

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: MS CONSTANCE NOLUTHANDO NZIWENI

COURT FOR WHICH CANDIDATE APPLIES: WESTERN CAPE 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. B Proc University of Fort Hare 1997; and

1.1.2. LLB University of Fort Hare 1999.

1.2. The candidate is appropriately qualified.

1.3. The candidate has also held the following positions:

1.3.1. Public Prosecutor 1999

1.3.2. Junior State Advocate 2001

1.3.3. District Court Magistrate 2003

1.3.4. Acting Regional Court Magistrate 2011

1.3.5. Regional Court Magistrate 2013 (to date)

1.3.6. Acting Judge 2021 (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.

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

- 3.1. There are currently 25 full time judges on the Western Cape bench, comprising (as far as could be ascertained):

3.1.1. 10 black women (3 African, 1 Indian, 6 Coloured)

3.1.2. 7 black men (6 African, 1 Indian)

3.1.3. 3 white women

3.1.4. 5 white men

- 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 51.

4.5. If appointed, the candidate could serve up to 19 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 Association for Regional Magistrates of Southern Africa ("**ARMSA**") since 2013.

5.2. She was provincial chairperson for project and wellness in ARMSA in 2017 up to 2019.

5.3. Currently the candidate holds the position of provincial secretary in ARMSA.

5.4. There is no other information which demonstrates a commitment to the constitution.

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

6.1. The candidate is an experienced Magistrate with over 15 years of experience in the Regional Court. She has been an acting judge at the High Court six times.

6.2. In her application, she reports that she has presided over matters in different areas of the law such as personal injury, tax, shipping, intellectual property, and divorce.

6.3. According to her application, she has dealt with constitutional issues involving access to justice, access to information held by public bodies, and the right to a fair trial. She has admitted that cases involving constitutional issues only form 5% of her work in the High Court.

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

7.1. The candidate reports that to her knowledge one of her judgments has been taken on appeal, but that the appeal has not been finalised yet (*Director of Public Prosecutions Western Cape v Regional Court Wynberg and Others* 2021 (1) All SA 154 WCC; 2022 (1) SACR 8 WCC (13 October 2021)).

7.2. We have also been made aware of the fact that leave to appeal has been granted for another reported judgment of the candidate (*M v K* 2022 1 All SA 738 (WCC) 19 January 2022).

7.3. We have not been able to find any appeal judgments in respect of her decisions.

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

8.1. The candidate has more than 15 years of experience presiding in the District and Regional Magistrates Courts in both civil and criminal matters.

8.2. The candidate been an acting judge at the Western Cape High Court six times and she reports having presided in a wide variety of matters in the High Court.

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

9.1. The candidate's judgments are well written and well reasoned.

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

10.1. We could not establish the period within which some of the judgments were handed down.

10.2. Some members reported that she has the ability to produce judgments swiftly.

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

11.1. The candidate's application and references indicate that she has ample experience in conducting court proceedings.

11.2. The Senior State Advocate mentioned her "*impeccable temperament*" characterised by thoughtfulness, courtesy, politeness, (in court for example, if a legal practitioner commits an error in front of her, she will rectify and guide the legal practitioner in a dignified and professional manner).

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

12.1. There is nothing in the candidate's judgments to suggest that she is not independent minded.

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

13.1. There is no reason to doubt the candidate's administrative ability.

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

14.1. The candidate has lengthy experience in dealing with various matters in the Magistrates' Court. She has had six acting stints at the High Court. In this period, she has managed to produce numerous well-reasoned judgments. She had six reported judgments.

14.2. Her appointment would be of significant value to the excellence and diversity of the Western Cape High Court Bench.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:

- 1.1. *M v K* 2022 1 All SA 738 (WCC) 19 January 2022
- 1.2. *Director of Public Prosecutions Western Cape v Regional Court Wynberg and Others* 2021 (1) All SA 154 WCC; 2022 (1) SACR 8 WCC (13 October 2021)
- 1.3. *S v Woelf and Another* 2021 (2) SACR 97 (WCC) 7 May 2022
- 1.4. *Lin and Another v S* 2021 (2) SACR 505 (WCC) 22 February 2021
- 1.5. *Mosilikili v South African Board of Sheriffs* 2022 2 BLLR 197 (WCC); 2022 43ILJ 946 (WCC) 11 November 2021
- 1.6. *Body Corporate of Nautica v Misphe Close Corporation* 2022 (1) ALL SA 399 WCC

2. Unreported judgments:

- 2.1. *Marawanqana v Road Accident Fund* (18336/2018) [2021] ZAWCHC 115 (4 June 2021)
- 2.2. *VINPRO NPC v President of the Republic of South Africa & Others* (1741/2021) [2021] ZAWCHC 149 (3 August 2021)
- 2.3. *S v Mackay* (326/2021) [2022] ZAWCHC 17 (22 February 2022)
- 2.4. *Greef and Another v S* (A258/20) [2021] ZAWCHC 48 (1 March 2021)

3. Judgments upheld or overturned on appeal:

- 3.1. *Director of Public Prosecutions Western Cape v Regional Court Wynberg and Others* 2021 (1) All SA 154 WCC; 2022 (1) SACR 8 WCC (13 October 2021) – The appeal is still pending at the Supreme Court of Appeal
- 3.2. *M v K* 2022 1 All SA 738 (WCC) 19 January 2022 – the Supreme Court of Appeal has granted leave to appeal