

**JSC INTERVIEW ROUND: OCTOBER 2022**

**CANDIDATE: JUDGE ESTHER JOHANNA SOPHIA STEYN**

**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 (1984), UNISA;

1.1.2. LLB (1992), University of Western Cape; and

1.1.3. LLM (1999), University of Cape Town.

1.2. The candidate is appropriately qualified.

1.3. The candidate has been a permanent judge of the KwaZulu-Natal  
Division, Durban since 1 January 2009.

**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 white woman.

3.3. There has not been a female Judge President of the KwaZulu-Natal High Court.

**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 59 years old and has completed a period of 13 years of active service as a judge.

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 values of the Constitution is evident in the following ways:

5.1.1. She was a lecturer in the Department of Criminal Justice for over 10 years;

5.1.2. She rose through the ranks in the National Prosecuting Authority;

5.1.3. She was a Magistrate for a short period.

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

6.1. The candidate was a senior lecturer for over ten years. She was a prosecutor for almost a decade.

6.2. The candidate has been a sitting judge in the KZN Division of the High Court for 13 years.

6.3. The candidate has written a number of academic articles.

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

7.1. The candidate listed five judgments which were overturned on appeal:

7.1.1. In *Van Vuuren v eThekweni*, the candidate had found that there was no legal duty on the Municipality in relation to a public water slide on the Durban beach front. This finding was overturned on appeal, the SCA finding that there was such a legal duty;

7.1.2. In *Aboobaker NO and others v Serengeti Rise*, the candidate had granted a demolition order in relation to a building which had been found to have been constructed contrary to the statutory scheme. The SCA on appeal found that demolition was not the appropriate remedy and that the candidate's reliance on *Lester v Ndlambe Municipality* as requiring demolition was misplaced;

7.1.3. In *Snowy Owl v Mziki*, the candidate heard argument and upheld a point *in limine*, in the context of an arbitration agreement. The issue concerned an interpretation of the nature of the relief sought. On appeal, the Full Court found that there was no merit in the point *in limine* and that the court a quo ought to have ruled accordingly and considered the merits of the application for interdictory relief;

7.1.4. In *Hume Housing v Hibiscus Coast*, the candidate upheld a plea based on *res judicata*. On appeal to the Full Court, the finding was reversed and the Full Court's judgment was upheld on appeal before the SCA.

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

8.1. The candidate has the following experience:

8.1.1. 1980 – 1983: Clerk of the Criminal and Civil Court, Department of Justice;

8.1.2. 1984 – 1986: District Prosecutor, Department of Justice;

8.1.3. 1987 – 1990: District Court Magistrate, Department of Justice;

8.1.4. 1991 – 1995: Senior Prosecutor, Goodwood and Wynberg Court;

8.1.5. 1996 – 2007: University of Cape Town as a Senior Lecturer;

8.1.6. 2008 – Department of Justice, Acting Judge in Cape Provincial Division and Northern Cape;

8.1.7. 2009 to date: Judge of the High Court in the KwaZulu-Natal Division of the High Court.

**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.

9.2. This assessment is based on the judgments annexed in the candidate's application and the number of articles the candidate has written, all of which are in English.

9.3. From the candidate's judgment, she shows a clear proficiency in the English language.

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

10.1. The candidate has no reserved judgments outstanding.

10.2. In certain of the judgments annexed to the candidate's application (e.g. *Naidoo v Regional Magistrate and Savoii and Others v NDPP*), the judgment was handed down more than three months after the hearing.

**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 fairly, efficiently and effectively.

**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 community at large:**

14.1. The candidate's appointment as Judge President would send a message to the community that the judicial system is serious about transformation and the inclusion of women in high judicial offices, and that experience is valued for judicial appointment and promotion.

**ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

1. Reported judgments:
  - 1.1. No judgments listed
2. Unreported judgments:
  - 2.1. No judgments listed
3. Judgments upheld on appeal:
  - 3.1. No judgments listed
4. Judgments overturned on appeal:
  - 4.1. No judgments listed