

JSC INTERVIEW ROUND: APRIL 2024

CANDIDATE: MS LOKWALO ROSE MOGWERA

**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. B. Juris, North-West University (1990);

1.1.2. LLB, North-West University (2000); and

1.1.3. LLM, Nelson Mandela University (2010).

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) 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. At the time of the interviews, the candidate will be approximately 57 years and 1 month old.

4.5. If appointed, the candidate would be eligible to complete a period of up to 15 years’ active service as a judge.

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

5.1. The candidate, in her questionnaire, indicates that she is involved with the Christian Women’s Federation, Nazarene Missions International, Basadi Dirang Society and Nazarene Compassionate

Ministry. The extent of the involvement and the aim of the associations is not explained.

5.2. The candidate records that she has addressed conferences (for example, Church conferences) on legal matters affecting women.

5.3. The candidate records that she has spoken in training traditional leaders on matters pertaining to human rights in the context of traditional courts.

5.4. The candidate records that she has organized and facilitated workshops for Magistrates on social context, diversity and HIV / AIDS.

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

6.1. The judgments submitted by the candidate were considered.

6.1.1. The judgments demonstrate that the candidate has not been exposed to diverse areas of civil litigation but has received extensive exposure to criminal litigation.

6.1.2. The candidate indicates, at paragraph 6.2.2 of her questionnaire, that she does not have much professional experience in the field of administrative law.

6.1.3. The candidate records that her proportion of work involves no labour law.

6.1.4. The candidate records almost all matters, if not all, have elements of constitutional law.

6.1.5. The candidate further records that she has dealt with many divorce trials. The reviewers noted in the October 2022

interviews, that the candidate indicated she had dealt with one civil trial in the High Court. The candidate further indicated her acting stints of 33 weeks in the criminal court and 2 weeks in the motion court.

- 6.1.6. The reviewers further referred to the October 2022 interview of the candidate for the North West High Court. The reviewers noted that when the candidate was engaged by Ngcukaitobi SC and Professor Marumoagae on a matter that was presided over by the candidate, the candidate found that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (PIE) applied to the land when the issue involved rural land. The explanation that the candidate gave was that she relied on the agreement by counsel that represented the parties in the matter that PIE applied despite the statute defining the category of property it applies to. The further explanation by the candidate that the relief sought (eviction) could not be granted in terms of the Extension of Security of Tenure Act (ESTA) is disturbing. The reviewers have indicated the need for the candidate to receive more exposure to civil litigation.

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

- 7.1. The candidate recorded that most of her criminal matters “*about 98%*” are confirmed on appeal. The candidate recorded that two civil matters were taken on appeal but she did not disclose the details of these matters.

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

8.1. Since 1989, the candidate was employed by the Department of Justice as a clerk. The candidate has steadily worked through the ranks being appointed as a Legal Administration Officer, Public Prosecutor, Magistrate and now a Regional Court Magistrate.

8.2. The candidate has been a Regional Court Magistrate from 2004 to date.

9. The candidate's linguistic and communication skills:

9.1. The candidate articulates herself well. The candidate appears to have a sufficient command of the English language and her judgments are well reasoned.

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

10.1. The reviewing team noted previous concerns which were raised about the length of time it took the candidate to hand down judgments.

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 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. The reviewing team referred to the concerns raised in the April 2021 interviews. The reviewing team noted the reply of the candidate during the October 2022 interviews. The reviewing team

is concerned as to whether the issues raised in the April 2021 interviews have been addressed.

- 11.2. There is nothing to suggest that the candidate does not conduct court proceedings fairly.

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 she did not act with impartiality.

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

- 13.1. The reviewing team is concerned with the issues raised in the April 2021 interview. There were issues of court files and notes missing, resulting in a delay in handing down judgments.

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

- 14.1. The candidate has been a Regional Magistrate from 2004 to date. The candidate has the potential to be a good Judge but needs to be given a longer acting stint, to be exposed to more civil litigation matters.
- 14.2. The reviewing team further noted that the candidate in her questionnaire, did not deal with paragraph 11 "*Is there anything about the state of your health which should be disclosed to the commission?*"

- 14.3. 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. None

2. Judgments upheld on appeal:

2.1. None

3. Judgments overturned on appeal:

3.1. None