

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: JUDGE MANDELA MAKAULA

COURT FOR WHICH CANDIDATE APPLIES: SUPREME COURT OF APPEAL

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

1.1. The candidate holds the following qualifications:

1.1.1. B Juris LLB (1990) University of Transkei (now Walter Sisulu University); and

1.1.2. LLM (1993) Georgetown University, Washington DC, United States of America.

1.2. The candidate is therefore 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 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 21 full time judges in the Supreme Court of Appeal, comprising (as far as could be ascertained):

3.1.1. 10 black women (7 African, 2 Indian, 1 Coloured);

3.1.2. 6 black men (5 African, 1 Indian);

3.1.3. 1 white woman; and

3.1.4. 4 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 58 years old and has completed a period of 12 years of active service as a judge.

4.5. If appointed, the candidate could serve up to 12 years actively in office.

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

5.1. There is nothing to suggest that the candidate is not committed to upholding the values of the Constitution.

5.2. The candidate is a well-respected judge in the Eastern Cape Division and has at all times shown the necessary commitment and ability to uphold the values enshrined in the Constitution.

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

6.1. The candidate has an extensive knowledge of the law including constitutional law which is evident from his decisions and his judgments attached to his application and his further judgments which have been handed down during his 12 year term as a judge of the High Court, Gqeberha.

6.2. From a reading of the candidate's application and the judgments annexed thereto it appears that he is cognisant of the values enshrined in the Constitution.

6.3. The candidate has set out in his application which of his judgments have been taken on appeal, which of those have been confirmed on appeal and which of those have been overturned.

6.4. The number of judgments so cited must be weighed against the length of his term of office to date, being 12 years.

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

7.1. Judgments upheld on appeal:

7.1.1. *Kirkland Investments (Pty) Ltd. t/a Eye & Laser Institute v The Honourable Member of the Executive Council for Health, Province of the Eastern Cape NO & Others*, Case No. 870/2009;

7.1.2. *Nelson Mandela Bay Municipality v Yvette Georgiou t/a Georgiou Spa*, Case No. 3347/2013;

7.1.3. *Maria Jacoba Reyneke v Intercape Ferreira Mainliner (Pty) Ltd.* Case No. 6012/2007;

7.1.4. *McMillan v Bate Chubb & Dickson Incorporated*, Case No. 229/2020;

7.1.5. *B v Minister of Police*, Case No. 416/2017 ZAECPEHC.

7.2. Judgments overturned on appeal:

7.2.1. *CA Focus CC v Village Freezer t/a Ashmel Spar*, Case No. 731/2012;

7.2.2. *Kirkland Investments (Pty) Ltd. t/a Eye & Laser Institute v The Honourable Member of the Executive Council for Health Eastern Cape Province, Case No. 870/2009* (only a portion of the judgment was overturned on appeal).

7.3. In none of the aforementioned judgments was the candidate at any time criticised by an appeal court for his lack of knowledge of the law nor his rulings.

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

8.1. The candidate has some 36 years of legal experience, being 4 years in the Department of Justice as prosecutor and Magistrate respectively and 20 years as a candidate attorney and attorney. He has held the position of High Court Judge since 2010.

8.2. He has experience in all facets of the law, being criminal, civil and constitutional.

8.3. The candidate has, during 2022, held acting appointments in the Supreme Court of Appeal. He presently still holds an acting appointment in the Supreme Court of Appeal.

9. The candidate's linguistic and communication skills:

9.1. The candidate's linguistic and communication skills are excellent which is evident from the judgments he relies upon in support of his application.

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

- 10.1. The candidate has on occasions delayed delivering judgments which may impact on the evaluation of his suitability for the position of a Judge on the Supreme Court of Appeal.
- 10.2. It appears from the judgments attached to his application in support thereof that the judgements were reserved for a period ranging from 5 to 7 months.
- 10.3. Accordingly, the candidate does not always adhere to the norms and standards for the Performance of Judicial Functions (2014) which requires that judges hand down judgments no more than 3 months of the hearing of the matter.

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

- 11.1. The candidate's ability to conduct Court proceedings fairly, efficiently and effectively is well known and well respected in the Eastern Cape.
- 11.2. The candidate's ability to conduct Court proceedings as aforementioned, is without blemish. In *S v Omotoso* he had, after the trial had commenced and evidence led, recused himself due to a potential or perceived conflict of interest.

12. The candidate's independent mindedness:

- 12.1. The candidate is known for his independent mindedness on the Eastern Cape Bench.

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

13.1. The candidate has good administrative ability.

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

14.1. The candidate's appointment would send a positive message to the community. It would further the goal of racial transformation.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:

- 1.1. *Baloyi v S* (739/2021) [2022] ZASCA 35; 2022 (1) SACR 557 (SCA)
(1 April 2022)
- 1.2. *Cape Concentrate (Pty) Ltd. v Pagdens Incorporated* [2020] ZAECPHC 25 [2020]; 4 ALL SA 61 (ECP)
- 1.3. *S v Brown and Another* [2019] ZAECPHC 11; 2019 (1) SACR 691 (ECP)
- 1.4. *S v Brown and Another* [2019] 2 ALL SA 552 (ECP)
- 1.5. *S v Blignaut & Others* [2017] ZAECPHC 55; 2018 (1) SACR 587 (ECP)
- 1.6. *Randell v S* [2017] ZAECPHC 130; [2018] 1 ALL SA 845 (ECG)

2. Unreported judgments (judgments referred to in his application and attached thereto)

n/a

3. Judgments upheld on appeal:

- 3.1. *Kirkland Investments (Pty) Ltd. t/a Eye & Laser Institute v The Honourable Member of the Executive Council for Health, Province of the Eastern Cape NO & Others*, Case No. 870/2009;
- 3.2. *Nelson Mandela Bay Municipality v Yvette Georgiou t/a Georgiou Spa*, Case No. 3347/2013;

3.3. *Maria Jacoba Reyneke v Intercape Ferreira Mainliner (Pty) Ltd.* Case No. 6012/2007;

3.4. *McMillan v Bate Chubb & Dickson Incorporated*, Case No. 229.2020;

3.5. *B v Minister of Police*, Case No. 416/2017 ZAECPEHC.

4. Judgments overturned on appeal:

4.1. *CA Focus CC v Village Freezer t/a Ashmel Spar*, Case No. 731/2012;

4.2. *Kirkland Investments (Pty) Ltd. t/a Eye & Laser Institute v The Honourable Member of the Executive Council for Health Eastern Cape Province*, Case No. 870/2009.