

**JSC INTERVIEW ROUND: OCTOBER 2023**

**CANDIDATE: ADV RICHARD BONAKELE MKHABELA SC**

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

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

1.1. The candidate is appropriately qualified.

1.2. The candidate holds the following qualifications:

1.2.1. BA (Philosophy and Law) – University of the Witwatersrand, Johannesburg (1998);

1.2.2. LLB – University of the Witwatersrand, Johannesburg (2000);

1.2.3. LLM – University of the Witwatersrand, Johannesburg (2008); and

1.2.4. Certificate in Construction Arbitration – Arbitration Foundation of South Africa (2019).

1.3. The candidate is a practising advocate at the Johannesburg Bar. He was conferred the status of senior counsel in May 2022.

**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 79 full time judges on the Gauteng Division bench, comprising (as far as could be ascertained):

3.1.1. 23 black women (17 African, 4 Indian, 2 coloured);

3.1.2. 25 black men (19 African, 3 Indian, 3 coloured);

3.1.3. 15 white women; and

3.1.4. 16 white men.

3.2. The candidate is a black (African) 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 is 58.

4.5. If appointed, the candidate could serve up to 17 years actively in office.

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

5.1. The candidate has shown in his application that he is committed to equity and fairness of treatment as core constitutional values. He has displayed this commitment by assisting junior advocates in achieving success and in being treated fairly and equitably.

5.2. The candidate is a strong proponent of creating awareness of the negative and painful consequences of bullying, and demonstrates this by way of his membership of an outreach group which focuses on this issue.

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

6.1. The candidate appears to specialise in criminal law and medical malpractice.

6.2. Given the limited number of judgments the candidate has handed down as an acting judge, it is difficult to establish the breadth of his knowledge of the law. That said, his judgments reflect a working knowledge of the areas of the law considered.

6.3. The extent of the candidate's knowledge of constitutional law is unclear.

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

7.1. The candidate states that an application for special leave to appeal against one of his six judgments is currently pending before the Supreme Court of Appeal. The candidate did not identify the judgment in question.

7.2. None of the candidate's other judgments has been the subject of an appeal.

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

8.1. The candidate has almost 18 years' experience as an admitted advocate, having practised as such since 12 December 2005 at Group 621 at the Johannesburg Bar. Prior to his pupillage in 2004, he worked in a wide variety of jobs, including as a security constable, a farm worker, a golf caddy, a gardener, a tutor, a sales assistant, and a legal adviser.

8.2. In his practice as an advocate, the candidate has appeared in all divisions of the High Court other than the Limpopo Division, and has also appeared in magistrates' courts across the country. He has only appeared once in the Supreme Court of Appeal (with Soni SC), in a matter that he regards as a highlight of his career (*NK obo ZK vs MEC for Health Gauteng* 2018 (4) SA 454 (SCA)).

8.3. From 2019 to July 2023, the candidate served as an acting judge in the Gauteng Division of the High Court on six occasions, each lasting only a week or two. The volume of judgments produced in that time seems relatively limited. The candidate is currently acting

in the Gauteng Division, this time for a longer period (17 July to 15 September 2023).

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

- 9.1. The candidate's judgments indicate that he has a good command of English and is able to communicate his thoughts both clearly and effectively. Unfortunately, some of his judgments contain spelling or grammatical errors, suggesting inadequate attention to proofreading.

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

- 10.1. All of the candidate's judgments have been delivered no more than three months from the date of hearing.

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

- 11.1. There appear to be no concerns regarding the candidate's ability to conduct court proceedings fairly, efficiently, and effectively. He appears to have acted in an even-handed manner in all six judgments reviewed.

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

- 12.1. There appear to be no concerns regarding the candidate's independent mindedness.

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

- 13.1. No adverse comments on the candidate's administrative ability have been received.

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

- 14.1. The candidate's appointment would be a recognition of the fact that despite humble beginnings, he has managed – seemingly against all odds – to build a successful career in law. It would send the message to the public at large that the bench includes judges drawn from a diverse range of socio-economic backgrounds and life experiences.

**ANNEXURE: LIST OF JUDGMENTS CONSIDERED**1. Reported judgments:

1.1. None

2. Unreported judgments:2.1. *LK v PK* (21/19630) [2022] ZAGPJHC 194 (2 February 2022)2.2. *Malinga v Minister of Police* [2021] ZAGPJHC 858 (22 July 2021)2.3. *Engen Petroleum Limited v Sing* [2021] ZAGPJHC 724 (12 November 2021)2.4. *Labuschagne, Jolien & BCSD Prime Investments (Pty) Ltd v Vliegmasjien (Pty) Ltd & Vormbaum, Cheryl Ann* (case number: 20/26416 (attached to application))2.5. *Goosebay Farm (Pty) Ltd v Icon Civil Engineering (Pty) Ltd and Another* [2022] ZAGPJHC 193 (4 February 2022)2.6. *Madzivhanana v Road Accident Fund* 2023 JDR 1129 (GJ)3. Judgments upheld on appeal:

3.1. None

4. Judgments overturned on appeal:

4.1. None