

DEPUTY PRESIDENT OF THE SUPREME COURT OF APPEAL

CANDIDATE: JUSTICE DUMISANI HAMILTON ZONDO

1. The maximum time period the candidate could serve if appointed:

- 1.1. 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.
- 1.2. 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.
- 1.3. 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.
- 1.4. The candidate is 66 years old and has completed a period of 17 years of active service as a judge.
- 1.5. If appointed, the candidate could serve up to 3½ years actively in office as the Deputy Judge President.

2. The candidate's reputation for integrity and ethical behaviour:

2.1. The candidate has, throughout his judicial career, had an unimpeachable reputation for integrity. On the number of occasions that he has been interviewed by the JSC, no issues to the contrary have arisen.

2.2. It is clear from his questionnaire and *curriculum vitae* that the candidate is held in high esteem. This confirms his reputation as someone who is ethical and of integrity.

3. The candidate's qualities as an outstanding leading jurist who seeks (and is able to achieve) consensus:

3.1. The candidate's highest academic qualification is an LLM, which he obtained from Georgetown University in Washington DC. Having completed his articles in 1986, the candidate spent 21 years in practice as an attorney, 18 of which were at his own firm (Zondo Attorneys).

3.2. The candidate served as an acting judge of the Western Cape Division between April 2005 and May 2007, when he was appointed on a permanent basis. He served as an acting judge of the Competition Appeal Court between 2009 and 2011 and as a permanent member of that court between April 2011 and April 2021. The candidate also served as an acting judge of the Labour Appeal Court for four terms in the period 2010 to 2012.

3.3. The candidate was elevated to the SCA in 2014 and, save for two terms during which he acted in the Constitutional Court in 2017, has

been a judge of that court since then. The candidate has, in addition, been the Chairperson of the Electoral Court since 2022.

- 3.4. Hence between 2014 and 2021, the candidate indicates that he was both a member of both the Competition Appeal Court (CAC) and the Supreme Court of Appeal (SCA). Importantly, the SCA has found that that Judges of the SCA cannot also be Judges of the CAC because the SCA enjoys appellate jurisdiction over the CAC, in certain instances: see *Competition Commission v Computicket (Pty) Ltd* [2015] 1 CPLR 15 (SCA). Notably, the candidate was part of the bench that delivered this decision. The dates indicated by the candidate for his tenure of the CAC should therefore be queried.
- 3.5. The candidate has therefore enjoyed a long and successful legal career, first as an attorney and then as a judge. During his tenure as a judge, the candidate has written several important judgments, including *Democratic Party v Minister of Home Affairs* 2023 (6) SA 156 (SCA); *Motus Corporation (Pty) Ltd v Wentzel* [2021] 3 All SA 98 (SCA); *Herbert N.O. v Senqu Municipality* [2021] ZASCA 177; *Premier for the Province of Gauteng v Democratic Alliance* [2021] All SA 60; *Levenstein and Others v Estate of The Late Sidney Lewis Frankel And Others* 2018 ZACC 16; and *ABSA Bank v Keet* 2014 (4) SA 474 (SCA).
- 3.6. Before his elevation to the SCA, the candidate's judgments were upheld on appeal on at least four occasions. Most notably, his dissenting minority judgment in the Labour Appeal Court in *Myers v National Commissioner of the South African Police Service* was upheld by the SCA ((2013) 34 ILJ 1729 (SCA)). The candidate also wrote the unanimous judgment of the SCA in *Minister of Finance v*

Afribusines NPC, which was upheld by the Constitutional Court (2022 (4) SA 362 (CC)).

- 3.7. The candidate's decisions as a High Court judge were overturned on at least three occasions and partially overturned on two further occasions. Two of the SCA judgments authored by the candidate have been overturned on appeal to the Constitutional Court. Given the lengthy period over which the candidate has served as a judge, it may be that this number is insignificant. It is, furthermore, clear from a review of the judgments of the appeal courts that overturned the candidate's judgments that the issues in question were contentious and unclear; and in most cases there was other authority that was consistent with the candidate's decision.
- 3.8. The candidate has, however, written relatively few reported judgments for a judge of nearly twenty years' experience. His contributions as an author of judgments delivered by the SCA, in particular, appear relatively limited. This, together with his lack of any contribution to jurisprudence other than by means of his judicial decisions (in the form of academic articles, public lectures and the like), means that he is unlikely to be considered an "outstanding leading jurist" in the country.
- 3.9. The reviewing team is not able to comment on the candidate's ability to achieve consensus.

4. The candidate's experience in court administration and leadership or similar roles:

4.1. The candidate is currently the Chairperson of the Electoral Court. The reviewing team is not aware whether the candidate has other experience in court administrative and leadership positions.

5. Whether the candidate possesses the qualities required to lead the judiciary in effectively defending, protecting and upholding the Constitution:

5.1. As noted, the candidate has relatively few reported judgments for a judge of his experience. Only a small proportion of these relate to Constitutional matters.

5.2. The reviewing team is not therefore able to conclude that the candidate has the qualities required to lead the judiciary in effectively defending, protecting, and upholding the Constitution, and therefore expresses no view on the question.

6. Whether the candidate possesses the qualities required to lead the judiciary in fearlessly asserting its independence and respect for the separation of powers:

6.1. The candidate's application does not include any evidence that would support (or negate) the view that the candidate possesses the qualities required to lead the judiciary in fearlessly asserting its independence and respect for the separation of powers.

6.2. The reviewing team is not, for example, aware of any judgments, academic articles, or public addresses by the candidate that have

dealt with the independence of the judiciary and the separation of powers.

7. Whether the candidate possesses the qualities required to lead the judiciary in pursuing a transformative jurisprudence geared for the advancement of social justice and access to justice:

7.1. The candidate's application does not include any evidence that would support the view that the candidate is well-placed to lead the judiciary in pursuing a transformative jurisprudence geared for the advancement of social justice. The candidate does not, for example, appear to be involved in any voluntary associations, non-governmental, or community organisations committed to promoting the advancement of social justice, or access to justice.

7.2. The reviewing team is therefore unable to comment on whether the candidate possesses the qualities required to lead the judiciary in these, or other, respects.

8. Whether the candidate possesses the leadership qualities required to instil a judicial culture and work ethic that will meet acceptable judicial performance standards and standards of accountability:

8.1. While there does not appear to be any reason to doubt the candidate's ability to produce judgments timeously, the limited number of reported and unreported judgments found by the reviewing team – over a period of some eighteen years – gives rise to a concern that the candidate may not be able to instil a strong work ethic amongst his peers at the SCA.