

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: ZAMANI MSWAZI NHLANGULELA

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 is duly qualified, having obtained:

1.2.1. LLB (University of Natal – 1988);

1.2.2. BA Law (Fort Hare University – 1995); and

1.2.3. Certificate of Constitutional Litigation (UNISA – 1995).

2. The candidate's integrity and ethics:

2.1. No circumstances are known that would suggest the candidate is not a person of integrity with a reputation for ethical behaviour or is not a fit and proper person for appointment.

2.2. For more than ten (10) years working with him both as a Judge and a Deputy Judge President the reviewers are not aware of any matter that would disqualify him from becoming a Supreme Court of Appeal Judge.

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) man.

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 1 January 2009. He will turn 70 on 13 December 2030, at which point he will have served as a judge for more than 15 years.

4.5. If appointed, the candidate could serve a further 6 years.

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

5.1. The candidate appears to embrace the core values of the Constitution and human rights.

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

6.1. The candidate appears to have a good level of understanding of the law and the Constitution.

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

7.1. The following judgments were taken on appeal:

7.1.1. *Magqeya v MEC for Health, Eastern Cape* (2018) ZASCA 148 (01 October 2018); and

7.1.2. *Mtokonya v Minister of Police* (1057/2014) (2015) ZAECMC 67 (23 September 2015 – Constitutional Court Citation: 2018 (5) SA 22 (CC)).

7.2. Both judgments did receive the approval of the apex courts. Leave to appeal in respect of the *Magqeya* judgment was dismissed by the Constitutional Court pursuant to the dismissal of an appeal by the SCA.

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

8.1. The candidate has been in the practice of law since 1990. Such an extensive period of time supports the view that his experience in the legal profession will help him navigate any challenges there might be at the SCA.

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

9.1. The judgments attached on her application form written by the candidate do not reflect a lack of linguistic or communication skills.

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

10.1. In respect of High Court judgments – from the 20 judgments randomly selected, 8 were handed down after the period of 3 months, but during the fourth month of the judgment being reserved.

10.2. The candidate is known for being particularly quick in handing down judgments.

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

11.1. There is nothing to indicate that the candidate cannot conduct court proceedings fairly, efficiently and effectively.

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

12.1. There is nothing to indicate that the candidate is not independently minded.

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

13.1. No adverse comments have been received.

13.2. The candidate has managed the High Court of Mthatha without any reported problems since his appointment to that position and would therefore appear to have well-developed administrative skills.

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

14.1. The appointment of the candidate will send a positive the message to the community.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:
 - 1.1. None
2. Unreported judgments:
 - 2.1. None
3. Judgments upheld on appeal:
 - 3.1. None
4. Judgments overturned on appeal:
 - 4.1. None