

**JSC INTERVIEW ROUND: OCTOBER 2022**

**CANDIDATE: MR COLLEN KGAOLO STEPHEN MATSHITSE**

**COURT FOR WHICH CANDIDATE APPLIES: GAUTENG DIVISION OF THE HIGH COURT AND THE NORTH WEST 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, North West University (1983); and

1.1.2. LLB, North West University (1985).

1.2. The candidate is appropriately qualified.

1.3. The candidate has also held the following positions:

1.3.1. Admitted as an attorney (1991);

1.3.2. Admitted as the first black notary public and conveyancer in the North West (1995);

1.3.3. Certificate in Practice Management, LSSA (1999);

1.3.4. Commercial Practice, Black Lawyers Association (2005);

1.3.5. Certificate in Corporate Law, UNISA (2008);

- 1.3.6. Judicial Skill Training Course for Attorneys (Criminal), Law Society of South Africa (2009);
- 1.3.7. Judicial skills training, by Honourable Judge President of High Court, Gauteng Division. Basic Aspirant Judges, South African Judicial Education Institute (“SAJEI”) (2010);
- 1.3.8. Advanced Aspirant Judges Course, SAJEI (2014);
- 1.3.9. Regional Magistrate (2015 to present); and
- 1.3.10. LLM (Commercial Law), University of Johannesburg (2020).

**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 81 full time judges on the Gauteng Division 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; and
  - 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 61.

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 has been a member of the Black Lawyers Association since 1994 until present. The extent of his involvement is unclear.

5.2. He was involved with the Law Society of the Northern Provinces in various forms including:

- 5.2.1. Convener and examiner of the Notarial Examination from 1995 to 2020.
- 5.2.2. Member of the Disciplinary Committee from 2005 to 2015.
- 5.3. The candidate is a member of the Kudung Community Association where he provides advice to the community, but the extent of his involvement and the aim of the association is not explained.
- 5.4. The candidate records that he has unselfishly assisted his colleagues.

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

- 6.1. Seventeen judgments dealing with diverse areas of the law were considered.
- 6.2. In his questionnaire (p 17, paragraph 8.1.5), the candidate pointed out that:

*“I have presided over various criminal matters, which involved all spectrum of the laws, like Murder, Rape of adult and minor children, Robbery with aggravating circumstances, Housebreaking with intent to steal and theft or rob, Fraud and commercial crimes. I have presided over various civil matters, like claims against the State, against Police, Motions and Divorces.”*

- 6.3. At paragraph 9.3 of the Questionnaire (p 18), the candidate further pointed out that:

*“I have sat on civil trials, unopposed and opposed motions, interlocutory applications, urgent applications, admissions of attorneys and advocates, application to struck off a practitioner, divorce matters, criminal trials, appeals from Lower Courts and single judges.”*

6.4. The candidate’s judgments are reasoned and have shown the candidate’s knowledge in diverse fields of law.

6.5. In 2012, the candidate submitted a thesis in compliance with the requirements for an LLM degree in Commercial Law at the University of Johannesburg under the topic *“Intermediaries and Advisors’ duties to disclose onerous clauses to prospective policyholders”*.

6.6. This dissertation dealt with a discrete area of insurance law and shows that the candidate has a keen interest and understanding of diverse fields of law.

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

7.1. The reviewing team did not find judgments of the candidate that fall in these categories.

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

8.1. Since 1984, when the candidate was employed as a Legal Assistant at the Northwest Department of Finance, he has steadily worked through the ranks of being an attorney, senior state advocate, regional Magistrate, and acting judge. Most of the candidate’s experience is in

the field of criminal law. The candidate has acted as a judge for a total period of about 11 months.

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

9.1. The candidate seems to have a sufficient command of the English language and his judgments are reasoned.

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

10.1. In the 17 judgments handed down by the candidate, the candidate handed down judgment after three months in the following matters:

10.1.1. *EnX Corporation Ltd v Maroos* (case no 3163/2019) (five days after the expiration of the three-month period).

10.1.2. *Ntuli and another v S* [2018] 1 All SA 780 (GJ) (five days after the expiration of the three-month period).

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

11.1. No circumstances are known that would suggest that the candidate does not conduct court proceedings fairly, efficiently and effectively.

11.2. One of the candidate's highly publicised cases, the case of the murder of a 3-year-old baby, the so-called "*Baby Daniel Murder case*" (*S v Hibbers* 2019 JDR 0262 (GJ)), was televised and the candidate showed his ability to conduct court proceedings fairly, efficiently and effectively notwithstanding the high public interest and the glare of the media's cameras in the courtroom (<https://youtu.be/NflbQWkGSZk>).

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

- 12.1. In *S v Hibbers (supra)*, the candidate showed the candidate's independent-mindedness in handling a high-profile murder case despite enormous public interest and the glare of the media.

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

- 13.1. The candidate's administrative ability is borne out by his prompt and efficient delivery of judgments.

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

- 14.1. The candidate has been in legal practice for over 30 years and has been employed as a regional Magistrate since 2015. The candidate has a relatively wide breadth of legal knowledge and experience. Most of the candidate's judgments have been in the area of criminal law. These judgments reveal a sophisticated understanding of the essential legal principles in this field.
- 14.2. The candidate's appointment would send the message to the public at large that the bench is not an elitist institution: it is made up of individuals from a diverse array of legal professional backgrounds and is constituted by persons who demonstrate competency, humility, and wisdom.

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

- 1.1. *Opperman v De Klerk N.O. and Another* (case no 48920/2020)
- 1.2. *JS Auctioneers and Others v Minister of Agriculture Forestry and Fisheries* 2021 JDR 3101 (GP)
- 1.3. *S v Fouche* (A29/2021) (attached to application)
- 1.4. *Lammerding v Lobby Room (Pty) Ltd t/a Rockets Menly* (case no 10589/2021) (attached to application)
- 1.5. *S v Sitole* 2021 JDR 3196 (GJ)
- 1.6. *Dancesport South Africa v South African Dance Foundation and Others* (case no 53311/2019)
- 1.7. *S v Hibbers* 2019 JDR 0262 (GJ)
- 1.8. *S v Albertyn* 2019 JDR 0178 (GJ)
- 1.9. *S v MA* [2019] JOL 41075 (GJ)
- 1.10. *EnX Corporation Ltd v Maroos* (case no 3163/2018) (attached to application)
- 1.11. *Mofokeng v RAF* (case no 3163/2018) (attached to application)
- 1.12. *Cruise International SA (Pty) Ltd v Oroni and Another* (case no 44762/2017) (attached to application)
- 1.13. *S v Skosana* [2018] JOL 39698 (GJ)



- 1.14. *S v Nkomo* (case no 158/2016)
- 1.15. *Ntuli and Another v S* [2018] JOL 39455 (GJ)
- 1.16. *S v Gumbo* 2017 JDR 1032 (GJ)