

JSC INTERVIEW ROUND: APRIL 2022

CANDIDATE: MR LINUS BHEKIZITHA PHOSWA

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

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

1.1. The candidate has the following qualifications:

1.1.1. Master of Laws (LLM) (2005) University of KwaZulu Natal;

1.1.2. Bachelor of Laws LLB (2001) University of Zululand;

1.1.3. B. Juris (2000) University of Zululand;

1.1.4. Diploma Juris (1987); and

1.1.5. Admitted as an advocate of the High Court (8 April 2003).

1.2. The candidate is appropriately qualified.

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 un-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 black (African) man.

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

4.1. The candidate has been a long-standing member of social, civil and professional formations that seek to empower, transform society, and to advance human dignity, equality and freedom.

4.2. Member of the Black Lawyers Association (from 2010 to date).

4.3. Founder and co-ordinator of the St Charles Location Youth Development (1990-1996).

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

5.1. Recently there have been certain informal complaints from the members of the Pietermaritzburg Bar, against the candidate, chief amongst these are complaints about the candidate's failure to grasp and

apply foundational principles and concepts of civil law and procedure as follows:

- 5.2. In an urgent application (week ending 4 February 2022) brought by an owner of land against a person who was using same without the owner's permission, after finding the matter not urgent he proceeded to dismiss the application, without dealing with the merits. The appropriate order would have been to strike the matter of the roll.
- 5.3. In an urgent spoliation application on the same week, the candidate misconstrued the requirements of a spoliation, he insisted that the applicant had to establish the lawfulness of his initial occupation.
- 5.4. Some members of the Pietermaritzburg bar have expressed serious concerns about the candidate's ability to properly preside over civil disputes in the High Court.
- 5.5. The candidate has a good record for dealing with criminal matters and appears to grasp the principles and concepts involved in criminal matters. It will be noted that the candidate comes from a criminal law background having started practice as a state prosecutor and then Magistrate. He has very little civil law experience. This appears from his Curriculum Vitae ("CV") at pages 18,19 and 20 thereof.
- 5.6. The overall assessment of the candidate is that he is good with criminal law, and weak on civil law. At paragraph 19 of his CV he indicates attending a number of civil Magistrate court courses to upskill his understanding of civil law.

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

6.1. There is no information regarding the candidate's judgments that have been taken on appeal. In his questionnaire at paragraph 9.4 on page 12, the candidate indicated that none of his judgments have been taken on appeal.

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

7.1. The candidate has a long professional career as a prosecutor and later magistrate of the district and regional court. He has about 10 months of experience as an acting judge. The candidate has had limited exposure, experience and knowledge about civil matters especially in the High Court, which is as a result of his predominantly criminal law background. The candidate could benefit from a longer acting period to gain experience in civil matters in the High Court, and to enable the JSC to assess the candidate's suitability. The candidate has proven communication skills and ability to manage criminal court proceedings.

8. The candidate's linguistic and communication skills:

8.1. The candidate has a sufficient command of the English language. The judgments attached to his application are sufficiently well written in simple and clear language. The reasoning and discussion in those judgments are easy to follow and understand. The candidate can communicate well in the English language. The candidate is a Zulu man who was born and raised in this province. He has an excellent command of the IsiZulu and communicates exceptionally well in that language.

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

9.1. There is no information regarding instances where the candidate has taken longer than three months to hand down a judgment. In his questionnaire at paragraph 9.5 and 9.6 on page 13 he indicated that he has no outstanding or reserved judgments and no partly heard matters.

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

10.1. The candidate is one of the senior Magistrates in Pietermaritzburg. He is held in high regard by colleagues, legal practitioners and court staff. The candidate is said to be very experienced and knowledgeable when it comes to criminal matters. He endeavours to arrive at a decision that is fair, equitable and just in the circumstances. Some practitioners have expressed a view that the candidate is always punctual and takes exception to practitioners who arrive late to court or for appointments. The candidate is regarded as generally courteous with a mild temperament.

10.2. In the High Court, the candidate has been criticised for making up his mind too early before hearing full arguments in a matter.

11. The candidate's independent mindedness:

11.1. The candidate has a professional reputation for being independent minded, due to his vast experience as a presiding officer. He has the confidence to make up his own mind on the issues quickly.

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

12.1. From the candidate's CV it can be argued that he has good administrative skills. He founded and coordinated a mass choir, was president of the local football association and founded a youth development association. These indicate a good level of administrative abilities of the candidate.

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

13.1. That Magistrates with predominantly criminal experience or background, with hard work and determination will be able to become judges. It will diminish the current dominant view that a judge must appropriately be drawn from the ranks of senior advocates and attorneys because of their experience in the High Courts.