

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: PROF MBUZENI JOHNSON MATHENJWA

**COURT FOR WHICH CANDIDATE APPLIES: KWAZULU-NATAL
DIVISION OF THE HIGH COURT**

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

1.1. The candidate holds the following degrees:

1.1.1. B Juris (1991), University of Fort Hare;

1.1.2. LLB (1996), University of Witwatersrand;

1.1.3. LLM (2007), UNISA; and

1.1.4. LLD (2014), UNISA.

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 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 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 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 61 years old.

4.5. If appointed, the candidate could serve up to 14 years actively in office.

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

5.1. The candidate's commitment to the values of the Constitution is evident in the following ways:

5.1.1. He is a member of PABASA which is an organisation committed to transformation of the legal sector;

5.1.2. The candidate also aligns himself with fairness and social justice in the administration of justice. This is evident in his published articles and book, including his work entitled Supervision of Local Government, published in 2017;

5.1.3. The candidate has contributed to the public service, including through his participation in local government.

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

6.1. The candidate had his own legal practice as an attorney and he has over a decade of experience as a law lecturer.

6.2. The candidate recently joined the Bar as a full-time practicing advocate in 2021.

6.3. The candidate has acted as a judge in the KZN Division.

6.4. The candidate possesses a doctorate in Law.

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

7.1. The candidate has no judgments which have been taken on appeal.

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

8.1. 1982-1985: Constable, South African Railway Police Force, Empangeni;

8.2. 1986: Sergeant, South African Railway Police Force, Vryheid;

8.3. 1987-1988: Sergeant, South African Railway Police, Vryheid;

8.4. 1996-1998: Candidate Attorney, Cox Partners Attorneys, Vryheid;

8.5. 1998-1999: Professional Assistant, Botha's Incorporated Attorneys, Empangeni;

8.6. 1999-2002: Self-employed under the name Mathenjwa & Co Attorneys, Empangeni;

8.7. 2002-2004: Head of Department of Safety and Community Liaison, KZN Provincial Government;

8.8. 2004-2006: Municipality Manager, Mandeni Municipality;

8.9. 2006-2009: Municipality Manager, Abaqulusi Municipality, Vryheid;

8.10. 2010: Senior Lecturer – North-West University, Mahikeng;

8.11. 2011-2015: Senior Lecturer, UNISA;

8.12. 2016-2017: Associate Professor, UNISA;

- 8.13. 2018-2021: Full Professor, UNISA;
- 8.14. 2021 to date: Self-employed, Advocate of the High Court of South Africa.

9. The candidate's linguistic and communication skills:

- 9.1. The candidate has a good command of the English language. He writes in plain and clear language, and his writing is easily readable and understandable.
- 9.2. This assessment is based on the judgment annexed in the candidate's application and the number of articles the candidate has written, all of which are in English. The candidate's judgments appear well-written and well-reasoned.

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

- 10.1. The candidate has no reserved judgments outstanding.
- 10.2. All of the key judgments analysed (*Mshengu v Estate Late Mshengu and Others* (9223/2016P) [2021] ZAKZPHC 49 (6 August 2021); *Naysmith v Sanders* (4022/2020P) [2021] ZAKZPHC 24 (21 May 2021); *Makoba v Road Accident Fund* (13541/2017P) [2021] ZAKZPHC 63 (6 August 2021); *Royal Palm Body Corporate v Bahlati Investments (Pty) Ltd and Another* (7214/2020P) [2021] ZAKZPHC 28; 2021 (5) SA 632 (KZP) (1 June 2021); and *SM Zondi v S Dlomo Family Trust* (7153/2020P) [2021] ZAKZPHC 21 (12 May 2021)) were handed down within 3 months.

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

11.1. No adverse comments have been received regarding the candidate's ability to conduct court proceedings.

12. The candidate's independent mindedness:

12.1. No adverse comments have been received.

12.2. An analysis of the candidate's judgments indicates that the candidate has an independent mind.

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

13.1. No adverse comments have been received regarding the candidate's administrative ability.

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

14.1. The candidate's appointment would send a message to the community that the judicial system recognises and supports the inclusion of black academics in its current dispensation, and that academic experience is valued for judicial appointment.

14.2. The candidate would, if appointed, strengthen the High Court with both his breadth of legal knowledge and experience and his academic background.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

- 1.1. *Mshengu v Estate Late Mshengu and Others* (9223/2016P) [2021] ZAKZPHC 49 (6 August 2021)
- 1.2. *Naysmith v Sanders* (4022/2020P) [2021] ZAKZPHC 24 (21 May 2021)
- 1.3. *Makoba v Road Accident Fund* (13541/2017P) [2021] ZAKZPHC 63 (6 August 2021)
- 1.4. *Royal Palm Body Corporate v Bahlati Investments (Pty) Ltd and Another* (7214/2020P) [2021] ZAKZPHC 28; 2021 (5) SA 632 (KZP) (1 June 2021)
- 1.5. *SM Zondi v S Dlomo Family Trust* (7153/2020P) [2021] ZAKZPHC 21 (12 May 2021)