

JSC INTERVIEW ROUND: OCTOBER 2023

CANDIDATE: PROF. MBUZENI JOHNSON MATHENJWA

**COURT FOR WHICH CANDIDATE APPLIES: KWAZULU-NATAL
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. Bachelor of Law, University of Fort Hare, 1991;

1.2.2. Bachelor of Laws, University of the Witwatersrand, 1996;

1.2.3. Master of Laws (LLM), University of South Africa, 2007; and

1.2.4. Doctor of Laws (LLD), University of South Africa, 2014.

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 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 (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 turned 62 on 2 February 2023.

4.5. If appointed, the candidate could serve up to 12 years actively in office.

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

5.1. The candidate has indicated that from 2015 – 2017 he was involved in the Duma Nokwe Foundation at UNISA, where he co-ordinated lectures on Duma Nokwe.

5.2. From 2015 – 2017, he was the College of Law Coordinator for the Learners Research Summit where learners were mentored in research skills.

5.3. In 2017 he organised a seminar on customary marriage, in which knowledge of the legal nature of customary marriage was disseminated to the community.

5.4. The candidate does not appear to have served on any community or civil society structures.

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

- 6.1. As a senior lecturer, the candidate taught civil procedure and the law of evidence.
- 6.2. As an associate professor and full professor, the candidate taught constitutional and local government law at undergraduate and post-graduate levels.
- 6.3. According to the candidate's questionnaire, his areas of interest are administrative law, constitutional law, criminal practice and local government law.
- 6.4. The candidate has cited 16 publications in the field of law.

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

- 7.1. In *Director of Public Prosecutions, Kwazulu-Natal v Pillay* (706/2022) [2023] ZASCA 105 (23 June 2023) the Supreme Court of Appeal upheld an appeal against the judgment and order of the candidate together with Ploos van Amstel J, sitting as a court of appeal.
- 7.2. At paragraph 41 of the SCA's judgment, Goosen JA (with Dambuza ADP, Mothle and Matonjane JJA concurring) held that "*the high court ignored the facts as disclosed on the record*" and "*erred both in respect of the law relating to the section and in its application to the facts*".

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

- 8.1. The candidate has a long and diverse career. He is currently an advocate at the Johannesburg Bar. He has demonstrated life-long learning.
- 8.2. The candidate commenced employment as a constable with the South African Railway Police, thereafter as a sergeant with the South African Police. He completed his articles and worked for a year as a professional assistant with a law firm before practising for his own account under the name Mathenjwa and Company from 1 April 1999 to 30 June 2002.
- 8.3. The candidate then worked for the KwaZulu-Natal provincial government as Head of the Department of Safety and Community Liaison. Between 1 July 2004 and 31 December 2009, he was employed as the municipal manager of the Mandeni and Abaqulusi municipalities, respectively.
- 8.4. On 1 January 2010, the candidate took up a position as a senior lecturer in law at North-West University and thereafter at the University of South Africa from 1 January 2011. He remained at the University of South Africa, where he held the position of Associate Professor from 1 January 2016 to 31 December 2017, and Professor from 1 January 2018 to 31 March 2021.
- 8.5. On 1 April 2021, he was admitted as an advocate of the High Court of South Africa.
- 8.6. Between 9 November 2020 to 15 June 2023, the candidate acted as a judge for 12 sessions, sitting in both the civil and criminal courts of the KwaZulu-Natal Division of the High Court.

8.7. Despite the candidate's long and diverse professional career, he does not have lengthy experience in legal practice as a lawyer. He practised briefly as an attorney from 1 April 1998 to 30 June 2002 and was admitted as an advocate in April 2021.

8.8. The candidate does, however, have significant experience as an academic and therefore has the necessary potential to demonstrate knowledge of the law as is required of a judge. He has also sat as an acting judge for 12 sessions.

9. The candidate's linguistic and communication skills:

9.1. The candidate's judgments appear to be well-written and well-reasoned.

9.2. The candidate has several publications in the field of law and has published a book.

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

10.1. There are no circumstances, from available judgments considered, where the candidate has taken longer than three months to hand down a judgment.

10.2. The candidate disclosed that he has three partly heard matters.

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

11.1. No comments about the candidate's ability in this respect were received by the review team.

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

12.1. It is not possible to draw any adverse conclusions regarding the candidate's independent mindedness.

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

13.1. The candidate disclosed that he has published books and articles in accredited journals, listing 15 articles and 1 book published. The candidate has examined masters and doctoral theses for various universities. It is reasonable to infer, therefore, that he has well-developed administrative abilities.

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

14.1. The candidate has a sound legal academic background and knowledge of the law. Overall, the candidate's appointment would inspire confidence in the judiciary.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED1. Reported judgments:

1.1. None

2. Unreported judgments:2.1. *Utopia Trade and Investments (Pty) Ltd v Stoneridge Investments (Pty) Ltd & 4 Others (*2.2. *N2 Eco Fuel CC & 2 Others v Brechoost CC & 5 Others*2.3. *Busisiwe Rejoice Shange v Mandisa Gareth Gcaba N.O. & 1 Other*3. Judgments upheld on appeal:

3.1. None

4. Judgments overturned on appeal:4.1. *Director of Public Prosecutions, Kwazulu-Natal v Pillay (706/2022)*
[2023] ZASCA 105 (23 June 2023)