

JSC INTERVIEW ROUND: APRIL 2022

CANDIDATE: MS VUYOKAZI PAMELLA NONCEMBU

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

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

1.1 BA Law (1996) University of the Western Cape;

1.2 LLB (2007) University of the Western Cape.

2. The candidate's integrity and ethics:

2.1. No circumstances are known that would suggest that the candidate is not a person of integrity with a reputation for ethical behaviour or is not a fit and proper person for appointment.

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

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 personal commitment to the values of the constitution:

4.1. The candidate's position as Regional Court President, North-West Regional Division and her duties as Head of the Judiciary in the North West Regional Division speaks to her commitment to the values of the Constitution.

4.2. The candidate has also served as a Deputy President of the South African Chapter of the International Association of Women Judges from August 2018 to August 2021 and served as Vice President on the programmes of the SAC-IAWJ Committee. These positions, together with her membership of the Black Lawyers Association for the period 2013 to 2014, appear to confirm that the candidate is an active member of the legal community and a number of legal organisations which commit to the values of the Constitution.

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

5.1. The candidate's legal experience to date has been largely in the lower courts. The main focus of her legal experience appears to have been criminal law although she has had a number of years' experience as a Regional Magistrate dealing with civil matters.

5.2. Her recent position as a Regional Court President has in all likelihood limited her court exposure as she now holds a more administrative function.

- 5.3. The candidate has only held three acting appointments in three Divisions for limited periods of time, namely North-West Division of the High Court, 1 October to 6 November 2020 (6 weeks); Gauteng Division of the High Court, Pretoria, 19 July 2021 to 17 September 2021 (8 weeks) and the Eastern Cape Division of the High Court, Mthatha, Bhisho, Makhanda and Gqeberha, 16 October to 3 December 2021 (7 weeks).
- 5.4. During her acting stint in the Eastern Cape Division, she did not preside over any civil trial courts and for three weeks of the seven weeks she was assigned to criminal court. She only dealt with civil appeals and Motion Court for the remaining four weeks of her acting stint.
- 5.5. The candidate's application is silent on her knowledge and experience of matters involving constitutional law.
- 5.6. The candidate, furthermore, declines to specify her specific Court experience as required by the application and has merely elected to state that she does not appear in Court as she is a Judicial Officer. Therefore, she has not indicated what proportion of work has been in the various fields as stipulated in the application.

6. Judgments of the candidate that have been overturned, upheld or commented on, on appeal:

- 6.1. The candidate merely indicates that one of her judgments has been appealed against and that the result of the appeal is still pending. She, however, fails to indicate whether the appeal is to the Full Bench of the High Court of South Africa or whether it has been referred to the

Supreme Court of Appeal whether leave was granted by herself or on petition and whether it has indeed been heard and, if so, when it is anticipated that judgment thereon will be delivered.

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

- 7.1. The candidate has some 25 years' experience being six years in the National Prosecuting Authority and the remainder of the years in the Department of Justice and Constitutional Development as a Magistrate and her current position of Regional Court President.
- 7.2. She has no experience in private practice and her only Court experience as a litigant was as a Prosecutor in the Criminal Division of the Magistrates' Court.
- 7.3. As aforementioned she has only held acting appointments for 21 weeks over a one-year period.
- 7.4. In light of the candidate's experience to date and very short duration of her acting appointment in the Eastern Cape, the candidate has not had sufficient time to demonstrate her ability to effectively manage Court proceedings and preside over complicated issues.
- 7.5. The candidate would likely benefit from longer acting periods to gain experience and to enable the JSC to assess the candidate's suitability.

8. The candidate's linguistic and communication skills:

- 8.1. Having regard to the application, the applicant's motivation and judgments attached to her application, the applicant's linguistic and

communication skills are fair despite obvious typographical errors therein which she overlooked.

- 8.2. What does, however, become apparent from certain of her judgments is that she is not a stickler for attention to detail which is a necessary quality for an incumbent of the High Court Bench. It is noteworthy that her name is misspelt in the first judgment attached to her application, namely the *Massbuild* Judgment, which also contains an obvious spelling mistake in the first line.

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

- 9.1. The candidate lists four outstanding judgments from 8 and 9 September 2021 and two on 4 November 2021 respectively.
- 9.2. The candidate's application is dated 30 November 2021 and, accordingly, her list of outstanding judgments as per her application at that date had not been outstanding for more than three months. All her outstanding judgments relate to her acting position in the Eastern Cape Division of the High Court.
- 9.3. What is further noteworthy in one of the candidate's reported judgments *AL v CAL* (31/2020) [2021] JAMWHC 81 (15 April 2021), a Rule 43 application. Her reasons for judgment were only given on 15 April 2021 some six months after the matter was heard on 22 October 2020.
- 9.4. Accordingly, it appears that the candidate does not adhere to the norms and standards for the performance of judicial functions (2014) to hand down judgments no more than 3 months after the last hearing.

9.5. It is unknown whether these judgments have been delivered or whether they are still outstanding.

10. The candidate's ability to conduct court proceedings fairly, efficiently and effectively:

10.1. This criteria has not been sufficiently tested as the candidate has only to date acted for seven weeks within in the division and the legal practitioners of the division have had limited exposure to the candidate.

10.2. Having regard to the candidate's reported decisions, the candidate has one civil trial judgment, two judgments on opposed application, two criminal appeals and the rest are appeals where the candidate appeared as the second Judge.

10.3. The candidate's lack of sufficient experience and exposure is borne out by the paucity in her reported judgments to date.

11. The candidate's independent mindedness:

11.1. The candidate has referenced the publication of one article on the sentencing of children.

11.2. The candidate, therefore, appears to have independent mindedness.

12. The candidate's administrative ability (other than in relation to court proceedings):

12.1. The candidate currently holds the position of Regional Court President in North-West and has held such position for the last six years. The

candidate, therefore, appears to have administrative ability to manage Court proceedings.

12.2. The candidate has, without explanation, omitted to complete the application form properly in that she has omitted her ID number, residential and postal address and contact numbers. She has also omitted the above information in her *curriculum vitae*. This appears to reflect a lack of attention to detail which may demonstrate a lack of administrative ability.

13. **The message that the candidate's appointment would send to the public at large:**

13.1. The candidate's appointment would evidence transformation in the Eastern Cape although, as pointed out above, to date the Bench of the Eastern Cape Division has transformed to a large extent in recent times which is evidenced by, *inter alia*, the permanent appointment of 6 black African female Judges and two white female Judges.

13.2. The candidate fails to state where she currently resides. She has indicated that she has a child of school going age and therefore it is uncertain whether she can relocate to the Eastern Cape and how she would comply with her commitment to her duties, if appointed in the Eastern Cape, Gqeberha.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments (e.g. SALR; All SA; SACR; BCLR; CPLR; SATC; ILJ; BLLR; ALR; BIP):

None

Unreported judgments (judgments referred to in her application and attached thereto)

AL v CAL (31/2020) [2021] JAMWHC 81 (15 April 2021)

Zilwa and Another v South African Legal Practice Council (7367/2021) [2021] ZAGPPHC870 (8 November 2021)

Nagel v Minister of Police (CIV/APP/MG14/19) [2020] ZANWHC66 (23 October 2020)

Nagabindi v S (A52/2021) [2021] ZAGPPHC572 (31 August 2021)

Katlego v Minister of Police (313/2018) [2020] ZANWHC88 (5 November 2020)

Judgments upheld on appeal:

None

Judgments overturned on appeal:

None