

**JSC INTERVIEW ROUND: OCTOBER 2023**

**CANDIDATE: MS NARINI NIRMALA HARILALL**

**COURT FOR WHICH CANDIDATE APPLIES: KWAZULU-NATAL  
LOCAL DIVISION OF THE HIGH COURT, DURBAN**

**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 (Law), University of Durban-Westville (1982); and

1.2.2. Bachelor of Laws, University of Durban-Westville (1984).

1.3. The candidate holds the following professional memberships:

1.3.1. Natal Law Society/Legal Practice Counsel – member 1987 to present;

1.3.2. South African Woman Lawyers Association – member 2015 to present;

1.3.3. South African Labour Dispute Resolution Practitioners – member May 2020 to present; and

1.3.4. Black Lawyers' Association – member September 2019 to present.

**2. The candidate's integrity and ethics:**

2.1. There are no circumstances that would suggest that the candidate is not a person of integrity or 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 28 judges permanently appointed to the KwaZulu-Natal Division of the High Court. Based on the names listed on the judiciary's website, the KwaZulu-Natal Division's racial and gender composition appears to be:

3.1.1. 10 black women (5 African, 4 Indian, 1 coloured);

3.1.2. 1 white woman;

3.1.3. 11 black men (6 African, 3 Indian, 2 coloured); and

3.1.4. 6 white men.

3.2. There are currently 14 judges permanently appointed to the KwaZulu-Natal Division of the High Court in Durban. Based on the names listed on the judiciary's website, the Division's racial and gender composition in Durban appears to be:

3.2.1. 4 black women (3 African, 1 Indian);

3.2.2. 5 black men (3 African, 2 Indian); and

3.2.3. 5 white men.

3.3. The candidate is a black woman of Indian descent.

**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 will turn 62 on 5 November 2023.

4.5. If appointed, the candidate could serve up to 13 years actively in office.

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

5.1. The candidate’s commitment to the values of the Constitution is evident from the following:

5.1.1. The candidate is a member of various organisations which align themselves with the values enshrined in the Constitution. She is a member of the Black Lawyers

Association, which is committed to transformation of the legal sector.

5.1.2. The candidate aligns herself with fairness and social justice. She is further committed to preserving social relationships.

5.1.3. The candidate is a member of various professional societies which demonstrates a commitment to society and the values in the Constitution.

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

6.1. The candidate has over 30 years of experience as an attorney. Her *curriculum vitae* reflects a wealth of knowledge in labour law.

6.2. By reason of her experience as an attorney as well as acting stints in both seats of the KwaZulu-Natal Division of the High Court, the candidate has a wide experience in law.

6.3. The candidate has held acting appointments in both seats of the KwaZulu-Natal Division of the High Court for a cumulative period of approximately 53 weeks between 28 August 2017 and 26 March 2023.

6.4. The candidate has also acted as a judge in the KwaZulu-Natal Labour Court for a period of approximately 45 weeks between 5 July 2021 and 13 July 2022, including approximately 35 weeks performed *pro bono*.

6.5. The candidate has experience as a commissioner at the CCMA.

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

7.1. The candidate has one judgment: *Investec Bank Ltd v Pillay* 2021 JDR 1265 (KZP) that was taken on appeal. The appeal court upheld the appeal but the judgment could not be sourced by the review team.

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

8.1. The candidate has over 30 years of experience as an attorney, and as a labour lawyer. She has acted as a judge in KwaZulu-Natal Division and the Labour Court over many weeks.

8.2. No adverse comments were received.

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

9.1. The candidate has an excellent ability for writing judgments in plain and clear language, making them easily readable and understandable.

9.2. From the candidate's judgments, she shows a clear proficiency in the English language.

9.3. No adverse comments have been raised in respect of the candidate's communication skills.

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

10.1. The candidate has not disclosed any reserved judgments.

10.2. Some of the judgments attached to the application do not provide dates to discern the period for which judgments were reserved.

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

11.1. The candidate is a litigation attorney and part-time commissioner in the CCMA. The candidate has also been appointed as an acting judge on a number of occasions. The candidate can therefore be expected to have well-developed skills in conducting court proceedings.

11.2. The candidate also has written detailed judgments.

11.3. No adverse comments have been received regarding the candidate's ability to conduct court proceedings.

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

12.1. No adverse comments have been received.

12.2. An analysis of the candidate's judgments indicates that the candidate has an independent mind.

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

13.1. The candidate has had her own private practice and has practiced as a lawyer for over 30 years. It can therefore be inferred that she has well-developed administrative skills.

13.2. No adverse comments have been received regarding the candidate's administrative ability.

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

- 14.1. The candidate's appointment to the KwaZulu-Natal Division of the High Court will send a message to the public that the judiciary is committed to gender transformation, especially in view of the fact that it has been several years since a Black woman of Indian descent was appointed to this division.
- 14.2. The candidate's appointment would further reflect the judiciary's commitment to the pursuit of social and administrative justice, as fundamental tenets of the Constitution.
- 14.3. The candidate displays a good ability as a legal practitioner and administrator of justice, which would demonstrate to the community that the judiciary is committed to preserving its high standard of competence and expertise.

## ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:
  - 1.1. None
2. Unreported judgments:
  - 2.1. *N Longano v The State*, case no: 8977/2018 D, KZND, delivered on 20 April 2023
  - 2.2. *NN Mgwaba v The State*, case no: D12746/2022, KZN, delivered on 31 March 2023
  - 2.3. *BE Cunniffe v MC Ngcobo and others*, case no: D38/2022, KZND
  - 2.4. *Optimum Coal Terminal (Pty) Ltd (in business rescue) and Others v Richards Bay Coal Terminal (Pty) Ltd*, case no: D531/2023, delivered on 31 May 2023
  - 2.5. *Tracker Connect (Pty) (Ltd) v BEE Woman Trading CC t/a Nolrich Brokers*, case no: D4866/2019
  - 2.6. *JF Henn v Ethekwini Municipality*, case no:3217/2019, KZND
  - 2.7. *Zardad Properties CC v C Mathas N.O. and Others*, case no: 3091/17P, the candidate scribed the judgment sitting with two senior judges, Van Zyl J and Mnguni J
  - 2.8. *LP Mncwabe v The State*, case no: AR 119/22, KZN, (attached to the application), the candidate wrote the judgment sitting with Chetty J
  - 2.9. *The State v MM Noguda*, case no: CCD33/20, judgment delivered on 29 March 2021



- 2.10. *Randsome Sandile Maphumulo v Ethekwini Municipality and Others*, case no: D1069/18 delivered on 30 November 2021
- 2.11. *Mkatshwa v Bosasa Security (Pty Ltd* [2007] JOL 19821 (CCMA)
- 2.12. *SACCAWU obo Gumede / Shoprite Checkers* [2009] JOL 4138 (CCMA)
- 2.13. *Arjoon / Mr Price (NMR Avenue – Dbn)* [2009] JOL 23227 (CCMA)
- 2.14. *Ndevu / Scott Bader (Pty) Ltd* [2010] JOL 24913 (CCMA)
- 2.15. *Mseleku /Afinta Part* [2007] JOL 19952 (DRC)
- 2.16. *Kanniah v First National Bank and Others* 2022 JDR 2064 (LC)
3. Judgments upheld on appeal:
  - 3.1. *Investec Bank Ltd v Pillay* 2021 JDR 1265 (KZP)
4. Judgments overturned on appeal:
  - 4.1. None