and 16.4 above) and he has noted a desire to continue rendering this service to the community;
 - 19.4.3. Acting at no cost to the State in order to reduce the backlog of appeals (see 2.3 and 6.7 above);
 - 19.4.4. Assisting a young man to obtain work experience at a firm of attorneys that brief him, mentor him and monitor his progress with his studies;

- 19.4.5. Acting on a *pro bono* basis in bringing an urgent application on behalf of a minor to undergo emergency, life-saving surgery;
- 19.4.6. Sponsoring football boots for junior soccer players from disadvantaged backgrounds.
- 19.5. The candidate has contributed to development of the profession. In 2013, the candidate was awarded a long service certificate by the then Minister of Justice and Constitutional Development (see 6.4 above) which recognises the candidate's noble commitment to the profession and giving back to the community.

20. Candidate's potential:

- 20.1. The candidate has the potential to bring 35 years of demonstrable experience in various legal roles to the bench (see 8.1 – 8.4 above).
- 20.2. The candidate will also bring his positive work ethic to the bench (see 14.5 above).
- 20.3. With the candidate's desire to continue to serve the community, he will likely further grow as a lawyer and become a good judge.

21. Message that the candidate's appointment would send to the community at large:

- 21.1. Appointment of the candidate would send a message that decades of service to the legal profession, your colleagues, the judiciary and the community, is valued.

- 21.2. His appointment will demonstrate the measure of service required of candidates, irrespective of their race, to hold this position and encourage other legal practitioners, wishing to join the judiciary, to be of this measure.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported decisions

Lombard v Droprop CC and Others 2010 (5) SA 1 (SCA)

Monteagle Consumer Group Limited v Balcomb

LDM Consulting v South African Road Agency Society Ltd (SANRAL) (1490/17)
[2017] ZAKZPHC 8 (7 March 2017)

Natal Zoological Gardens (Pty) Ltd and Others v Ezemvelo KZN Wildlife and Others
(5945/09) [2009] ZAKZPHC 38 (13 August 2009)

Unreported decisions

Westmead Carriers CC v Pillay N.O. and Others (KZN-PMB)

Naidoo and Another v Dent and Others (KZN Local – Durban)

Ngidi v The State (SCA) AR 642/200

Judgments upheld on appeal

None

Judgments overturned on appeal

None