

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: JUDGE M. Z. N LALLIE

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. B IURIS – University of Transkei (1987);

1.2.2. LLB – University of Natal (1991); and

1.2.3. BA (Hons) Industrial Relations – University of Port Elizabeth (1993)

1.3. Professional admissions, and permanent judicial appointment:

1.3.1. The candidate was a prosecutor with the Transkei Department of Justice from 1987 to 1989.

1.3.2. Although the candidate indicates that she was a candidate attorney from 1994 to 1997, she does not indicate whether she was admitted as an attorney.

1.4. The candidate was admitted as an advocate in 2008.

1.5. The candidate was appointed as a Judge of the Labour Court on 1 January 2012.

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 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 is 62 years old and has completed a period of 11 years of active service as a judge.
- 4.5. If appointed, the candidate could serve up to 8 years actively in office.

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

- 5.1. Prior to her appointment to the bench in 2012, the candidate was a member of the National Democratic Lawyers Association, Advocates for Transformation, and the South African Women Lawyers Association.
- 5.2. In a podcast interview with Dr. Amaleya Goneos-Malka on 11 August 2021, the candidate emphasised that:
 - 5.2.1. a key function and jurisdiction of the Labour Court focuses on discrimination and unfair dismissal of employees and in so doing the court considers the role of legislation in relation to closing gender pay gaps, such as the Employment Equity Act which espouses equal pay for work of equal value;
 - 5.2.2. removing gender distinctions where possible and potentially applying a principle from the civil service to the private

sector where salaries are based on the job not the applicant in order to help close gender pay gaps.

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

6.1. The candidate has significant experience in the field of labour law:

6.1.1. she served as a full-time CCMA commissioner for three years;

6.1.2. acted as a judge in the Labour Court for approximately three years;

6.1.3. served as a senior CCMA commissioner for three years;

6.1.4. she managed a dispute resolution business for five years;

6.1.5. practised as an advocate for three years; and

6.1.6. has been a Judge of the Labour Court for almost eleven years.

6.2. Despite the candidate's experience, her judgments are generally brief and do not engage with case law or the Constitution in any detail. A significant number of judgments have been overturned on appeal.

6.3. The candidate has been on the bench since 2012, but has only authored a handful of reported judgments. Given the general brevity of her judgments, this is not surprising.

6.4. Furthermore, the only other judgment which is of any considerable length was attached to the applicant's application, namely the unreported judgment of *MEC Gauteng Department of Social*

Development v Public Health and Social Development Sectoral Bargaining Council.

6.5. In light of the aforementioned, the candidate's knowledge of constitutional law is not readily discernible from her judgments.

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

7.1. In general, the candidate has not been severely rebuked by the Labour Appeal Court.

7.2. In *Ball v Bambalela Bolts (Pty) Ltd and Another* [2013] ZALAC 14; [2013] 9 BLLR 843 (LAC); (2013) 34 ILJ 2821 (LAC) (30 May 2013), the LAC partly upheld an appeal against the candidate's judgment, holding that the candidate had made an inappropriate order as to costs:

7.2.1. *“Another important aspect which the court a quo clearly did not consider before making the costs order, is the fact that the enforcement of a restraint, technically, involves a constitutional issue. Restraints of the kind being considered, constitute a limitation on a citizen's right, in terms of section 22 of the Constitution, which, arguably, requires justification (although the procedure employed in Reddy, would suffice in most cases). In constitutional matters, the general rule that costs follow the result, does not apply.”*

7.3. In *Ruselo v Sutherland Transport* 2022 JDR 0103 (LAC), the LAC upheld an appeal against the candidate's judgment refusing an

application to make an arbitration award and order of court. The LAC held that:

7.3.1. *“The Labour Court erred in the exercise of its discretion and failed to properly assess the conflicting versions on the central issue, and to take into account the correct facts, having properly determined them.”*

7.4. A number of the candidate’s judgments have been upheld on appeal, but the LAC did not comment on the qualities of the judgment in the court *a quo*. Again this is probably attributable to the brevity of judgments by the candidate.

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

8.1. As is evident from the candidate’s CV, she has significant experience in the field of labour law and has been a judge of the Labour Court since 1 January 2012.

8.2. While the candidate has experience in the field of labour law, this is not demonstrated in her written judgments.

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

9.1. While the candidate’s judgments are short, they are well written. While the candidate’s judgments may not be regarded as unreasoned, given their brevity, they are generally not reasoned sufficiently.

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

10.1. The candidate has a number of outstanding judgments. The candidate has disclosed in her questionnaire that she has:

10.1.1. nine judgments which have been outstanding for more than six months; and

10.1.2. eight further judgments which have been outstanding for more than three months.

10.2. This is of great concern.

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

11.1. The review team received no adverse comments about the candidate's ability to conduct court proceedings appropriately.

12. The candidate's independent mindedness:

12.1. While we are unable to comment on the candidate's extra curial writings or professional reputation, from her judgments it is apparent that the candidate is independent and does not demonstrate any bias for or against employees or the employer, including when the employer is the state.

12.2. In several instances the candidate found against the state and acted to protect whistle blowers or claimants who were sexually abused.

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

13.1. The review team received no adverse comments about the candidate's administrative abilities.

13.2. The candidate's professional history, including the management of her own dispute resolution business, would indicate that she has well-developed administrative skills.

13.3. The number of outstanding judgments is, however, an area of concern.

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

14.1. If the candidate is appointed to the LAC it will be indicative that length on the bench takes precedence over demonstrating judicial leadership through well-reasoned and useful judgments.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:

- 1.1. *Golden Arrow Bus Services (Pty) Ltd and Another v Minister of Employment and Labour and Others* [2023] 8 BLLR 775 (LC); (2023) 44 ILJ 1715 (LC). *Retmil Financial Services (Pty) Ltd v Sanlam Life Insurance Company Ltd and others* [2013] 3 All SA 337 (WCC)
- 1.2. *Solidarity obo B v South African Police Service and Others* (2022) 43 ILJ 2869 (LC)
- 1.3. *Mkhutshulwa v Department of Health, Eastern Cape and Others* (PR 134/17) [2023] ZALCPE 5; [2023] 8 BLLR 809 (LC) (4 April 2023)
- 1.4. *Contracta Force Corporate Solutions (Pty) Ltd v National Union of Public Service and Allied Workers and Others* (P 87/22) [2022] ZALCPE 42; (2023) 44 ILJ 558 (LC) (6 December 2022)

2. Unreported judgments:

- 2.1. *SAICA Enterprise Development (Pty) Ltd v Brown and Another* (P73/21) [2023] ZALCPE 16 (10 August 2023)
- 2.2. *Hackula v Premier of the Eastern Cape Province and Another* (PS39/17) [2023] ZALCPE 15 (4 August 2023)
- 2.3. *Mfingwana v Commission for Conciliation, Mediation and Arbitration and Others* (PR226/21) [2023] ZALCPE 11 (19 June 2023)
- 2.4. *Douse v National Horseracing Authority* (PR 246/21) [2023] ZALCPE 14 (7 June 2023)

- 2.5. *Aspen Pharmacare v National Bargaining Council for the Chemical Industry and Others* (PR 196/20) [2023] ZALCPE 4 (29 March 2023)
- 2.6. *Somi v Transnet Bargaining Council and Others* (PR212/20) [2022] ZALCPE 40 (9 December 2022)
- 2.7. *Minister of Home Affairs v PSA obo Khoza and Another* (P40/2020) [2022] ZALCPE 44 (7 December 2022)
- 2.8. *Ngqungwana v Port Elizabeth College and Another* (P 69/2021) [2022] ZALCPE 36 (22 November 2022)
- 2.9. *McLachlan N.O. and Others v Gradwell* (PR 205/20) [2022] ZALCPE 33 (11 November 2022)
- 2.10. *Ntsiko v Commission for Conciliation, Mediation and Arbitration and Others* (PR 161/20) [2022] ZALCPE 32 (11 November 2022)
- 2.11. *Mvulo v Amathole District Municipality* (P16/22) [2022] ZALCPE 34 (7 November 2022)
- 2.12. *Diedricks v Expert-Tech (PTY) Ltd and Others* (PR 168/20) [2022] ZALCPE 31 (31 October 2022)
- 2.13. *Minister of Justice and Constitutional Development v PSA obo Bobo and Others* (PR 88/17) [2022] ZALCPE 30 (31 October 2022)
- 2.14. *Minister of Police v Safety and Security Sectoral Bargaining Council and Others* (PR 130/20) [2022] ZALCPE 24 (31 August 2022)
- 2.15. *Department of Health: Eastern Cape v Du Preez and Others* (PR58/19) [2022] ZALCPE 18 (31 August 2022)

3. Judgments upheld on appeal:

- 3.1. *Mdunjani-Ncula v MEC, Department of Health and Another* (PA10/2019) [2021] ZALAC 29; (2021) 42 ILJ 2393 (LAC); [2021] 12 BLLR 1195 (LAC) (20 September 2021)
- 3.2. *Transnet t/a Transnet Freight Rail v NUMSA obo Manku and Others* (PA11/2019) [2021] ZALAC 17; (2021) 42 ILJ 1948 (LAC); [2021] 10 BLLR 1004 (LAC) (29 June 2021)
- 3.3. *Nyathikazi v Public Health and Social Development Sectoral Bargaining Council and Others* (JA106/2019) [2021] ZALAC 11; [2021] 8 BLLR 778 (LAC); (2021) 42 ILJ 1686 (GJ) (26 May 2021)
- 3.4. *Lemley v Commission for Conciliation Mediation and Arbitration and Others* (PA6/2018) [2020] ZALAC 6; (2020) 41 ILJ 1339 (LAC); [2020] 7 BLLR 676 (LAC) (4 March 2020)
- 3.5. *Association of Mineworkers and Construction Union and Others v Northam Platinum Mine Limited* (JA8/19; JA9/19) [2021] ZALAC 32; (2021) 42 ILJ 2565 (LAC); [2022] 1 BLLR 28 (LAC) (14 September 2021)
- 3.6. *Woolworths (PTY) Limited v Mabija and Others* (PA3/14) [2016] ZALAC 86 (19 February 2016)
- 3.7. *Solidarity obo Members employed in motor industry v Automobile Manufacturers Employers Organisation (AMEO) and Others* (JA11/17) [2019] ZALAC 63; [2020] 2 BLLR 142 (LAC); (2020) 41 ILJ 419 (LAC) (16 October 2019)
- 3.8. *Transport and Allied Workers Union of South Africa v Algoa Bus Company (PTY) Limited South African Transport and Allied Workers*

Union and Others (PA 14/17) [2018] ZALAC 54; [2019] 3 BLLR 262 (LAC); (2019) 40 ILJ 827 (LAC) (12 December 2018)

3.9. *Malamlela v South African Local Government Bargaining Council* (PA4/2017) [2018] ZALAC 25; (2018) 39 ILJ 2454 (LAC) (6 June 2018)

3.10. *HOSPERSA AND OTHERS V MEC FOR HEALTH (EC) and OTHERS* (PA 2/2015) [2016] ZALAC 82 (8 December 2016)

3.11. *NHLS v Yona and Others* (PA 12/13) [2015] ZALAC 115 (12 May 2015)

4. Judgments overturned on appeal:

4.1. *Minister of Police v Safety and Security Sectorial Bargaining Council* (SSSBC) and Others (PA16/2021) [2022] ZALAC 123; [2023] 3 BLLR 214 (LAC); (2023) 44 ILJ 1017 (LAC) (29 November 2022)

4.2. *Ball v Bambalela Bolts (Pty) Ltd and Another* (JA 23/11) [2013] ZALAC 14; [2013] 9 BLLR 843 (LAC); (2013) 34 ILJ 2821 (LAC) (30 May 2013)

4.3. *Ruselo v Sutherland Transport and Others* (PA3/20) [2022] ZALAC 1; [2022] 4 BLLR 347 (LAC); (2022) 43 ILJ 1320 (LAC) (18 January 2022)

4.4. *Woolworths (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* (PA12/2020) [2021] ZALAC 49; [2022] 3 BLLR 296 (LAC); (2022) 43 ILJ 839 (LAC) (10 December 2021)

- 4.5. *South African Police Services v Solidarity obo Slingers and Another* (JA57/2020) [2021] ZALAC 35; (2021) 42 ILJ 1934 (LAC) (14 June 2021)
- 4.6. *South African Police Service v POPCRU obo Mmatli and Others* (JA39/2019) [2020] ZALAC 62; (2021) 42 ILJ 358 (LAC) (13 November 2020)
- 4.7. *Ukweza Holdings (Pty) Ltd v Nyondo and Others* (PA2/19) [2020] ZALAC 7; [2020] 6 BLLR 544 (LAC); (2020) 41 ILJ 1354 (LAC) (4 March 2020)
- 4.8. *Buffalo City Metro v Mangashe And Others* (PA8/2014) [2016] ZALAC 74 (3 May 2016)
- 4.9. *NUM obo Majebe v Civil and General Contractors* (PA6/19) [2020] ZALAC 56; [2021] 4 BLLR 374 (LAC); (2021) 42 ILJ 1027 (LAC) (17 November 2020)
- 4.10. *African Explosives Limited v Panelist M S Raffee N.O and Others* (JA 88/2014) [2016] ZALAC 103 (4 March 2016)
- 4.11. *Merafong City Local Municipality v South African Municipality Workers Union ("SAMWU") and Another* (JA44/14, J1021/12) [2016] ZALAC 12; [2016] 8 BLLR 758 (LAC); (2016) 37 (ILJ) 1857 (LAC) (20 April 2016)