

**JSC INTERVIEW ROUND: APRIL 2023**

**CANDIDATE: MR MOKATE VICTOR NOKO**

**COURT FOR WHICH CANDIDATE APPLIES: GAUTENG DIVISION**

**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 – North West University (1994);

1.1.2. LLB – North West University (1997);

1.1.3. Diploma in Insolvency Practice – University of Pretoria (2004);

1.1.4. LLM – University of Pretoria (2018); and

1.1.5. PG Diploma in Labour Law – University of Johannesburg (2021).

1.2. The candidate enrolled for a postgraduate diploma in tax law at the University of the Witwatersrand, Johannesburg in 2022. He will presumably complete this course at the end of 2023, as this is a two-year course.

1.3. The candidate was admitted as an attorney and conveyancer in 1998, and as a notary public in 2001.

**2. The candidate's integrity and ethics:**

2.1. No circumstances are known or could be found 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 75 full time Judges on the Gauteng Division bench, comprising (as far as could be ascertained):

3.1.1. 22 black women (16 African, 4 Indian, 2 Coloured);

3.1.2. 24 black men (17 African, 4 Indian, 3 Coloured);

3.1.3. 14 white women; and

3.1.4. 15 white men.

3.2. The candidate is a black 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 was born in 1971 and will be 52 in October.

4.5. If appointed, the candidate could serve up to 18 years in office.

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

5.1. The candidate has acted as a Commissioner in the small claims court over a period of two years between 2010 and 2015, provided legal assistance as a member of the Adelaide Tambo Clinic Committee (in Pretoria North) since 2021, and has served on a panel of attorneys of SASLAW (at the Labour Court) to provide legal services to indigent members of the public.

5.2. The candidate has also been a member of NADEL since 2020, having served as the treasurer of its Pretoria branch from 2020 to 2021, and is that branch's representative on the NEC from 2021 to date.

5.3. The candidate also served as an additional member on the NEC of the Black Conveyancers Association from 2021 to date.

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

6.1. The candidate appears to have practiced in a wide range of areas of the law. However, his practice comprised of conveyancing (25%),

divorces (20%), “estate (property) litigation” (15%), and labour law (15%) with only 1% constitutional law as shown in the application.

6.2. Of the three cases over which he presided, the candidate considers his most significant were in the Labour Court, another in the Land Claims Court and one in the Gauteng Division of the High Court. Of these three cases, one is attached to the application being the *Mkhize* case and the other, the *Bakgatla* case, could be found on Saflii but the case of *Noko v Lekoane* could not be found.

6.3. From reading the candidate’s judgments it is generally reflected that he has a broad knowledge of the law or ability to familiarise himself with a new area of law. However, it does not appear that the candidate has had exposure to constitutional law, either as a practising attorney or as an acting judge. He also appears to have limited exposure to administrative law and allocates about 5% of his practise to administrative law on his application.

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

7.1. The candidate indicated on his application that he is not aware of any matter which has been taken on appeal. The reviewers discovered no judgments taken on appeal.

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

8.1. The candidate was admitted as an attorney and conveyancer in 1998 (and as a notary public in 2001). He therefore has 25 years of experience as a legal practitioner. However, as indicated above, his professional experience has largely been limited to specific areas of law, some of which fall outside of the jurisdiction of the High Court.

8.2. The candidate has served as an acting judge in Gauteng (both provincial and local divisions) from 2019 to 2022 for a total of 25 weeks. According to his application, he was appointed as an acting judge for the following dates:

8.2.1. 4 weeks in 2019 (no dates provided);

8.2.2. 1 week in July 2020 (27 to 31);

8.2.3. 6 weeks in February-March 2021 (15 February to 26 March);

8.2.4. 4 weeks in October 2021 (4 to 29); and

8.2.5. 10 weeks in April-June 2022 (11 April to 17 June).

8.3. The candidate is currently serving as an Acting Judge in the Gauteng Division of the High Court.

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

9.1. From a reading of numerous judgments it is clear that the candidate's judgments are well written, well-reasoned, and easy to follow.

9.2. The candidate ordinarily provides sufficient background and narration of the facts, as well as the issues to be determined. In a handful of his appeal judgments, however, the candidate appears to have included far too much granular detail on the facts, making the judgments a little difficult to follow.

9.3. However, from reading and analysing his application it does not appear that the candidate has paid careful attention to his application:

9.3.1. for example, *the curriculum vitae* that he has attached has outdated information, including a reference to a retired judge

of appeal where he referred to such judge as a sitting judge, and incomplete information regarding a course of study which he began in 2022; and

9.3.2. to a limited extent, this lack of attention to detail is also apparent in some of the candidate's judgments, which contain typing errors. It is likely that the candidate has not spent sufficient time proofreading these judgments.

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

10.1. The candidate is able to produce judgments well within three months, in accordance with the norms and standards for judicial performance , except for three matters:

10.1.1. *Lumka v Director of Public Prosecutions* [2022] ZAGPPHC 77, which was heard on 18 October 2021 and the judgment was granted on 7 February 2022. In this matter the candidate was one of three judges.

10.1.2. *Mobile Telephone Networks (Pty) Ltd v Ngubeni* 2022 JDR 0221 (GP), where the matter was heard on 20 October 2021 and the judgment was granted on 26 January 2022.

10.1.3. *NC v LC 2021 JDR 0298* (GJ), where the matter was heard on 14 April 2020 and the judgment was only granted on 10 December 2020. In this matter there is no explanation for the delay and this extensive delay should be explained by the candidate.

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

11.1. There is nothing to suggest that the candidate lacks the ability to conduct court proceedings fairly, efficiently, and effectively.

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

12.1. There is nothing to suggest that the candidate is not independent-minded.

12.2. In the matter of *Gold Reef City (Pty) Limited and Another v Bruni David John and Another* [2021] ZAGPJHC 33 where judgment was granted on 26 March 2021, the candidate wrote a dissenting judgment from the judgment of Judge Adams in an appeal against a summary judgment order. The candidate held that the summary judgment should have been refused on the facts pleaded and leave to defend granted.

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

13.1. The fact that the candidate was able to provide judgments within three months after the hearing of the matter, except for the three mentioned above, and still be involved in his attorney practice, indicates that he is administratively proficient.

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

14.1. The candidate has actively participated in institutions that assist the wider community. His appointment, if made, would send a positive message to the public.

## **ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

### 1. Reported judgments:

- 1.1. *Fairvest Property Holdings v Valdimax CC t/a Fish and Chips Co & Others* 2020 (3) SA 202 (GJ)

### 2. Unreported judgments:

- 2.1. *Gold Reef City (Pty) Limited and Another v Bruni David John and Another* [2021] ZAGPJHC 33
- 2.2. *Mthethwa Justice Melusi v State* [2022] ZAGPJHC 309
- 2.3. *Mokwena v Johannesburg Metropolitan Municipality and Another* [2019] ZAGPJHC 472
- 2.4. *Theron v Minister of Police* [2020] ZAGPJHC 309
- 2.5. *S v Hlatswayo* [2022] ZAGPJHC 538
- 2.6. *Sithole and Others v S* [2022] ZAGPJHC 294
- 2.7. *Beautement v Propnu t/a Properteam Rental and Another* [2020] ZAGPJHC 365
- 2.8. *Lumka v Director of Public Prosecutions* [2022] ZAGPPHC 77
- 2.9. *Malgas and Others v Minister of Justice and Correctional Services* 2022 JDR 0215 (GP)
- 2.10. *Meechan v Naude and Another* [2020] ZAGPJHC 272
- 2.11. *Minister of Police v Mashilwane* 2019 JDR 2610 (GJ)



2.12. *Mobile Telephone Networks (Pty) Ltd v Ngubeni* 2022 JDR 0221 (GP)

2.13. *Naidoo v Hesslewood* 2021 JDR 3060 (GP)

2.14. *NC v LC* 2021 JDR 0298 (GJ)

2.15. *S v Dube* 2019 JDR 2046 (GJ)

2.16. *S v Hudla and Another* 2022 JDR 1773 (GJ)

2.17. *S v Khumalo* 2019 JDR 2099 (GJ)

3. Judgments upheld on appeal:

3.1. None

4. Judgments overturned on appeal:

4.1. None