

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: MR MUDUNWAZI SAMUEL MAKAMU

**COURT FOR WHICH CANDIDATE APPLIES: GAUTENG DIVISION OF
THE HIGH COURT**

**1. The candidate's tertiary qualifications, professional admissions, honours,
and permanent judicial appointments:**

1.1. The candidate has the following qualifications:

1.1.1. Dip. Juris – 1985 (University of Zululand);

1.1.2. B Juris – 1991 (University of Zululand); and

1.1.3. LLB – 1999 (University of Zululand).

1.2. The candidate is appropriately qualified.

1.3. The candidate has held the following permanent judicial appointments:

1.3.1. Additional Magistrate, Giyani: 1985 to 1996;

1.3.2. Senior Magistrate and Head of Office, Benoni: 1996 to 2013;

1.3.3. Acting Regional Court Magistrate: 2007 to 2013;

1.3.4. Aspirant Regional Court Magistrate: 2010 to 2013; and

1.3.5. Regional Court Magistrate: 2013 to date.

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.
- 2.2. The candidate disclosed in his application that he successfully appealed to the High Court to set aside his conviction of alleged fraud. The case is reported at *S v Samuel* (A2006/409) [2007] ZAGPHC 102 (15 June 2007).

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

- 3.1. There are currently 81 full time judges on the Gauteng bench, comprising (as far as could be ascertained):
- 3.1.1. 20 black women;
- 3.1.2. 31 black men;
- 3.1.3. 13 white women;
- 3.1.4. 17 white men.
- 3.2. The candidate is a black African man.

4. The maximum time period the candidate could serve if appointed:

- 4.1. Section 176(2) of the Constitution provides that all judges other than Constitutional Court judges "*hold office until they are discharged from active service in terms of an Act of Parliament.*" The Act in question is

the Judges Remuneration and Conditions of Employment Act 47 of 2001.

- 4.2. Section 3(2)(a) of the Act provides that, subject to section 4(4), a judge will ordinarily be discharged from active service upon reaching the age of 70 if, by that date, they have completed a period of active service of not less than ten years. If not, they will be discharged from active service after having completed ten years of active service.
- 4.3. Section 4(4) allows for a judge who reaches the age of 70 to continue serving until the age of 75 if, at the time of turning 70, they have not yet served 15 years' active service.
- 4.4. The candidate is 64 years old.
- 4.5. If appointed the candidate could serve up to 11 years actively in office.

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

- 5.1. The candidate has a demonstrated commitment to the values of the Constitution. This is illustrated by the many instances in which he has been involved in both community organisations and initiatives established by the Department of Justice and Constitutional Development. In this regard:
 - 5.1.1. the candidate indicates that he was a founding member of the Judicial Officers Association of South Africa;
 - 5.1.2. the candidate assisted in establishing the Community Justice Forum in 1997, the purpose of which was to educate the community about the law and how it works. The candidate

indicates that this model was rolled out to various districts in Gauteng by the Regional Office of the Department of Justice and Constitutional Development;

5.1.3. the candidate chaired an Inter-Sectoral Committee in 1999 that was aimed at reducing the number of children detained in correctional facilities;

5.1.4. the candidate indicates that he spearheaded the implementation of correctional supervision as a sentencing option in his district;

5.1.5. the candidate sat on the management board of the SANCA Horizon Clinic from 1999 to 2019;

5.1.6. the candidate attends the Christian Teaching Centre and was a member of its advisory board. The candidate indicates that he was appointed as the project manager (2006 – 2018) to establish a shelter for abused women and children; and

5.1.7. the candidate has also assisted in developing various training manuals for the Department of Justice and Constitutional Development. These include: The Bench Book for Equality Courts; The Civil Court Bench Book; and The Child Law Manual for Judicial Officers.

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

6.1 Since 2016, the candidate, as far as could be ascertained, has penned 9 written judgments which were published during his various acting stints in the Gauteng Division.

6.2 It was noted that none of them have been reported and none of them dealt with an issue considered novel or unique. These judgments deal, in the main, with criminal and RAF matters.

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

7.1. As far as could be ascertained, only one judgment has been taken on appeal, namely: *Mzangwa v Road Accident Fund* (37617/16) [2017] ZAGPPHC 381 (6 June 2017). The appeal judgment is reported as *Dhliwayo v Road Accident Fund* (A598/17) [2020] ZAGPPHC 544 (7 August 2020).

7.2. The candidate had dismissed a pedestrian's claim against the RAF where the pedestrian crossed a well-lit dual carriage way and where nothing obstructed the view of the insured driver.

7.3. The candidate found that, and in the main, due to the pedestrian's failing to keep a proper look-out, the insured driver did not contribute to the cause of the collision.

7.4. On appeal, it was said that "*on the probabilities it appears that the court a quo misdirected itself in favour of the version of the insured driver with regard to the cause of the collision, in light of its finding that the insured driver's evidence was to some extent contradictory.*" It went on further to say that the insured driver's evidence that the plaintiff appeared from nowhere is improbable when one takes into account her evidence that nothing obstructed her view of the road and that there was evidence that there was a bus stop near the scene of the accident. The

insured driver did not provide evidence that the plaintiff was running and was drunk. The appellant gave a plausible explanation why after being knocked down, he was confused, hence he stood up and ran or that he was initially not willing to get medical assistance. The candidate, in dismissing the plaintiff's claim, reasoned inter alia that the plaintiff did not keep a proper lookout as he was surprised when the vehicle hit him, and that the plaintiff fled the scene as he (plaintiff) "*knew that he had done something that is not correct*". The plaintiff denied that he was drunk. The appeal court found that both parties should have kept a proper lookout for other road users and that both parties were equally to blame for the collision. The appeal was accordingly upheld, and the order of 2017 was substituted. The RAF was held liable for 50% of the plaintiff's proven or agreed damages.

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

- 8.1. The candidate has had an extensive legal career. The candidate was appointed as a prosecutor in 1983, a Magistrate in 1985, and Regional Court Magistrate in 2013. The candidate has also attended various courses and seminars geared towards, in particular, developing skills as a member of the judiciary.
- 8.2. Having regard to the length of time, and the different positions that the candidate has held, one can conclude that he has deep and practical understanding of the workings of the magistrates' courts and that he has gained the necessary skills to have become a seasoned Magistrate.
- 8.3. The candidate has also acted as a Judge of the High Court. These acting stints were undertaken at the Pretoria and Johannesburg High Courts

since the beginning of 2016. The candidate states that during these acting stints, he has presided over various matters, including criminal and civil trials, full bench appeals, full court appeals, bail appeals, reviews, petitions, admission applications, and matters pertaining to mental ill health patients.

9. The candidate's linguistic and communication skills:

- 9.1. The candidate has delivered several judgments. The overriding view is that they are not well or sufficiently reasoned and have, on occasion, relied on incorrect legal assumptions.
- 9.2. The candidate tends to combine his analysis of the facts inconveniently or inelegantly with the reasons for the decision reached. There are also instances where it is confusing to a reader with regards to what is obiter and what is the ratio of the judgment.
- 9.3. The candidate will, respectfully, benefit from a clearer structure in his judgments.
- 9.4. The following judgments are particularly noteworthy in this regard:
 - 9.4.1. *Khumalo v S* (A262/16) [2016] ZAGPPHC 685 (11 August 2016);
 - 9.4.2. *Kruger v Road Accident Fund* (31685/14) [2017] ZAGPPHC 337 (15 June 2017);
 - 9.4.3. *Molai v Pule Incorporated* (31533/2015) [2016] ZAGPPHC 695 (12 August 2016);

9.4.4. *Ndzimande v Minister of Police and Another* (56349/2012) [2016] ZAGPPHC 795 (2 September 2016); and

9.4.5. *Dube, Jeremiah Nyasha Muvudzi, Maxwell Ndlovu Rathele, and Sello Athlone v The State* Case Number: SS63/2016.

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

10.1. The published judgments analysed did not include the date on which evidence was heard, but, for example, in the matter of *Molefe* referred to in paragraph 6.3, the draft order annexed to that judgment included trial fees of 5 and 8 August 2016. That judgment was handed down on 12 August 2016. He also wrote the *Molai* judgment on 12 August 2016 and the *Khumalo* judgment the day before. It therefore seems that the candidate can produce judgments promptly; however, reference is made to what is set out in paragraph 9 above.

10.2. There are no known judgments where the candidate took longer than three months to produce his judgment.

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

11.1. The candidate was reported to be:

11.1.1. a fair and accommodating acting judge who treats everyone equally regardless of his/her status with an open door policy to other judges, secretaries and other court officials;

11.1.2. punctual and prepared – he arrives at chambers before 08h00 to do research or draft and would sometimes start court at 09h30 to

make full use of court time and leave around 17h00. At the end of each court day he would remain in his chambers to do research or write judgments;

11.1.3. courteous towards accused who represented themselves and to show the same respect towards counsel; and

11.1.4. very patient, polite, never losing his temper in court and a good listener, remembering small details.

12. The candidate's independent mindedness:

12.1. There is nothing to indicate that the candidate is not independently minded.

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

13.1. When appointed as the Head of Office (senior Magistrate) in 1996, he was seen as a good leader and proved to have excellent managerial skills and proved to have good dispute resolution attributes.

13.2. The candidate's administrative ability can be determined with reference to some current and previous positions held. The candidate:

13.2.1. served as the President of the Association of Regional Magistrates of Southern Africa from 2015 till 2019; and

13.2.2. is currently a member of the Lower Court Remuneration Committee, the Deputy Chairperson of the Magistrate's

Commission and is a member of both the Appointments and Ethics Committees of that Commission.

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

- 14.1. The candidate has been in the employment of the Department of Justice for the whole of his working career, starting as a court interpreter in 1980 at the Giyani Magistrate's Court to being appointed as an acting judge for various terms since 2016 to date. He has dedicated his working life to the Department of Justice.
- 14.2. The candidate's home language is Tsonga, but he in addition listed 7 other South African languages in which he is proficient.
- 14.3. Although it appears that the candidate's judgments are delivered promptly, there are concerns about the candidate's linguistic and communication skills in judgment writing as described above, which might (if published widely) send the message to the public at large that these skills are not important when permanent judicial appointments are meaningfully considered.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

1.1. No reported judgments could be identified.

2. Unreported judgments: (SAFLII):2.1. *Khumalo v S* (A262/16) [2016] ZAGPPHC 685 (11 August 2016)2.2. *Manana v S* (A890/2015) [2017] ZAGPPHC 1217 (30 October 2017)2.3. *Hlungwana v Road Accident Fund* (2814/2014) [2017] ZAGPPHC 410
(13 June 2017)2.4. *Mazangwa v Road Accident Fund* (37617/16) [2017] ZAGPPHC 381
(6 June 2017)2.5. *Kruger v Road Accident Fund* (31685/14) [2017] ZAGPPHC 337 (15
June 2017)2.6. *Molai v Pule Incorporated* (31533/2015) [2016] ZAGPPHC 695 (12
August 2016)2.7. *Molefe v Road Accident Fund* (86183/2014) [2016] ZAGPPHC 693 (12
August 2016)2.8. *Masilela v Road Accident Fund* (87122/14) [2016] ZAGPPHC 693 (12
August 2016)2.9. *Ndzimande v Minister of Police and Another* (56349/2012) [2016]
ZAGPPHC 795 (2 September 2016)

3. Judgments upheld on appeal:

3.1. No reported judgments could be identified.

4. Judgments overturned on appeal:

4.1. *Dhliwayo v Road Accident Fund (A598/17) [2020] ZAGPPHC 544 (7 August 2020)*