

**JSC INTERVIEW ROUND: OCTOBER 2022**

**CANDIDATE: JUDGE MPHO CATHERINE MAMOSEBO**

**COURT FOR WHICH CANDIDATE APPLIES: ELECTORAL COURT**

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

1.1. The candidate holds the following qualifications:

1.1.1. University of Bophuthatswana (Northwest University) – B Juris  
1986 – 1991;

1.1.2. Rand Afrikaans University (University of Johannesburg) – BA  
Hons Labour Relations 1996 – 1998;

1.1.3. Rand Afrikaans University (University of Johannesburg) –  
Masters in Labour Law and Employment Relations (M.Phil)  
1999 – 2002; and

1.1.4. University of South Africa (UNISA) – Bachelor of Laws (LLB)  
2005 – 2010.

1.2. The candidate is appropriately qualified.

1.3. The candidate has also completed the following:

1.3.1. Arbitration Foundation of South Africa (AFSA) – Diploma in  
Dispute Resolution 2002.

1.4. The candidate was appointed as Judge to the Northern Cape Division of the High Court, Kimberley on 1 January 2016.

**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. On the contrary, as appears from the candidate's wide fields of experience prior to her appointment, she has served in a number of positions that clearly emphasise her integrity, for example serving as the Assistant Director of the Independent Complaints Directorate, as well as a Magistrate on the Magistrates Commission.

2.3. The candidate is known as a person whose ethics and integrity are beyond reproach.

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

3.1. There are currently 3 full time judges on the Electoral Court comprising (as far as could be ascertained):

3.1.1. 2 black men (African); and

3.1.2. 1 white man.

3.2. The candidate is a black African woman.

**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 55 years old and has completed a period of 6 years of active service as a judge.

4.5. If appointed, the candidate could serve up to 15 years actively in office.

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

5.1. The candidate is committed to the Constitution, and the values thereof, as is clear from judgments prepared by her.

5.2. This is also evident from the manner in which she interacts with practitioners, but also with litigants, witnesses, and accused persons.

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

6.1. The candidate has a broad range of knowledge of law, as a result of her previous background, which includes:

6.1.1. criminal law as state prosecutor;

6.1.2. police matters with regard to the Independent Complaints Directorate; and

6.1.3. labour law, in a managerial and consultant capacity, as well as having recently acted in the Labour Court.

6.2. By reason of her experience on the bench, the candidate should have had exposure to a wide range of law, including constitutional law matters.

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

7.1. In the matter of *Links v MEC Department of Health, Northern Cape Province* 2013 ZANCHC 26, the candidate held that the plaintiff's claim had prescribed, whereas, if this were not the case, she would have granted him condonation in terms of Section 3 of the Institution of Legal Proceedings Against Certain Organs of State Act.

7.2. Her decision regarding the prescription of the plaintiff's claim was upheld by a full bench of the Northern Cape Division in *Links v MEC Department of Health, Northern Cape Province* 2014 ZANCHC 17.

7.3. The candidates' judgment, as well as that of the full bench, was subsequently overturned by the Constitutional Court in *Links v MEC Department of Health, Northern Cape Province* 2016 (5) BCLR 656 (CC), also reported as 2016 (4) SA 414 (CC).

7.4. As set out in paragraphs [50] and [51] of the Constitutional Court judgment:

*“[50] The High Court and the Full Court appear to have overlooked the question whether the applicant had the full facts necessary for him to institute his claim on or before 5 August 2006. He did not know or have reasonable grounds to suspect that his negligent treatment at the hands of the respondent’s personnel had led to the compartment syndrome. Nor did he know that this in turn caused the amputation of his thumb and the loss of function of his left hand. In my view, the High Court and the Full Court erred in not approaching the matter in this way.*

*[51] The High Court made it clear that, had it not been for its conclusion that the applicant’s claim had prescribed, it would have condoned the applicant’s failure to comply with section 3 of the Legal Proceedings Act. Counsel for the respondent did not argue that this conclusion by the court of first instance was wrong. Indeed, the conclusion seems to me justified.”*

7.5. In the judgment of *NDPP v Botha NO and Another* 2016 ZANCHC 89, the candidate ordered the forfeiture of an immovable property in terms of the Prevention of Organised Crime Act, on the basis that renovations

that had been carried out thereto were the proceeds of unlawful activities.

- 7.6. On appeal, the SCA in *Botha NO v NDPP* 2018 ZASCA 146 (also cited as 2018 JDR 2093 SCA) held that it was incorrect to order the forfeiture of the whole property, as only the cost of the renovations was to be forfeited. The SCA reduced the amount that stood to be forfeited to the state by reducing the costs of the renovations by the amount that was repaid.
- 7.7. The Constitutional Court in *NDPP v Botha NO and Another* 2020 (6) BCLR 693 (CC) found that the full amount of the costs of renovations had to be forfeited to the state, but not the whole of the immovable property, as held in the court of first instance.

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

- 8.1. The candidate has served as a Judge of the Northern Cape Division for more than 6 years.
- 8.2. Prior thereto she held acting appointments in the Northern Cape Division for more than 3 years.
- 8.3. The candidate has acted in the Labour Court between July 2017 to September 2017, as well as between October 2017 to December 2017.
- 8.4. The candidate has acted as Deputy Judge President of the Northern Cape Division between 1 May 2022 and 31 May 2022.

**9. The candidate's linguistic and communication skills:**

9.1. Although the candidate is soft-spoken and reserved, her linguistic and communication skills are very good.

9.2. The candidate's judgments are written in clear and concise language and address the issues of fact and principles of law in a logical and well-reasoned manner.

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

10.1. The general impression from the candidate's judgments is that she hands judgments down promptly.

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

11.1. No adverse comments were received in respect of the candidate's fairness and impartiality. She is perceived to act and administer the law without fear, favour, or prejudice.

11.2. The candidate has demonstrated her ability to conduct court proceedings fairly, efficiently, and effectively during her acting stints, as well as since her permanent appointment.

**12. The candidate's independent mindedness:**

12.1. No adverse comments were received in respect of the candidate's independent-mindedness.

12.2. The candidate is independent-minded and this is clearly established by her conduct in court and in her judgments.

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

13.1. The candidates' legal experience, prior to her appointment on the bench, also illustrates that not only she has a thorough knowledge of the law, as well as excellent communication skills, the ability to manage court proceedings, and strong administrative skills.

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

14.1. In addition to the fact that the candidate has 6 years' experience on the bench, as a Judge of the Northern Cape Division (together with more than 3 years during her acting appointments), she has been involved in regulatory bodies prior to her appointment to the bench, including the Independent Complaints Directorate, and the Magistrates Commission.

14.2. The candidate's appointment to the Electoral Court would therefore send a positive message that persons of experience and ability are appointed to that Court.

**ANNEXURE: LIST OF JUDGMENTS CONSIDERED**1. Reported judgments:

- 1.1. *NDPP v Johnson and Another* 2019 (2) SACR 438 (NCK)
- 1.2. *Borbet SA (Pty) Ltd v National Union of Metalworkers of South Africa and Others* [2018] 4 BLLR 348 (LC); (2018) 39 ILJ 1585 (LC)
- 1.3. *NDPP v DP* 2017 (2) SACR 577 (NCK)
- 1.4. *S v Carter* 2014 (1) SACR 517 (NCK)

2. Unreported judgments:

- 2.1. *Troger NO and Another v Hunt and Others* [2015] JOL 33725 (NCK)
- 2.2. *Nama Khoi Municipality and Others v Member of the Executive Council for Local Government, Northern Cape Provincial Government and Others* [2013] JOL 30646 (NCK)
- 2.3. *Ross v Sol Plaatje Municipality* (attached to application)
- 2.4. *Basson v the State* (attached to application)
- 2.5. *Top Security Systems (Pty) Ltd v Samy's Wholesalers CC t/a Samy's Wholesalers* 2022 ZANCHC 2

3. Judgments upheld on appeal:

- 3.1. The unreported judgment of the candidate in *Erasmus N.O. and Others v EC Traffic Services and Others* unreported case no. 1283/2011, was

upheld on appeal in *EC Traffic Services v Erasmus N.O and Others* 2016 ZANHC 16

4. Judgments overturned on appeal:

- 4.1. The matter of *NDPP v Johnson and Another* 2019 (2) SACR 438 (NCK) was subsequently overturned on appeal in *Yangfang v NDPP* (2746/2017) [2022] ZANHC 6 (04 February 2022)
- 4.2. *NDPP v Botha NO and Another* 2016 ZANHC 89, was overturned by the SCA on appeal, in *Botha NO v NDPP* 2018 ZASCA 146 (also cited as 2018 JDR 2093 SCA) and was ultimately dealt with by the Constitutional Court in *NDPP v Botha NO and Another* 2020 (6) BCLR 693 (CC)
- 4.3. *Kapa Koni Investments CC v Abrinah 7804 (Pty) Ltd* 2016 ZANHC 84 overturned by a full bench in *Abrinah 7804 (Pty) Ltd v Kapa Koni Investments CC* 2018 (3) SA 108 (NCK)
- 4.4. *Links v MEC Department of Health, Northern Cape Province* 2013 ZANHC 26 upheld by a full bench in *Links v MEC Department of Health, Northern Cape Province* 2014 ZANHC 17, and overturned in *Links v MEC Department of Health, Northern Cape Province* 2016 (5) BCLR 656 (CC) par [50] also reported as 2016 (4) SA 414 (CC)