

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: JUDGE THOBA PORTIA POYO-DLWATI

**COURT FOR WHICH CANDIDATE APPLIES: JUDGE PRESIDENT OF
THE 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 qualifications:

1.1.1. B Juris (1995), University of KwaZulu-Natal; and

1.1.2. Post-Graduate Diploma in Tax (1997), University of KwaZulu-Natal.

1.2. The candidate is appropriately qualified.

1.3. The candidate has also completed a Certificate in Mediation (2019), Utah, USA;

1.4. The candidate has been appointed to the following positions:

1.4.1. 1 June 2014: Appointed as a Judge in KwaZulu-Natal Division of the High Court;

1.4.2. 1 June 2020 – 30 November 2020, and 01 December 2020 – 30 May 2021: Appointed as an Acting Judge of the Supreme Court of Appeal in Bloemfontein;

1.4.3. 1 January 2022: Appointed as an Acting Judge of the Competition Appeal Court; and

1.4.4. 1 April 2022 to date: Appointed as Acting Deputy Judge President in KwaZulu-Natal Division of the High Court.

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 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 47 years old and has completed a period of 8 years of active service as a judge.
- 4.5. If appointed, the candidate could serve up to 23 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. She was a member of the Black Lawyers Association from 1997 till 2014;
 - 5.1.2. She was a member of SAWLA from 2007 till 2014;
 - 5.1.3. The candidate is a member of the South African Chapter of the International Association of Women Judges from 2016 and has been the Deputy President since August 2021; and

5.1.4. The candidate also aligns herself with fairness and social justice in the administration of justice. This is evident in her judgments.

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

6.1. The candidate was a director of a law firm and has over a decade of experience as a judge.

6.2. The candidate is the current Acting Deputy Judge President in the KZN Division.

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

7.1. The candidate lists only one judgment which was successfully appealed against – *Soni v The State* (a bail appeal).

7.2. We are aware of another decision: In *Member of the Executive Council for Cooperative Governance and Traditional Affairs, KwaZulu-Natal v Nkandla Local Municipality and Others* [2021] ZACC 46, an appeal against the candidate's judgment was upheld by the SCA, and the Constitutional Court dismissed the application for leave to appeal against the SCA's judgment. The matter concerned the proper interpretation of section 54A (2) of the Local Government Municipal Systems Act 32 of 2000.

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

- 8.1. The candidate is currently the Acting Deputy Judge President of the KwaZulu-Natal Division of the High Court.
- 8.2. She has 15 years of experience as an attorney.
- 8.3. She has been a judge since 2012 when she was appointed to act, and in 2014 she was appointed as a permanent judge.

9. The candidate's linguistic and communication skills:

- 9.1. The candidate has a good command of the English language. She writes in plain and clear language, making her writings easily readable and understandable.

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

- 10.1. The candidate has no reserved judgments outstanding. The judgments annexed to the candidate's application appear to have been handed down within a reasonable time.

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. 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 public at large:

14.1. The candidate's appointment would send a message to the community that the judicial system is serious about transformation, and it recognizes and supports the inclusion of black woman in its current dispensation, and that experience is valued for senior judicial appointment.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

1.1. No reported/unreported judgements given.

2. Unreported judgments:

2.1. No reported/unreported judgements given.

3. Judgments upheld on appeal:

3.1. No reported/unreported judgements given.

4. Judgments overturned on appeal:

4.1. No reported/unreported judgements given.