

**JSC INTERVIEW ROUND: APRIL 2023**

**NORTH WEST DIVISION OF THE HIGH COURT**

**CANDIDATE: MS MSONGELWA EULENDA MAHLANGU**

**COURT FOR WHICH CANDIDATE APPLIES: NORTH WEST HIGH COURT, MAHIKENG**

**1. The candidate's tertiary qualifications, professional admissions, honours, and permanent judicial appointments:**

1.1. The candidate holds the following qualifications:

1.1.1. BJuris – Vista University (1997); and

1.1.2. LLB – Vista University (2001).

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

2.1. There are no circumstances known that would suggest that the candidate is not a person of integrity with a reputation for ethical behaviour and is not a fit and proper person for appointment.

2.2. The reviewers are not aware of any complaints involving ethical misconduct on the part of the candidate.

**3. Whether the candidate's appointment would help to achieve an appropriate racial and gender composition on the bench:**

3.1. There are currently four full time judges on the North West Division comprising:

3.1.1. 1 black African women;

3.1.2. 2 Coloured men; and

3.1.3. 1 white woman.

3.2. The candidate is a black woman.

**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 57 years of age.

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 in her questionnaire indicates that she encourages children to finish school. The candidate indicates that she mentors many children. This suggests the candidate has a personal commitment to section 29 of the Constitution.

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

6.1. In *First Rand Bank Limited v D.S and A.A Viljoen*, the candidate showed a good understanding of the law in particular the National Credit Act.

6.2. The candidate was, however, criticised for the manner she handled the matter in *Olatotse Theophilus Bojosinyana versus Sello Maroga and 9 Others* – Case No: UM197/2022, a copy of which is attached to her application:

6.2.1. The first criticism is that the candidate ought to have struck the matter from the roll. The applicant in that matter was left with one month on his contract of employment before it was to come to an end by operation of law. The administrator in the matter, the first respondent, wrote a letter to the applicant informing the applicant that the contract of the applicant was to come to an end on 8 November 2022 by operation of law. The applicant was requested to not report for duty from 7 October 2022 until 8 November 2022 and the applicant would receive all payments due in terms of the law. The complaint is that the candidate erred in concluding the matter was urgent.

6.2.2. The second complaint relating to the *Bojosinyana* matter relates to the factual findings made by the candidate. The

candidate found that the fifth respondent approved the appointment of the first respondent. This is factually incorrect as the fifth respondent approved the intervention and not the appointment of the first respondent. Moreover, none of the respondents contended that the applicant was appointed by the seventh respondent on 20 September 2022. The applicant was in fact employed by the second respondent on 1 March 2018.

6.2.3. Third, the candidate is accused of having misunderstood the evidence before her in the *Bojosinyana* matter.

6.2.4. Finally, the candidate is criticised for failing to understand the role of the fifth respondent as it relates to Section 139(2)(b)(i) of the Constitution.

6.3. There are concerns as it relates to the candidate's knowledge and application of constitutional law and claims against the Minister of Police, especially when considering awards for unlawful arrest made by the candidate. The candidate is criticised for not considering the constitutional rights of the plaintiffs in unlawful arrest matters that have sat before her when assessing an appropriate award. In this regard, the concerns noted in the interview of the candidate in October 2022 are still present.

6.4. The reviewers have been informed of an incident in the unopposed motion court where the candidate was faced with an application for substituted service to serve a notice of motion in terms of Rule 46A on the respondent by way of substituted service. The candidate granted the application. Immediately after granting the application, in the same matter, counsel for the applicant moved for default

judgment, advising the candidate that the respondent in the matter had been previously advised of the proceedings by way of email and sms. The candidate granted default judgment. In doing so, the candidate clearly misunderstood that the granting of the application for substituted service did not amount to condonation of non-compliance with the requirements of Rule 46A, that documents be served personally on the respondent unless leave to serve in another manner has been granted. The candidate should have refused the application for default judgment and directed the order for substituted service be complied with and only after proof of compliance with the order could the candidate entertain the application for default judgment. This conduct demonstrates a lack of knowledge of the Uniform Rules of Court, and a lack of a sense of fairness towards the respondent.

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

7.1. The candidate indicated in her questionnaire that she has had a matter taken on appeal, but it has not been concluded as yet. The candidate did not mention which matter it is.

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

8.1. The candidate was a public prosecutor and later a state advocate from 2003 until 2012. The candidate did pupillage with the Johannesburg Bar in the year 2012 and has practised as an advocate for her own account from the year 2012 to date.

8.2. The candidate has a long professional career but only started acting as a Judge in July 2020. It may be said that the candidate does not

yet have sufficient professional experience as an Acting judge. The candidate has potential to become a good judge in time and could benefit from a longer acting period to gain experience, and to enable the JSC to assess the candidate's suitability.

- 8.3. Importantly, there was an issue raised in relation to a matter handled by the candidate in *Mosetsanagape Sheila Tselapedi versus Zanael Desmond Lawu*, Case No: 2226/2020, North West High Court. This matter was an action for defamation of character. The candidate at the close of the plaintiff's case granted absolution from the instance, when according to the plea of the defendant, the defendant admitted having uttered the words complained of. The words which were complained of were that the plaintiff in the matter, in her official capacity as the Human Resource manager, had increased her salary by about 51% and had received payment to that effect and that the increase of her salary was prior to the probation period of the plaintiff having lapsed. These words were uttered by the defendant during an interview with the South African Broadcasting Corporation ("SABC").
- 8.4. The defendant admitted having uttered the words, and the defendant admitted the publication of the words on the SABC. The defendant pleaded that the words were correct and uttered for public benefit. The plaintiff pleaded that a reasonable person would know that the defendant was referring to her, especially her fellow employees.
- 8.5. The candidate found when granting absolution found at paragraph 23 of the judgment that "*there were no defamatory words uttered by the Defendant on National TV, the Court cannot make the*

*assumption that the Defendant referred to the Plaintiff as a corrupt person.”*

8.6. The candidate has been criticised for failing to apply her mind to the allegation made by the defendant that the plaintiff had increased her salary by about 51% before her probation period expired.

8.7. The *Bojosinyana* and *Tselapedi* judgments show that the candidate’s judgments are not well-reasoned.

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

9.1. The *Bojosinyana* and *Tselapedi* judgments also demonstrate that the candidate’s judgments are not well written.

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

10.1. As far as the reviewers have been able to ascertain, the candidate delivers her judgments within a period of three months.

10.2. The candidate, however, refers to two judgments reserved from 30 October 2022 and 21 October 2022. The judgment of 21 October 2022 is a full bench judgment.

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

11.1. In the *Tselapedi* judgment, the defendant filed his discovery affidavit and documents one day prior to the hearing of the matter. Counsel for the plaintiff sought to have the matter postponed to consider the documents discovered at this late stage and to consult with the plaintiff as it related to the matter. The candidate refused the request and directed that counsel for the plaintiff consult with his

client and the matter be heard at 14h00. The order was made at or around 10h00 on the morning of the trial.

11.2. In the *Bojosinyana* matter, there was an interaction between the candidate and counsel for the first and second respondents, where it is reported that the candidate was so hostile towards counsel that they requested a short adjournment to take instructions on bringing an application for the recusal of the candidate from the matter. After the adjournment the candidate was reportedly no longer hostile towards counsel for the first and second respondents.

11.3. The candidate has a reputation for not being fair, or properly prepared.

11.4. While the candidate is courteous, her temperament is not always befitting a judicial officer, as is demonstrated in the *Bojosinyana* and *Tselapedi* matters.

11.5. The candidate is not always punctual, but is reported to have improved.

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

12.1. There is no reason to think the candidate is not independently minded.

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

13.1. The candidate is involved in business and has run her practice as an advocate whilst running her businesses. This fact indicates that the candidate has the necessary administrative skills.



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

- 14.1. The appointment of the candidate would send a message to the community that the JSC is determined to appoint independent-minded judicial officers.

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

1. Reported judgments:

1.1. None

2. Unreported judgments:

2.1. *Mosetsanagape Sheila Tselapedi versus Zanael Desmond Lawu* –  
Case No: 2226/20, North West High Court

2.2. *Olatotse Theophilus Bojosinyana versus Sello Maroga and 9  
Others* – Case No: UM197/2022

2.3. *FirstRand Bank Limited versus Derick Seymour Viljoen and  
Amanda Antonette Viljoen* – Case No: 2133/2017

3. Judgments upheld on appeal:

3.1. None

4. Judgments overturned on appeal:

4.1. None