

JSC INTERVIEW ROUND: APRIL 2024

CANDIDATE: JUDGE SEENA YACOOB

COURT FOR WHICH CANDIDATE APPLIES: ELECTORAL COURT

1. The candidate's tertiary qualifications, professional admissions, honours, and permanent judicial appointments:

1.1. The candidate holds the following qualifications:

1.1.1. Bachelor of Music, University of Durban-Westville (1996);

1.1.2. Bachelor of Laws, University of Cape Town (2000); and

1.1.3. Master of Laws, *summa cum laude*, Vrije Universiteit, Amsterdam (2006).

1.2. The candidate was admitted as an advocate of the High Court of South Africa in 2003.

1.3. The candidate was appointed as a Judge of the High Court of South Africa, Gauteng Division in January 2019.

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. The Electoral Court is currently comprised of two permanent judicial members, who are both black (African) women (as provided by the Registrar of the Electoral Court)

3.2. The candidate is a black (Indian) 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. Section 19(2) of the Electoral Commission Act, 51 of 1996 provides that the President shall determine the terms of office of members of the Court.

4.5. At the time of the interviews, the candidate will be approximately 50 years and 9 months old and will have completed a period of approximately 5 years and 3 months of active service.

4.6. The candidate is eligible to complete a further period of 19 years and 2 months' active service as a judge, during which period she would remain eligible to be a judge-member of the Electoral Court.

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

5.1. The candidate states that she is committed to transforming the legal profession.

5.2. The candidate has contributed to training and development within the legal profession through Advocacy Training, mentorship and judging moot court competitions.

5.3. The candidate was a member of the International Association of Women Judges – South African Chapter in 2019.

5.4. The evidence, including the candidate's written judgments, show a commitment to the achievement of dignity, equality and freedom for all, and human rights generally.

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

6.1. The candidate has extensive experience in administrative and constitutional law, pension law, telecommunications law, insolvency law, land claims, restitution and expropriation law and competition law during her time in practice from 2003 to 2018.

- 6.2. The candidate indicates in her *curriculum vitae* that she was a researcher in the Land Claims Court from December 2003 till December 2018 and acted in the Land Claims Court between April 2016 to July 2016 and October 2016 to January 2017.
- 6.3. In the matter of *Taproot Property Management (RF) (Pty)(Ltd) v Mbango and Others* (1617/2020) (30 November 2021) (Application Bundle p70 – 74):
- 6.3.1. The candidate dealt with application for eviction of vulnerable members of society who were tenants of a Social Housing Institution, Taproot.
- 6.3.2. The tenants embarked on what the applicant referred to as a “*rental boycott*” to force the applicant to comply with its obligations as a Social Housing Institution.
- 6.3.3. The court weighed both parties’ interests and held that it was “*not satisfied that the eviction of the respondents at this point is just and equitable*” (para 65) but found that the tenants were not entitled to live rent free.
- 6.3.4. The court ordered that the eviction application be dismissed, the tenants to pay rent and further that both parties must resolve the issues regarding the levy, rental and other additional charges amongst themselves.
- 6.3.5. The candidate’s judgment was well reasoned, applied constitutional principles and fairly acknowledged both parties’ interests.

6.4. In *Jose and Another v Minister of Home Affairs and Others* 2019 (4) SA 597 (GP):

6.4.1. The candidate was called upon to decide if the court should grant citizenship to the applicant in terms of s 4(3) of the South African Citizenship Act 88 of 1995 or if the application should be remitted to Home Affairs for consideration.

6.4.2. The court held that the requirements of s 4(3) had been satisfied by the applicant and that it would not be in the interests of justice to remit the matter in circumstances where the Department of Home Affairs had no discretion to exercise. Home Affairs could only grant the application; there was no room for “*consideration*” of the application.

6.4.3. On appeal to the Supreme Court of Appeal, Yacoob J’s order was upheld.

6.5. The candidate has also presided in criminal matters such as *S v R.S and Another* (SS27/2021) [2023] ZAGPJHC 1200 (20 October 2023).

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

7.1. In *The Minister of Home Affairs and Others v Jose and Another* (169/2020) [2020] ZASCA 152 (25 November 2020), the Supreme Court of Appeal applied Yacoob J’s reasoning in *Jose and Another v Minister of Home Affairs and Others* 2019 (4) SA 597 (GP).

7.2. No adverse comments from courts of appeal could be identified regarding the candidate's judgments.

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

8.1. The candidate practised as an advocate for a period of approximately 15 years.

8.2. The candidate has been appointed as a permanent Judge in the Gauteng Division for a period of five years.

8.3. Prior to being permanently appointed as a Judge in the Gauteng Division in January 2019, the candidate held a number of acting appointments in the Gauteng Division between 2013 to 2018 and the Land Claims Court.

8.4. The candidate therefore has considerable judicial experience.

8.5. The candidate has no experience in an acting capacity at the Electoral Court, although such a practice (of acting appointments) at that Court appears rare.

8.6. Given that the candidate demonstrates that she possesses legal and professional skills, especially in public and constitutional law, the candidate will not find it difficult to transition to an appointment to the Electoral Court. However, given the urgency of decisions often demanded of the Electoral Court, the demands will be considerable.

9. The candidate's linguistic and communication skills:

9.1. The candidate's judgments are well written and demonstrate a strong command of the English language.

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

- 10.1. The Electoral Court is required to issue urgent judgments at short notice in accordance with section 20 of the Electoral Commission Act, 51 of 1996.
- 10.2. The candidate generally produces judgments within three months but in a few cases, she has taken longer to produce judgments.
- 10.3. Please note the following cases wherein it took the candidate more than three months to deliver a judgment:
- 10.3.1. *Bubu v Kay and Another* (40591/2021) [2022] ZAGPJHC 779 (10 October 2022). Date hearing: 12 April 2022. Date of judgment: 10 October 2022.
- 10.3.2. *Mokone v Kone and Another* (11258/2021) [2022] ZAGPJHC 775 (7 October 2022). Date hearing: 11 April 2022. Date of judgment: 7 October 2022.
- 10.3.3. *Mantsie v Road Accident Fund* (34199/2011) [2020] ZAGPJHC 39 (10 February 2020). Date hearing: 10 June 2019. Date of judgment: 10 February 2020.
- 10.3.4. *Fourie v Du Toit* (23000/2017) [2020] ZAGPJHC 38 (10 February 2020). Date hearing: 14 and 18 June 2019. Date of judgment: 10 February 2020.
- 10.3.5. *Prudential Authority v Bophelo Life Insurance Company Ltd and Others* [2020] ZAGPJHC 7 (30 November 2020). Date of hearing: 6 November 2019. Date of judgment: 30 November 2020.

10.4. The candidate has, candidly, attributed the delay to “*a combination of personal reasons and the fact that I think I was not ready for appointment at the time*”. Notably the judgments found that took longer than three months were all more than a year ago in time, and the issue appears to be historical.

10.5. At the time of the application, the candidate had eight reserved judgments. There are only three outstanding judgments found by the reviewers as at date of this review, being *Paleng v Davey* (30 August 2023), *In re: Welverdiend Community (Land Claim)* (31 August 2023) and *Waco Africa v Eskom; SGB v Eskom* (9 November 2023)

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

11.1. There are no adverse comments about the candidate from the legal fraternity in general.

12. The candidate’s independent-mindedness:

12.1. The candidate, in her written judgments, demonstrates an independent mind.

12.2. In the October 2018 JSC interview, the candidate was questioned on the issue of expropriation without compensation. The candidate gave her response based on her experience in the Land Claims Court and indicated that anything further than that would fall within Parliament’s domain, demonstrating constitutional deference to Parliament’s legislative competence.

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

13.1. The candidate was a member of the Johannesburg Society of Advocates for approximately 15 years, demonstrating an ability to manage her legal practice.

13.2. In the time the candidate was at the JSA, she was a member of a number of committees and a member of the Johannesburg Bar Council. She was also a member of the General Council of the Bar. This demonstrates the candidate's administrative capability.

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

14.1. The message the candidate's appointment to the Electoral Court would send to the public is of a well-rounded, dedicated, and competent woman to serve on the Court. She will be the first Indian judicial member to serve on the Court.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

1. Reported judgments:

- 1.1. *Groundup News NPC and Others v South African Legal Practice Council and Others* [2023] (4) SA 617 (GJ)
- 1.2. *Gauteng Refinery (Pty) Ltd v Eloff* [2023] (2) SA 223 (GJ)
- 1.3. *Jose and Another v Minister of Home Affairs and Others* [2019] (4) SA 597 (GJ).
- 1.4. *Argent Industrial Investment (Pty) Ltd v Ekurhuleni Metropolitan Municipality* [2017] (3) SA 146 (GJ).

1. Unreported judgments:

- 1.1. *S v R.S and Another* (SS27/2021) [2023] ZAGPJHC 1200 (20 October 2023)
- 1.2. *ABSA Bank Limited v Elsologix (Pty)* (21179/2020) (9 March 2021) (attached to application)
- 1.3. *Government of the RSA and Another v Oppressed ACSA Minority 1 (Pty) Ltd and Others* (27286/2015) (15 July 2020) (attached to application)
- 1.4. *Prudential Authority v Bophelo Life Insurance Company Ltd and Others* [2020] ZAGPJHC 7 (30 November 2020) (attached to application)
- 1.5. *Toproot Property Management (RF) (Pty) (Ltd) v Mbango and Others* 2021 JDR 3209 (GJ) (attached to application)

1.6. *Brodie and Another v Kgomasang and Others* (20 I9/32683) [2019]
(attached to application)

2. Judgments upheld on appeal:

2.1. *Government of the RSA and Another v Oppressed ACSA Minority I (Pty) Ltd and Others* (27286/2015) (15 July 2020) (attached to application), upheld in *Oppressed A C S A Minority I (Pty) Ltd and Another v Government of the Republic of South Africa and Others* (case no 898/2020) [2022] ZASCA 50 (11 April 2022)

2.2. *Prudential Authority v Bophelo Life Insurance Company Ltd and Others* [2020] ZAGPJHC 7 (30 November 2020) (attached to application), upheld in *Lebashe Financial Services (Pty) Ltd v The Prudential Authority and Others* (346/2021) [2022] ZASCA 141 (24 October 2022)

3. Judgments overturned on appeal:

3.1. None