

**JSC INTERVIEW ROUND: APRIL 2024**

**CANDIDATE: MR COLLEN KGAOLO STEPHEN MATSHITSE**

**COURT FOR WHICH CANDIDATE APPLIES: THE NORTH WEST  
DIVISION OF THE HIGH 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. Dip Juris, North West University (1983); and

1.1.2. LLB, North West University (1985); and

1.1.3. LLM (Commercial Law), University of Johannesburg (2020).

1.2. The candidate was

1.2.1. admitted as an attorney in 1991; and

1.2.2. admitted as the first black notary public and conveyancer in the North West in 1995.

1.3. The candidate was appointed as a Regional Court Magistrate in 2015.

**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 5 full time Judges on the North West bench comprising (as far as could be ascertained):

3.1.1. 2 black women;

3.1.2. 2 Coloured men; and

3.1.3. 1 white woman.

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. At the time of the interviews, the candidate will be approximately 62 years and 7 months old.

4.5. If appointed, the candidate would be eligible to complete a period of up to 12 years and 4 months' active service as a judge.

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

5.1. The candidate has been a member of the Black Lawyers Association ("BLA") since 1994 to date. The extent of his involvement in the BLA is unclear.

5.2. The candidate has been involved with the former Law Society of the Northern Provinces in various forms including:

5.2.1 Convener and examiner of the Notarial Examination from 1995 to 2020;

5.2.2 Member of the Disciplinary Committee from 2002 to 2015.

5.3. The candidate records that he is a member of the Kudung Community Association and Baja Boswa Ba Mokate Community Association. The extent of his involvement and the aim of the associations is not explained.

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

6.1. The candidate submitted 41 judgments for consideration. 10 of the judgments were considered. The judgments submitted by the candidate deal with various areas of the law.

- 6.2. The judgments of the candidate are reasoned and demonstrate the candidate has been exposed to diverse areas of law, both criminal and civil.
- 6.3. The reviewing team referred to the October 2022 interview of the candidate for the Gauteng Division of the High Court. The reviewing team noted the candidate was asked what he would do if he had handed down a judgment and forgot to deal with the issue of costs. The candidate struggled with the answer and was later advised by Deputy President of the Supreme Court of Appeals, that the answer is Rule 42(1). The candidate having been a Regional Court Magistrate and having acted in the High Court on various occasions for a lengthy period, should have known the answer to the question. This is troubling to the reviewing team.

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

- 7.1. The reviewing team did not find judgments of the candidate that fall in this category.
- 7.2. The candidate did however refer to the matter of *State v Hibbers and Pillay* and the matter of *State v Albertyn* and the candidate indicated he is unaware if the matters have been finalised or not.
- 7.3. The reviewing team raised its concern on this aspect. The candidate was an acting Regional Court Magistrate from 10 October 2010 to 28 February 2015. The candidate has been a Regional Court Magistrate from 2015 to date.
- 7.4. The candidate has acted in the High Court on various occasions from the year 2016 and according to the questionnaire the last time

being from 15 May 2023 to 15 June 2023. The reviewing team find it improbable during this entire period none of the matters presided over by the candidate have been taken on appeal and overturned on appeal or upheld.

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

8.1. The candidate has a lengthy work history. The candidate was an attorney, senior state advocate, is currently a Regional Magistrate and he has acted as a Judge. The work history of the candidate dates back to 1984.

8.2. The candidate records in his questionnaire that he has the following further qualifications:

8.2.1. Certificate in Practice Management, LSSA (1999);

8.2.2. Commercial Practice, Black Lawyers Association (2005);

8.2.3. Certificate in Corporate Law, UNISA (2008);

8.2.4. Judicial Skill Training Course for Attorneys (Criminal), Law Society of South Africa (2009);

8.2.5. Judicial skills training, by Honourable Judge President of High Court, Gauteng Division. Basic Aspirant Judges, South African Judicial Education Institute (“SAJEI”) (2010); and

8.2.6. Advanced Aspirant Judges Course, SAJEI (2014).

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

9.1. The candidate seems to have a sufficient command of the English language and his judgments are well reasoned.

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

10.1. The reviewing team noted that generally the candidate delivers his judgments within a period of 3 months but there have been occasions where judgments were delivered after this period. In those instances, the judgments were delivered five days late. This is based on the judgments the candidate submitted for consideration.

10.2. The candidate has not acted in the North West Division of the High Court and the reviewing team were not able to assess other judgments of the candidate or the length of time it takes the candidate to hand down judgments.

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

11.1. No circumstances are known that would suggest that the candidate does not conduct court proceedings fairly, efficiently and effectively.

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

12.1. There is nothing to suggest in the judgments which have been put up by the candidate, that he did not act with impartiality.

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

13.1. The candidate's administrative ability is borne out by his prompt and efficient delivery of judgments.

- 13.2. The reviewing team however raised concerns as it relates to the judgment in the matter between *Standard Bank of South Africa Limited versus Andries Francois Du Toit Marais*, case number 884/21, Gauteng Division Pretoria. The paragraphs in the judgment were not properly numbered. The paragraphs go from 11 and the candidate skipped 12, 13, 14 and 15 then the judgment resumes at 16. Paragraph 16 and its subparagraphs are repeated on pages 5, 6 and 7 of the judgment.
- 13.3. The reviewing team raised concerns that the candidate does not always appear to proof read his judgments and check them for errors before handing them judgments down.
14. **The message that the candidate's appointment would send to the public at large:**
- 14.1. The reviewing team raised concerns about the fact that the candidate has not acted in the North West High Court for which he now seeks permanent appointment.
- 14.2. The appointment of the candidate would send the message to the public at large that the bench is made up of individuals from a diverse array of legal professional backgrounds.

## **ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

### 1. Reported judgments:

1.1. None

### 1. Unreported judgments:

1.1. *EnX Corporation Ltd v Maroos* (case no 3163/2018) attached to the application.

1.2. *The Standard Bank of South Africa Limited v Andries Francois Du Toit Marais* (case no 884/21) attached to the application.

### 2. Judgments upheld on appeal:

2.1. None

### 3. Judgments overturned on appeal:

3.1. None