

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: ADV SORAYA KHATIJA HASSIM 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 obtained the following tertiary qualifications:

1.2.1. Bachelor of Arts (1988); and

1.2.2. Bachelor of Laws (1991).

1.3. Professional admissions and honours:

1.3.1. admitted as an attorney (practising as such from 9 March 1993 to 22 February 1994);

1.3.2. admitted as an advocate on 12 April 1994; and

1.3.3. conferred Silk status on 12 December 2011.

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 woman of Indian descent.

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 56.
- 4.5. If appointed, the candidate could serve up to 19 years actively in office.
5. **The candidate's personal commitment to the values of the constitution:**
- 5.1. The candidate has demonstrated commitment to the Constitution's values in her professional and personal life.
- 5.2. Her commitment is evidenced by her conduct as counsel with a keen interest in administrative, constitutional, and public interest law.
- 5.3. The candidate identifies her most significant contribution to the law and pursuit of justice in South Africa to be the development of the law of land restitution in the Land Claims Court, the practice of constitutional law particularly in the early days of the democratic dispensation, and the law on privacy in the context of the interception of communication and public administration.
- 5.4. The candidate has been involved in the training of pupils at the Pretoria Society of Advocates for a prolonged period and has also served as an examiner for the National Bar Exam.
- 5.5. The candidate mentored women legal practitioners and provided support and guidance on legal-practice-related issues in both professional and other aspects. This includes, but is not limited to, creating social media platforms for the benefit of women practitioners, both junior and senior, to share knowledge and experience and address gender issues.

5.6. The candidate has always been a champion for women and the previously disadvantaged.

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

6.1. The candidate's tertiary and professional qualifications speak for themselves.

6.2. The candidate has a wealth of constitutional law knowledge, as appears from the list of reported and unreported judgments in which she appeared as counsel, and the judgments handed down by her whilst serving as an acting judge.

6.3. The candidate has appeared in the High Court of South Africa, the Special Income Tax Court, the Labour Court and Labour Appeal Court, the Supreme Court of Appeal, the Constitutional Court, the Botswana High Court and the Botswana Appeal Court.

6.4. The candidate has also appeared before numerous professional bodies such as the HPCSA, the Professional Conduct Committee of the Nursing Council, the Gauteng Gambling and Betting Board, and the Broadcasting Complaints Commission.

6.5. Many of the candidate's judgments deal with constitutional principles. The Supreme Court of Appeal confirmed her judgment in *Boost Sports Africa*. This judgment dealt inter alia with the rights to access to courts and security for costs.

6.6. The candidate appeared in the Constitutional Court and Supreme Court of Appeal as counsel and served as a member of numerous Commissions, including the Broadcasting Complaints Commission and the Financial Services Tribunal.

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

7.1. The Supreme Court of Appeal unanimously upheld the candidate's judgment *a quo* in *Boost Sports v SA Breweries* 2015 (5) SA 38 (SCA).

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

8.1. The candidate has a long and distinguished professional career. She has appeared as counsel in many matters that have subsequently been reported as judgments in all courts of South Africa at all levels.

8.2. She has successfully demonstrated, whilst acting in several divisions of the High Court, her knowledge of the law, written communication skills, and an ability to manage court proceedings. The candidate has written judgments in diverse areas of law, and each of them demonstrates the candidate's extensive knowledge and versatility.

8.3. The candidate has also displayed a lifelong commitment to improving her knowledge of the law, and the knowledge and know-how of fellow practitioners, particularly women and previously disadvantaged practitioners.

8.4. She has been practising as counsel for 29 years and as a senior counsel for almost 13 years.

8.5. The candidate has acted in the Durban and Coast Local Division, and the Gauteng Division seated in Pretoria.

8.6. She has served as a member of the Financial Services Tribunal. She presided over enquiries under section 50 of the Tax Administration

Act and held appointments as Commissioner in enquiries under section 417 of the Companies Act of 1973.

8.7. She has been an arbitrator on the Arbitration Foundation of South Africa's panel of arbitrators and was appointed as an arbitrator in numerous disputes. She is a member of the panel from which Chairpersons of the Tax Board are appointed, was a member of the Broadcasting Complaints Commission, and a Commissioner of the Small Claims Court.

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

9.1. The candidate's judgments are well written, researched, and reasoned.

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

10.1. In certain instances, the candidate took longer than 3 months to deliver judgments.

10.2. A total of 35 reported and unreported judgments were found. These judgments were given from 2009 to 2023.

10.3. Most of the judgments not handed down within 3 months were delivered within 4 months.

10.4. There are 2 instances in which the judgments were delivered 14 months after the last hearing. Both these matters are related to claims against the Road Accident Fund. It is not apparent what the cause of this delay was. The two matters are:

- 10.4.1. *Els v The Road Accident Fund* 2022 JDR 0960 (GP) (JUTA & SAFLII). Heard 21 February 2021. Judgment 20 April 2022; and
- 10.4.2. *Sekhwela v The Road Accident Fund* 2021 JDR 1167 (GP) (JUTA & SAFLII). Heard 25 June 2020. Judgment 28 May 2022.
- 10.5. In the Judge President’s Practice Directive of 9 September 2020, the Judge President directed that: “*Acting Judges are reminded that any reserved Judgement that remains outstanding for 6 months or longer renders the Acting Judge concerned liable to be charged with professional misconduct.*”
- 10.6. The candidate mentions two pending reserved judgments (the *Vercuel* and *Makamu* matters, which were reserved on 7 and 9 March 2023, respectively). Those judgments have now been handed down. *Vercuel* was delivered on 28 July 2023, and *Makamu* was delivered on 9 July 2023. Therefore, based on the candidate’s application, the only judgment that appears to remain outstanding is item (c), *Ximbi v RAF*.
11. **The candidate’s ability to conduct court proceedings fairly, efficiently and effectively:**
- 11.1. The candidate is experienced in conducting court proceedings fairly, punctually, and courteously.
- 11.2. The candidate communicates clearly and decisively. Her demeanour speaks of confidence and commands respect.

11.3. The candidate has presided over both unopposed and opposed matters as an acting judge.

12. The candidate's independent mindedness:

12.1. The reviewers considered various written judgments delivered by the candidate.

12.2. These judgments all display the candidate's independent mindedness.

12.3. The complexity and way in which the candidate reasoned regarding difficult issues of fact and law in the judgments is apparent.

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

13.1. The candidate's administrative ability is evident from the fact that she served on or was involved in the following:

13.1.1. she was a member of the Bar Council of the Pretoria Society of Advocates for many years;

13.1.2. she served as Chief Examiner of the National Bar Examination Board;

13.1.3. she is the Chair of the Training and Development Committee of the South African Women Lawyers' Association; and

13.1.4. she is a member of the Board of the Tshwane Society of Advocates.

- 13.2. As an arbitrator and member of the commissions on which she served, she was responsible for effectively administrating and managing the processes.
14. **The message that the candidate's appointment would send to the public at large:**
 - 14.1. The candidate's appointment will convey to the community that the judiciary consists of judges that have undergone proper scrutiny regarding competency, experience, and proficiency.
 - 14.2. Her appointment as a judge will serve to affirm the respect which she already commands in her peers and members of the public who have come to know her in her personal and professional capacity.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

- 1.1. *Dealernet (Pty) Ltd v Mamahlodi* 2009 (6) SA 259 (GNP)
- 1.2. *Director General, Department of Public Works v Kovac Investments* 2010 (6) SA 646 (GNP)
- 1.3. *S v Shai* 2014 (1) SACR 204 (GNP)
- 1.4. *Boost Sports Africa (Pty) Ltd v South African Breweries Ltd* 2014 (4) SA 343 (GP)
- 1.5. *Hume v The Directorate for Priority Crime Investigation ("The Hawks") and Another* 2022 (1) SACR 518 (GP)
- 1.6. *Boost Sports Africa (Pty) Ltd v South African Breweries (Pty) Ltd* 2014 (4) SA 343 (GP) was upheld by the Supreme Court of Appeal in *Boost Sports Africa (Pty) Ltd v South African Breweries (Pty) Ltd* 2015 (5) SA 38 (SCA)

2. Unreported judgments:

- 2.1. *S v Halgryn* 2012 JDR 2079 (GNP)
- 2.2. *S v Tsotetsi* 2012 JDR 2395 (GNP)
- 2.3. *WJP Kotze v Member of the Executive Council*
- 2.4. *Mdhuli v Legoabe NO* 2014 JDR 1313 (GP)
- 2.5. *Tutani Investments 49 (Pty) Ltd v Easy Street Truck Dealers CC* 2014 JDR 1141 (GP)
- 2.6. *Ramolobeng v Lowveld Bus Services (Pty) Ltd* 2015 JDR 0190 (GP)

- 2.7. *Enable Employment (Pty) Ltd v Frese* 2015 JDR 0192 (GP)
- 2.8. *S v Radebe* 2015 JDR 2053 (GP)
- 2.9. *S v Pharasi* 2015 JDR 2229 (GP)
- 2.10. *Mkobeni v Road Accident Fund* 2016 JDR 0476 (GP)
- 2.11. *Browns Airside v the Airports Company of South Africa* 2016 JDR 1916 (GP)
- 2.12. *Sekhwela v The Road Accident Fund* 2021 JDR 1167 (GP)
- 2.13. *Mosemaka v The Road Accident Fund* 2020 JDR 2582 (GP)
- 2.14. *Xolile v Minister of Police* 2021 JDR 0389 (GP)
- 2.15. *Mhlongo v The Road Accident Fund* 2020 JDR 2581 (GP)
- 2.16. *Els v The Road Accident Fund* 2022 JDR 0960 (GP)
- 2.17. *Chamdor Service Station CC v The Controller of Petroleum Products of the Department of Mineral Resources Energy* 2021 JDR 0341 (GP)
- 2.18. *Sefiso v Road Accident Fund* 2021 JDR 1353 (GP)
- 2.19. *Classic Arms (Pty) Limited Dealer Code 2988 v The Minister of Sport, Arts and Culture* 2022 JDR 0737 (GP)
- 2.20. *National Stadium of South Africa (Pty) Ltd and Another v Street Spirit Trading 79 (Pty) Ltd and Others* 2022 JDR 0008 (GP)
- 2.21. *Mashaba v Muller* 2021 JDR 0482 (GP)

- 2.22. *Tahilram v Kayser & Others: In re Kayser & Others v Tahilram* (2020/10390) [2021] ZAGPJHC 751 (26 November 2021)
- 2.23. *South African Securitization Programme (RF) Ltd & Others v Litsamaiso (Pty) Ltd* (32179/2019) [2021] ZAGPJHC 785 (7 Dec 2021)
- 2.24. *Africa Parts Group Holdings (Pty) Ltd and Others v Titan Auto Parts (Pty) Ltd* 2022 JDR 0144 (GJ)
- 2.25. *Tsotetsi v Mkhwebane & Others* (40252/19) [2021] ZAGPJHC (6 Dec 2021)
- 2.26. *Quali N.O. and Others v Rikhotso and Another* (2020/9629) (16 September 2022)
- 2.27. *Bhiya v Passenger Rail Agency of South Africa* 2023 JDR 0224 (GP) (JUTA)
- 2.28. *Back to Christ Assembly Church v Back to Christ Assembly and another* 2023 JDR 0747 (GP)
- 2.29. *S v Ngwenya* 2023 JDR 0930 (GP)
- 2.30. *Road Accident Fund v Cloete Occupational Therapist CC* 2023 JDR 2077 (GP)
- 2.31. *Makamu v Electromode Ingrooves* 2023 JDR 2584 (GP)
3. Judgments upheld on appeal:
- 3.1. *Boost Sports Africa (Pty) Ltd v South African Breweries (Pty) Ltd* 2015 (5) SA 38 (SCA)

4. Judgments overturned on appeal:

4.1. None