

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: JUDGE ANNA MALESHANE KGOELE

COURT FOR WHICH CANDIDATE APPLIES: SUPREME COURT OF APPEAL

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. B.Proc (1987, University of the North);

1.2.2. LL.B (2005, UNISA) and

1.2.3. LL.M (2008, UNISA).

1.3. The candidate's was appointed as a Magistrate on 25 September 1991 and was a regional court Magistrate from 1 May 2008 until her appointment as a judge of the High Court on 25 November 2009.

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 22 judges permanently appointed to the SCA. Based on the names listed on the SCA website, the SCA's racial and gender composition appears to be:

3.1.1. 10 black women (7 African, 1 Indian, 2 coloured);

3.1.2. 2 white women;

3.1.3. 7 black men (5 African, 1 Indian, 1 coloured); and

3.1.4. 3 white men.

3.2. The candidate is a black (African) 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 was appointed as a judge on 25 November 2009. She will turn 70 on 18 June 2034, at which point she will have served as a judge for more than 15 years.

4.5. If appointed, the candidate could serve a further 10 and a half years.

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

5.1. The candidate has actively been involved in encouraging women to become part of the judiciary and legal fraternity in all spheres. She is one of the founding members of SAC-IAWJ since 2004. For the period 2010 to 2014 she was the provincial co-ordinator for the North West province; for the period 2014 to 2018 she was the president of the SAC-IAWJ; and for the period 2015 to 2017 she was the president for the African Region of SAC-IAWJ. In her involvement with SAC-IAWJ, she actively participates in its various programmes with the objective to reach gender equality, advance human rights, and obtain equal justice for all.

5.2. In the matter of *Sheldon-Lakey v the State* 2016 (2) SACR 632 (NWM), the candidate dismissed an appeal by a temporary teacher who was convicted of having penetrative sex with a learner who was under 16 years old. The teacher had appealed on the grounds that the learner had misled her into believing that he was older than 16. The candidate found that "*exploitation of emotional immature children and the risks of sexual transmitted diseases are causes of serious*

concern. The fact that the appellant was in an educator-learner relationship with the child aggravates the matter. What compounded the matter further is that the sexual encounter occurred more than once, even after the appellant received the birth certificate of the victim. The offence was committed by a person who clearly knows what the law and the scripture say about morality.”

- 5.3. The candidate seeks constantly and thoughtfully to apply the values of the Constitution in her judgments.
- 5.4. The candidate appears to be committed to the transformative constitutional imperative through her involvement and work with the SAC-IAWJ.
- 5.5. The candidate was also engaged in various special projects, such as service on various committees responsible for the development of the bench books for Magistrates relating to criminal court and customary marriage; the child law and ethics manuals for Magistrates; and the guidelines for Magistrates in domestic violence court. The candidate was also involved in the management of the Justice College.
- 5.6. The candidate served on the induction committee for the Justice College’s judicial officers’ gender forum; the organising committee for the IAJ conference held in South Africa; the social context committee of the Justice College; the committee responsible for the training of traditional leaders.
- 5.7. The candidate chaired the staff committee of the Mpumalanga Division of the High Court.

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

6.1. Based on the judgments considered, the candidate appears to be well versed in the law, including constitutional law.

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

7.1. The candidate disclosed that the following judgments were taken on appeal:

7.1.1. *Van den Heerver NO and Others v Smith* (925/03) [2009] ZANWHC 23 (25 September 2009) overturned in *Smith v Van den Heever NO and Others* (136/2010) [2011] ZASCA 5; 2011 (3) SA 140 (SCA) (4 March 2011) – The appeal court made the following comment: “*Landman J, in the first instance, and the full court in the second instance, although conscious of the nature of the contract and Mr Smith's defence, did not deal squarely with the issue. It would appear that sight was lost of the impact of their own findings that the agreement operated in cycles and was, within a cycle, not divisible, and that the company had failed to comply with its obligations during the August cycle and that the May debit had not become payable.*”

7.1.2. *Sheldon-Lakey v the State* 2016 (2) SACR 632 (NWM) – The appeal judgment could not be found for review.

7.1.3. *Lichtenstein v S* (CAF09/2015) [2015] ZANWHC 38 (27 August 2015) upheld in *Lichtenstein v S* (1094/2015) [2016] ZASCA 132 (29 August 2016) – The appeal court upheld the judgment of the candidate.

- 7.1.4. *Tsajoa Royal Family and Another v Premier, North West Province and Others* (HC11/2015) [2016] ZANWHC 71 (2 December 2016) – The appeal judgment could not be found for review.
- 7.1.5. *Tshiki v S* (CAF02/2015) [2018] ZANWHC 13 (1 February 2018) *upheld in Tshiki v S* (358/2019) [2020] ZASCA 92 (18 August 2020) – The appeal court upheld the judgment by the candidate.
- 7.1.6. *Bischoff v Welbeplan Boerdery (Pty) Ltd (unknown) overturned in Bischoff v Welbeplan Boerdery (Pty) Ltd 2021* (5) SA 54 (SCA) – The appeal court remarked as follow: “*The high court erred in its interpretation and application of the requirement of unlawful deprivation of possession for a spoliation order. In the process it extended the scope of the mandament beyond its intended purpose, scope and limits. Its order, if allowed to stand, would mean that a strongly worded letter threatening deprivation of possession, or a threat to approach a court to restrain possession, would found an application for the mandament van spolie. That is not the law.*”

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

- 8.1. The candidate has a long-standing legal career, during which she gained legal experience in different areas of the law and in different capacities and roles within the justice system, accompanied by substantial judicial experience, having served as judge for more 13 years.

8.2. The candidate therefore has a broad range of experience in different spheres of the legal profession.

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

9.1. The candidate has produced well-structured and clearly written judgments, penned in English.

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

10.1.1. Of 20 randomly selected High Court judgments by the candidate, 8 were handed down during the fourth month after judgment was reserved.

10.1.2. Of the eight SCA judgments located, only one was handed down four months after being reserved.

10.1.3. Three judgments were listed to have been outstanding at the time of completing the questionnaire. At the time of review, two of these judgments had been handed down.

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

11.1. The candidate's fairness and impartiality are demonstrated in her judgments, which resonate with humanity and a determination to do justice between the parties.

11.2. To the best of the reviewers' knowledge, no adverse comments have been received regarding the candidate's fairness.

11.3. The candidate has been described by practitioners as firm but fair, and as placing emphasis on ethical behaviour in court and during litigation by parties in general.

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

- 12.1. No adverse comments have been received regarding the candidate's independent mindedness.

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

- 13.1. The candidate's wealth of legal experience, including her leadership positions in various organisations, indicates her ability and commitment to judicial management and administration.

- 13.2. The candidate has received extensive leadership training including a seminar on office and district administration; a women's leadership empowerment workshop; management and leadership skills, organisational behaviour, managing conflict; SETA's assessor and mentorship training; social context training for office managers; seven habits of highly effective people by Franklin Cowley, leadership project and strategy management; executive women's master class; IAJ conference on judicial backlog and solution in the country; and CMJA commonwealth workshop in Mauritius on combatting corruption and enhancing integrity in the judiciary of the SADC regions.

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

- 14.1. The candidate would contribute to our jurisprudence and her appointment as an experienced and competent judge would be well received.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

- 1.1. *Sheldon-Lakey v the State* 2016 (2) SACR 632 (NWM)
- 1.2. *BW Brightwater Way Props (Pty) Ltd v Eastern Cape Development Corporation* 2021 (6) SA 321 (SCA)
- 1.3. *Arcus v Arcus* 2022 (3) SA 149 SCA

2. Unreported judgments:

- 2.1. *Tsajoa Royal Family and Another v Premier, North West Province and Others* (HC11/2015) [2016] ZANWHC 71 (2 December 2016)
- 2.2. *DPP, Pretoria v Zulu* (1192/2018) [2021] ZASCA 174 (10 December 2021)
- 2.3. *Lichtenstein v S* (CAF09/2015) [2015] ZANWHC 38 (27 August 2015)
- 2.4. *Van Heerden & Brummer Inc v Bath* (356/2020) ZASC (11 June 2021)
- 2.5. *Cipla Vet (Pty) Ltd v Merial and Others* (1068/2020) [2022] ZASCA 5 (11 January 2021)
- 2.6. *McGrane v Cape Royale The Residence (Pty) Ltd* (831/2020) [2021] ZASCA 139 (6 October 2021)

3. Judgments upheld on appeal:

- 3.1. *Lichtenstein v S* (CAF09/2015) [2015] ZANWHC 38 (27 August 2015) upheld in *Lichtenstein v S* (1094/2015) [2016] ZASCA 132 (29 August 2016)
- 3.2. *Sheldon-Lakey v the State* 2016 (2) SACR 632 (NWM), upheld (judgment on appeal and citation not found)
- 3.3. *Tsajoa Royal Family and Another v Premier, North West Province and Others* (HC11/2015) [2016] ZANWHC 71 (2 December 2016), (attached to application), upheld in (judgment on appeal and citation not found)
- 3.4. *Tshiki v S* (CAF02/2015) [2018] ZANWHC 13 (1 February 2018) upheld in *Tshiki v S* (358/2019) [2020] ZASCA 92 (18 August 2020)
- 3.5. *Mgwenya NO and Others v Kruger and Another* (unknown) upheld in *Mgwenya NO and Others v Kruger and Another* (1060/16) [2017] ZASCA 102 (6 September 2017)

4. Judgments overturned on appeal:

- 4.1. *Van den Heerver NO and Others v Smith* (925/03) [2009] ZANWHC 23 (25 September 2009) overturned in *Smith v Van den Heever NO and Others* (136/2010) [2011] ZASCA 5; 2011 (3) SA 140 (SCA) (4 March 2011 overturned in *Motsisi v S* (513/11) [2012] ZASCA 59 (2 April 2012)
- 4.2. *Bischoff v Welbeplan Boerdery (Pty) Ltd* (unknown) overturned in *Bischoff v Welbeplan Boerdery (Pty) Ltd* 2021 (5) SA 54 (SCA)