

JSC INTERVIEW ROUND: APRIL 2023

CANDIDATE: MS MABAENG MORONGWE DENISE LENYAI

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. BProc – University of the North (now known as the University of Limpopo) (1994); and

1.1.2. LLB – University of Natal (now known as the University of KwaZulu-Natal) (1996).

1.2. The candidate was admitted as a conveyancer in 1998 and as a notary in 1999.

2. The candidate's integrity and ethics:

2.1. The candidate has disclosed that in October 2008 the Law Society of the Northern Provinces applied to court to strike her (and her erstwhile partner) from the roll of attorneys (and suspend them from practice pending the determination of the application to strike them).

2.2. On 5 November 2008 the Gauteng Division of the High Court, Pretoria made an order precluding the candidate from practising for her own account pending the determination of the application to strike her from the roll (which she refers to as an interdict).

2.3. In October 2016, the Legal Practice Council (“the LPC”) took a decision to no longer proceed with the application to strike the candidate (and her erstwhile partner), and the candidate proceeded to “*bring an application for the upliftment of the interdict*” and dismissal of the application to strike. The candidate contends that this application was successful and refers to an annexure marked “MMD1” to her questionnaire in corroboration thereof. No such annexure was provided to the reviewers.

2.4. The reviewers are therefore unable to discern what the nature of the initial application was. The candidate should be questioned on the reasons for the application, and her suspension for a period of over 8 years.

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 woman.

3.3. The candidate states in her application that she has been deaf in her left ear since early childhood.

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 52.

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

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

5.1. The candidate appears to demonstrate a strong personal commitment to the values of the Constitution. This is evident from her participation and membership of various organizations within and outside the legal fraternity. The candidate states that she renders her legal expertise *pro bono* to ensure that legal rights are adequately

addressed for disadvantaged members of the public. She also participates in outreach programmes to communities to try to explain various aspects of the law to ordinary members of the public so that they understand the law and their basic human rights.

- 5.2. The candidate also appears to be involved, as a member of the Black Lawyers Association and the Law Society of South Africa, in grappling with the difficult questions pertaining to skewed briefing patterns and transformation of the legal profession faced by women legal practitioners.

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

- 6.1. From the review of the candidate's judgments, the candidate appears to have a fair knowledge of the law.

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

- 7.1. The candidate answered "yes" in her application to the question whether any of her judgments had been taken on appeal but indicated that the result is "*unknown at this stage*".

- 7.2. The reviewers were unable to find any judgments taken on appeal.

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

- 8.1. The candidate did her articles of clerkship from 3 January 1996 to 20 December 1997 and has since practiced as an attorney, holding various senior positions, including as a director of her own firm.

- 8.2. The candidate lists her experience as:

- 8.2.1. property law and conveyancing;

- 8.2.2. notarial practice;
- 8.2.3. land claims and assisting tribal communities to be recognised;
- 8.2.4. estate planning and administration of estates;
- 8.2.5. civil litigation;
- 8.2.6. commercial transactions including liquidations and tax law;
and
- 8.2.7. matrimonial law and child law.

- 8.3. The candidate has held membership and leadership roles in the BLA and LPC as well as serving on various committees of the said institutions, especially from 2015 onwards.

- 8.4. Since about 2018 the candidate has also been a member of the International Bar Association, BRICS Legal Forum, and the Southern Africa Development Community Lawyers Association.

- 8.5. The candidate does not have any court experience as counsel.

- 8.6. The candidate lists the following dates as having acted as a judge in the Gauteng Division of the High Court (being 24 weeks in total):
 - 8.6.1. 4th term 2020 – 4 weeks;
 - 8.6.2. 2nd term 2021 – 5 weeks;
 - 8.6.3. 4th term 2021 – 5 weeks; and
 - 8.6.4. 1st term 2022 – 10 weeks.

9. The candidate's linguistic and communication skills:

9.1. The candidate's judgments appear to be well reasoned and well written.

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

10.1. The candidate's judgments considered by the reviewers were delivered within three months with the exception of *Pillay and Another v Ramzan and Others* (9757/2020) [2022] ZAGPJHC 306 (26 April 2022), which was heard on 1 January 2022 and judgment was delivered on 26 April 2022.

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

11.1. Council appearing before the candidate reported that she demonstrated fairness, was prepared, was courteous to counsel and court staff, had a very good temperament, demonstrated a conservative style of judicial engagement, and optimal use of court time and resources.

12. The candidate's independent mindedness:

12.1. From the candidate's judgments the candidate appeared to be firm, but fair and independent.

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

13.1. The candidate has, from 2003 to date, been a member of various committees and held other senior positions at organisations including the Law Society of South Africa (of which the candidate

is the current President), Black Lawyers Association, Pan African Lawyer Union, Southern Africa Development Community Lawyers Association, BRICS Legal Forum, International Bar Association, and the Law Society of the Northern Provinces. The candidate thus appears to have good administrative abilities.

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

14.1. Appointing the candidate would send a message to the public at large that the JSC values the appointment of candidates who are able to produce a large number of well-reasoned and well-written judgments across a broad spectrum of legal fields, and who have knowledge and experience beyond the borders of South Africa.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:

1.1. None

2. Unreported judgments

2.1. *Kubheka v Nedbank Ltd and Others* (19767/2019) [2022] ZAGPJHC 303 (26 April 2022)

2.2. *Faleti v University of South Africa and Others* (12846/2020) [2021] ZAGPPHC 482 (27 July 2021)

2.3. *Letsoko v Monthanga* (25020/2020) [2022] ZAGPJHC 325 (3 May 2022)

2.4. *Liberty Group Limited v Plumifon (Pty) Ltd TA Sally Williams Ice Cream and Others* (11560/2019) [2021] ZAGPPHC 473 (23 July 2021)

2.5. *Maluleke v JR 209 Investments (Pty) Ltd and Another* (60330/2021) [2021] ZAGPPHC 861 (15 December 2021)

2.6. *R v R* (40000/2017) [2022] ZAGPJHC 302 (29 April 2022)

2.7. *Pillay and Another v Ramzan and Others* (9757/2020) [2022] ZAGPJHC 306 (26 April 2022) [annexed to candidate's application]

2.8. *Prinsloo and Others v Botha and Others* (10044/2020) [2021] ZAGPPHC 466 (14 July 2021)

2.9. *Robertson v National Commissioner of the South African Police Service and Others* (47373/2019) [2021] ZAGPPHC 477 (29 July 2021)

- 2.10. *Nedbank Ltd v Hip Hop Pantsula Production Close Corporation* (23465/2019) [2022] ZAGPJHC 299 (3 May 2022)
- 2.11. *Ngoepe v Minister of Police and Another* (56087/2012) [2022] ZAGPPHC 13 (13 January 2022)
- 2.12. *Nyawose v Road Accident Fund* (14546/2018) [2021] ZAGPPHC 506 (10 August 2021)
- 2.13. *Parameter Properties (Pty) Ltd t/a Aida Pretoria v Reed* (A93/2020) [2020] ZAGPPHC 751 (11 December 2020)

3. Judgments upheld on appeal:

- 3.1. None

4. Judgments overturned on appeal:

- 4.1. None