

JSC INTERVIEW ROUND: OCTOBER 2022

CANDIDATE: ADV MOHAMED SALIE SC

**COURT FOR WHICH CANDIDATE APPLIES: WESTERN CAPE
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. 1978 – 1981: BA (Law) from the University of the Western Cape; and

1.1.2. 1981 – 1983: LLB degree from UWC.

1.2. The candidate is appropriately qualified.

1.3. The candidate has also held the following positions:

1.3.1. 1984 – 1985: Candidate Attorney

1.3.2. 1986: Admitted as an attorney

1.3.3. 1999: Admitted as an advocate

1.3.4. 2015: Appointed as Senior Counsel

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 Indian 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 64 years old.
- 4.5. If appointed, the candidate could serve up to 11 years actively in office.
5. **The candidate's personal commitment to the values of the constitution:**
- 5.1. The candidate's commitment to the achievement of dignity, equality and freedom for all, and human rights generally, is evidenced through his involvement, past and present, in the following areas:
- 5.1.1. Member of Advocates for Transformation (1999 to present);
- 5.1.2. Head of the Cape Bar Disciplinary Portfolio;
- 5.1.3. Cape Town Small Claims Court Commissioner (past 15 years);
- 5.1.4. President of the JHESS outreach organisation, uplifting the poor through providing bursaries (2011 to present);
- 5.1.5. Founding member of Darum Islamic High School; and
- 5.1.6. Member of the Cape Bar's Transformation Committee, Finance Committee and Disciplinary Officer of the Cape Bar (2014/2015).
- 5.2. The candidate appeared on behalf of students charged with public violence arising from protests and uprisings against the Apartheid Government during the 1980s.

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

6.1. The candidate's practice, first as an attorney and then as an advocate, can be described as a broad general practice. His experience ranges from criminal law to delict, personal injury and the law of contract, as well as public law, construction law, commercial law, and tax law. The candidate has extensive experience in trial litigation.

6.2. As an advocate, the candidate has been involved in a number of matters that related to constitutional law, including the following matters:

6.2.1. In *FP van der Merwe v Minister of Justice and Other* (case number A349/04), the candidate successfully opposed the challenging of the constitutionality of section 236 of the Criminal Procedure Act 51 of 1977.

6.2.2. In *S v Nell* 2009 (2) SACR 37 (CPD), the candidate argued the constitutional issue relating to the admissibility of evidence pursuant to Section 35(5) of the Constitution.

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

7.1. None of the applicant's judgments have been considered on appeal.

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

8.1. The candidate did articles in 1983 to 1985, practised as an attorney from 1986 to 1999, was admitted as an advocate during September 1999, and received his letters patent during October 2015.

- 8.2. The candidate acted in the Western Cape division for part of the second term in 2017, the third term in 2020, the fourth term in 2020, and the second term in 2021.

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

- 9.1. The applicant's judgments are concise, clear, and well written.

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

- 10.1. It was not possible to determine the period within which two of the judgments were handed down.

- 10.2. Two of the judgments were handed down approximately 6 weeks after the hearings.

- 10.3. The candidate has the ability to produce judgments promptly.

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

- 11.1. Four members of the bar who have appeared in civil matters before the candidate were interviewed.

- 11.2. They were unanimous that the candidate was courteous in court. One member expressed the view that the candidate did not give him sufficient opportunity to make his submissions, but the others stated that he was a patient listener who gave juniors an equal opportunity to make their submissions.

- 11.3. He was well prepared for his matters and conducted an efficient court.

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

12.1. The candidate's independent mindedness is evident in the reported judgments he has handed down as an acting judge. This is supported through the interviews with counsel who have appeared before the candidate.

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

13.1. The candidate seems to possess sufficient administrative abilities. The candidate is a member of various organisations and committees, as listed above. The candidate has efficiently served as a member of these various committees.

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

14.1. The candidate's professional reputation, both as an advocate and during his various terms as acting judge, is sound. The candidate has served the profession since 1984. He has extensive experience as a legal practitioner.

14.2. The candidate also served as an acting judge for four terms. The message his appointment would send to the public at large is that long service to the profession by a competent practitioner is ultimately rewarded.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

The applicant attached the following judgments, that he had handed down in the Western Cape Division, to his application:

1. *Master of the MFV Lincoln v The Director General: Department of Transport – A118/202*
2. *Deysel v the Master of the High Court and others – 9138/2020*
3. *Petrus Gerhardus van Zyl t/a Goodwood Gold Exchange v The Magistrate for the District of Goodwood, Mr Louw and others – 7618/2020*
4. *The State v Junior Phiri – CC82/2019*