

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: JUDGE KATHARINE MARY SAVAGE

COURT FOR WHICH CANDIDATE APPLIES: LABOUR APPEAL COURT

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 – University of Cape Town (1988);

1.2.2. LLB – University of Cape Town (1991); and

1.2.3. LLM – University of Notre Dame (1997).

1.3. The candidate was admitted as an attorney in 1993.

1.4. The candidate was appointed as a Judge of the High Court (to the Western Cape Division) on 1 January 2015.

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 6 judges permanently appointed to the Labour Appeal Court. Based on the names listed on the judiciary's website,

the Labour Appeal Court's racial and gender composition appears to be:

3.1.1. 1 black (African) woman;

3.1.2. 4 black men (1 African, 3 coloured); and

3.1.3. 1 white man.

3.2. The candidate is a woman. She has not indicated her race in her questionnaire.

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 55 years old and has already served as a judge for 8 years.

4.5. If appointed, the candidate could serve a further period of 15 years.

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

5.1. The candidate is committed to the values of the Constitution.

5.2. She was a trustee of the Constitutional Court Trust for ten years from 2008 onwards.

5.3. She has been a member of the board of the Southern African Legal Information Institute (SAFLII) since 2006. SAFLII promotes free access to legal information, especially by publishing court judgments online.

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

6.1. The candidate has penned numerous reported judgments and thus made extensive contribution to the jurisprudential growth of the Labour Court during her tenure as an acting judge in this field. Her judgments show her deep understanding and application for law, the values that underpin our Constitution, fairness, and impartiality in the adjudication process.

6.2. The candidate's career in labour law dates as far back as 1992, when she served as a dispute resolution panellist of IMSSA, AMSSA, and Tokiso. She also served as a senior commissioner of the CCMA and was a panellist in various bargaining councils in the public sector: PSCPC, GPSSBC, PHWSBC, SSSBC, ELRC and SALGPC. For a period of twelve years, prior to her appointment as a judge, the candidate was a director and partner in various law firms.

6.3. The candidate has served as a judge of the Western Cape Division of the High Court for a period of more than eight years, during which time she has acted in three appellate courts in this country namely, the Supreme Court of Appeal, the Competition Appeal Court, and the Labour Appeal Court.

6.4. In 2022, the candidate was elected by the United Nations General Assembly as a judge of the United Nations Appeal Tribunal (UNAT) for a seven-year term of three two-week sessions per annum.

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

7.1. *Taxpayer v Commissioner for the South African Revenue Services* (2019) ZATC 2, upheld on appeal in *Mukuru Africa (Pty) Ltd v Commissioner for the South African Revenue Service* [2021] ZASCA 116.

7.2. *Taxpayer v Commissioner for the South African Revenue Service* [2018] ZATC 3, upheld in *Diageo South Africa (Pty) Ltd v Commissioner for the South African Revenue Service* [2020] ZASCA 34.

7.3. *Gbenga-Oluwatoye v Reckitt Benckiser South Africa (Pty) Limited and Another* [2016] ZALAC 2, upheld in *Gbenga-Oluwatoye v Reckitt Benckiser South Africa (Pty) Ltd and Another* [2016] ZACC 33 (15 September 2016); (2016) 37 ILJ 2723 (CC); 2016 (12) BCLR 1515 (CC); [2017] 1 BLLR 1 (CC).

7.4. Minority judgment upheld on appeal in *Primedia Broadcasting (a division of Primedia (Pty) Ltd) and Others v Speaker of the National*

Assembly and Others [2016] ZASCA 142; [2016] 4 ALL SA 793 (SCA); 2017 (1) SA 572 (SCA).

- 7.5. Minority judgment upheld on appeal in *National Union of Metalworkers of South Africa obo Nganezi and Others v Dunlop Mixing and Technical Services (Pty) Limited and Others* 2018 (6) SA 240 (LAC).
- 7.6. *Hendor Mining Supplies (A Division of Marschalk Beleggings (Pty) Ltd v National Union of Metalworkers of South Africa and Others* [2015] ZALAC 49; (2016) 37 ILJ 394 (LAC); [2016] 2 BLLR 115 (LAC) (Savage AJA, with Tlaletsi DJP, CJ Musi JA concurring), overturned in *National Union of Metalworkers of South Africa obo M Fohlisa and Others v Hendor Mining Supplies (a division of Marschalk Beleggings (Pty) Ltd* (CCT04/16) [2017] ZACC 9; [2017] 6 BLLR 539 (CC); 2017 (7) BCLR 851 (CC); (2017) 38 ILJ 1560 (CC).
- 7.7. *Really Useful Investments NO 219 (Pty) Ltd v City of Cape Town and Others* [2015] ZAWCHC 35 (Savage J), overturned in *Minister of Water and Environmental Affairs and Another v Really Useful Investments No 219 (Pty) Ltd and Another* [2017] 1 All SA 14 (SCA).
- 7.8. *Commissioner for the South African Revenue Service v Van Der Merwe; In Re: Commissioner for the South African Revenue Service v Van Der Merwe and Others* [2014] ZAWCHC 59, overturned in *Commissioner for the South African Revenue Service v Van Der Merwe* (20152/2015) [2015] ZASCA 86.

7.9. *Investec Bank Ltd t/a Investec Private Bank v Ramurunzi* [2013] ZAWCHC 25 (Savage AJ), overturned in *Investec Bank Limited t/a Investec Private Bank v Ramurunzi* [2014] ZASCA 56; [2014] 3 All 34 (SCA); 2014 (4) SA 394 (SCA).

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

8.1. The candidate has extensive experience in private practice and as a permanent and acting judge in various courts, as indicated in paragraph 6 above.

9. The candidate's linguistic and communication skills:

9.1. The judgments of the candidate are generally easy to read and well reasoned.

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

10.1. The candidate generally produced judgments promptly.

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

11.1. The candidate is a courteous judge and has the ability to conduct proceedings fairly, efficiently, and effectively.

12. The candidate's independent mindedness:

12.1. The candidate is independent minded.

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

13.1. The candidate has occupied positions which required administrative capabilities in the past and there is no reason to doubt that she has

the administrative ability to fill the position of a judge of the Labour Appeal Court.

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

- 14.1. The candidate's skills have been recognised by her appointment by the United Nations General Assembly as a judge of the United Nations Appeal Tribunal, as noted above. Her appointment as judge of the Labour Appeal Court would send a positive message to the public at large.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:

- 1.1. *Primedia Broadcasting (a Division of Primedia (Pty) Ltd) and Others v Speaker of the National Assembly and Others* 2015 (4) SA 525 (WCC)
- 1.2. *National Union of Metalworkers of South Africa obo Nganezi and Others v Dunlop Mixing and Technical Services (Pty) Limited and Others* [2019] ZACC 25; 2019 (8) BCLR 966 (CC); (2019) 40 ILJ 1957 (CC); [2019] 9 BLLR 865 (CC); 2019 (5) SA 354 (CC)

2. Unreported judgments:

- 2.1. None

3. Judgments upheld on appeal:

- 3.1. None

4. Judgments overturned on appeal:

- 4.1. *Really Useful Investments NO 219 (Pty) Ltd v City of Cape Town and Others* [2015] ZAWCHC 35 (Savage J) overturned in *Minister of Water and Environmental Affairs and Another v Really Useful Investments No 219 (Pty) Ltd and Another* [2017] 1 All SA 14 (SCA)
- 4.2. *Investec Bank Ltd t/a Investec Private Bank v Ramurunzi* [2013] ZAWCHC 25 (Savage AJ) overturned in *Investec Bank Limited t/a Investec Private Bank v Ramurunzi* [2014] ZASCA 56; [2014] 3 All 34 (SCA); 2014 (4) SA 394 (SCA)