

JSC INTERVIEW ROUND: APRIL 2023

CANDIDATE: JUDGE SEGOPOTJE SHEILA MPHAHLELE

**COURT FOR WHICH CANDIDATE APPLIES: JUDGE PRESIDENT:
MPUMALANGA DIVISION OF THE HIGH COURT OF SOUTH
AFRICA**

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. Proc conferred in 1991 at the University of Limpopo (Formerly known as University of the North); and

1.1.2 LLB conferred 1993 at the University of Limpopo (Formerly known as University of the North).

1.2 The candidate is experienced, having worked as:

1.2.1 Claims Handler at the Road Accident Fund (1994 – 1995);

1.2.2 Candidate Attorney (1995 – 1998);

1.2.3 Professional Assistant at Lephoko Attorneys (1998 – 1999);

1.2.4 Attorney (1999 – 2013);

1.2.5 Insolvency Practitioner (2000 – 2013); and

1.2.6 Appointed as a judge on 02 December 2013.

2. The candidate 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 eight full-time judges in the division, comprising (as far as could be ascertained):

3.1.1. four black women (African);

3.1.2. four black men (African); and

3.2. The candidate is a black woman.

3.3. The candidate is a member of the International Association of Women Judges (South Africa Chapter). One of the objectives of the International Association of Women Judges is to advance women's rights and equal justice for women and girls. The candidate's appointment will assist in addressing this.

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 will be 54 years eight months at the time of the interview and has completed a period of just over nine years of active service as a Judge.

4.5. If appointed, the candidate could serve a further 16 years as Judge President.

5. The candidate's personal commitment to the values of the Constitution:

5.1. The candidate contributes to transformation in that she is involved in the activities promoting the upliftment of young girls who are abused in the community of Mamelodi Township.

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

6.1. The candidate is well versed in the law. She has presided over a number of cases during her tenure as a Judge in the High Court of South Africa, Gauteng Division and Mpumalanga Division as a Deputy Judge President. The candidate sat on the bench in both the Pretoria and Johannesburg Divisions of the High Court, a busy division that handles a multiplicity of complicated matters.

6.2. The experience acquired by the candidate as a Judge places her in good stead to assume the role of Judge President of the High Court South Africa, Mpumalanga Division.

6.3. Although the candidate has been a sitting judge for nine years, she does not appear to have any reported judgments.

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

7.1. The Supreme Court of Appeal in the matter of *Oothuizen and Another v S* 2018 (2) SACR 237 (SCA) overturned the candidate's judgment. The Supreme Court of Appeal confirmed the conviction, but reduced the sentence handed down by the candidate in the court *a quo*.

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

8.1. The candidate has a clear understanding of law.

8.2. The candidate was admitted as an attorney and progressed to be appointed as a judge.

9. The candidate's linguistic and communication skills:

9.1. The candidate is proficient in her command of the English language and communication skills.

9.2. The candidate has given detailed judgments. It can be deduced from the written judgments that the language used is simple and can be understood.

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

10.1. The candidate is able to produce judgments promptly.

10.2. The reviewers are not aware of any complaints lodged against the candidate for delaying to produce a judgment on time.

11. The candidate's ability to conduct court proceedings:

11.1. There are no adverse comments received in this regard.

12. The candidate's independent mindedness:

12.1. There are no reservations or concerns regarding the candidate's impartiality and fairness.

12.2. The candidate presided in the matter of *The State v Zinhle Maditla*. Zinhle Maditla was charged by the state for premeditated murder of her four children, Ethen 11 years of age, Minenhle 8 years of age, Blessing 7 years of age, and Shaniqua 3 years of age at the time. The matter was handed to the Mpumalanga High Court sitting in Middleburg. On 9 September 2019, Judge SS Mphahlele sentenced Maditla to four life sentences. The judgment was well reasoned. Judge SS Mphahlele correctly noted as follows:

“The accused betrayed her own children. Having consumed the poison, the children did not die immediately ... they died long painful deaths. What is mostly disturbing is that these acts took place at their own [haven] with their mother. As a result, I could not find exceptional reasons which justify a deviation from the prescribed minimum sentence.”

13. The candidate's administrative ability:

- 13.1. The candidate is currently the Deputy Judge President of the Mpumalanga Division of the High Court. The role of Deputy Judge President involves amongst others scheduling and allocation of cases, management of administrative matters and assisting the Judge President on the making of practice directives.
- 13.2. Some practitioners within the Mpumalanga Division, however, have complained that they are not consulted when the directives are issued.
- 13.3. Practitioners have further complained that many of the provisions of the practice directives are in contravention of legislation and the Uniform Rules of Court to the extent that they impede accessibility, efficiency, and the proper functioning of the Courts. Some of the issues raised had been dealt with by the Supreme Court of Appeal (SCA) which handed down three separate judgements on the practice directives. These judgements are: *National Director of Public Prosecution (ex parte application) 2018 (2) SACR*, *National Director of Public Prosecution (ex parte application) (905217) 2018 (2) SACR* (“*Ramadhani – SCA Judgment*”), *National Director of Public Prosecution (ex parte Application) (2021) ZASCA 142*; *2022 (1) (SCA)* (“*Ntusi – SCA Judgment*”) and *Frank Mhlongo and Others v Tryphinah Mokoena N O and Others (2022) ZASCA 78 (May 2022)* (“*Mhlongo – SCA Judgment*”). Some of the issues crystallised in the above judgments are reflected in the most recent practice directive issued in October 2022.
- 13.4. In addition, there are a number other provisions of the practice directive which remain problematic. These are:

- 13.4.1. Paragraph 7.12 provides that all opposed motion matters shall be heard virtually. This provision arguably undermines section 34 of the Constitution. In addition, it prevents young practitioners from learning through observation in open court.
- 13.4.2. Paragraph 7.14 requires the filing of a document called “*oral written argument*” in addition to heads of argument. This is unnecessary as it increases the cost of litigation.
- 13.4.3. Paragraph 7.17 provides that matters which do not comply with any provision of the practice directives will not be allocated. This provision undermines the powers of a judge to condone any non-compliance with Rules in terms of Rule 27(1) of the Rules of Court. The import of this provision of the practice directives is that even minor non-compliance will prevent a matter being allocated to a Judge who might have condoned the non-compliance had the matter been allocated to him or her. It also undermines section 173 of the Constitution which gives Judges the power to regulate their own processes, as well as section 34 of the Constitution.

14. The message that the candidate’s appointment would send to the community at large:

- 14.1. If the candidate is appointed, it will convey to the community at large that the judiciary is embracing change and judges are members of the community and society. They have grown up and lived as members of the community.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported decisions

The candidate does not appear to have any reported judgments.

2. Unreported decisions

2.1. *Transnet SOC limited v Absa Insurance Company Ltd and others*
(08853/2016) [2019] ZAGPJHC 476 (24 October 2019)

2.2. *Ivan Don Van Der Linder and sixteen others v The National Director
of Public Prosecutions and two others* (27899/2008) [2013]
ZAGPJHC

3. Judgments upheld on appeal

3.1. *Oosthuizen and Another v S* 2018 (2) SACR 237 (SCA)

4. Judgments overturned on appeal

4.1. *Oosthuizen and Another v S* 2018 (2) SACR 237 (SCA)