

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: JUDGE M.P.N. NKUTHA-NKONTWANA

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 Juris – University of Zululand (1992);

1.2.2. LLB – University of Zululand (1994);

1.2.3. Certificate in Industrial Relations – WITS Business School (1997); and

1.2.4. Nexus II Leadership Program – Gordon Institute of Business Science (2004).

1.3. The candidate was appointed as a Judge of the Labour Court on 31 July 2017.

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 52 years old and has served as a judge for a period of 6 years.

4.5. If appointed, the candidate could serve a further 18 years as a judge.

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

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

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

6.1. The candidate has served on the bench of the Labour Court since 31 July 2017.

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

7.1. Judgments of the candidate that were unsuccessfully appealed against

7.1.1. *Mofokeng and others v Rotek and Roschon SOC Ltd* (2021) 42 ILJ 1902 (LAC);

7.1.2. *Anglo American Platinum (Rustenburg Platinum Mines) v Beyers and others* (20121) 42 ILJ 2149 (LAC);

7.1.3. *Murray & Roberts (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and others* (2019) 40 ILJ 2510 (LAC); and

7.1.4. *South African Commercial Catering and Allied Workers Union v Woolworths (Pty) Limited* 2019 (3) SA 362 (CC).

7.2. Judgments of the candidate that were successfully appealed against

7.2.1. *Zeda Car Leasing (Pty) Ltd t/a Avis Fleet v Van Dyk* (2020) 41 ILJ 1360 (LAC);

7.2.2. *Parexel International (Pty) Ltd v Chakane NO & others* (2019) 40 ILJ 2344 (LAC); and

7.2.3. *Vanachem Vanadium Products (Pty) Ltd v National Union of Metalworkers of SA on behalf of Members* (2017) 38 ILJ 926 (LAC).

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

8.1. The judicial experience of the candidate, who has served six years as a judge of the Labour Court, is limited.

8.2. The candidate indicated that she has also served as a commissioner for four years, was self-employed and in private practice as labour consultant, part-time commissioner, and advocate for seventeen years.

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. No comments were received indicating that the candidate is not able to conduct court proceedings fairly, efficiently, and effectively.

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

12.1. The judgments delivered by the candidate indicate that 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 the candidate 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 appointment would send a positive message to the public at large.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

- 1.1. *Mofokeng and others v Rotek and Roschon SOC Ltd (2021) 42 ILJ 1902 (LAC)*
- 1.2. *Solidarity on behalf of Oosthuizen v SA Police Service and Others (2023) 44 ILJ 882 (LC)*
- 1.3. *Planet Fitness (Pty) Ltd v Buirski and Another (2023) 44 ILJ 819 (LC)*
- 1.4. *Marais and Others v Shiva Uranium (Pty) Ltd (in business rescue) and Others (2019) 40 ILJ 177 (LC)*

2. Unreported judgments:

- 2.1. None

3. Judgments upheld on appeal:

- 3.1. None

4. Judgments overturned on appeal:

- 4.1. None