

JSC INTERVIEW ROUND: MAY 2024

CANDIDATE: JUDGE GLORIA NOZUKO MJALI

COURT FOR WHICH CANDIDATE APPLIES: SUPREME COURT OF APPEAL

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

1.1. The candidate holds the following qualifications:

1.1.1. BA Law (University of the Western Cape – 1987);

1.1.2. LLB (University of the Western Cape – 1990); and

1.1.3. LLM (Cardiff University of Wales, UK – 2003).

1.2. The candidate was appointed to the Eastern Cape High Court (Mthatha) in October 2010.

1.3. Prior thereto the candidate served as an Acting Judge in the Northern and Eastern Cape Divisions for the periods during 2009 and 2010 (the candidate also held an acting appointment in the Land Claims Court during the period June 2010 to October 2010).

1.4. The candidate commenced employment with the Department of Justice in May 1989 and held various positions including Senior State Advocate and an appointment with the Special Investigating Unit as legal representative.

2. The candidate's integrity and ethics:

- 2.1. No circumstances are known that would suggest 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 22 judges permanently appointed to the SCA. Based on the names listed on the SCA website, the SCA's racial and gender composition appears to be:

3.1.1. 11 black women (8 African, 1 Indian, 2 Coloured);

3.1.2. 2 white women;

3.1.3. 7 black men (5 African, 1 Indian, 1 Coloured); and

3.1.4. 2 white men.

- 3.2. The candidate is an 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. The candidate is currently 58 years old and has completed a period of 13 years of active service as a judge.

4.5. If appointed, the candidate could serve approximately 12 years in office.

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

5.1. The candidate is well-known to the Eastern Cape Society of Advocates and is known to be committed to the values of the Constitution.

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

6.1. From the judgments and the curriculum vitae that the candidate has submitted, it appears that the candidate has an excellent understanding of the law.

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

7.1. An example of the candidate's ability to analyse and formulate a well-researched judgment is the matter of *Ndabeni v O.R. Tambo District Municipality*. This matter served on appeal both before the SCA and the

Constitutional Court and the candidate's judgment in both instances was upheld (*Municipal Manager O.R. Tambo District Municipality and Another v Ndabeni* (CCT 45/21) [2022] ZACC 3; [2022] 5 BLLR 393 (CC); (2022) 43 ILJ 1019 (CC); 2022 (10) BCLR 1254 (CC); 2023 (4) SA 421 (CC) (14 February 2022 and *Ndabeni v Municipal Manager: OR Tambo District Municipality and Another* (1066/19) [2021] ZASCA 8 (21 January 2021)).

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

- 8.1. As indicated above, the candidate has occupied various positions in the legal profession commencing with the Justice Department and her curriculum vitae indicates extensive experience as a legal practitioner, and also as an acting judge and judge.
- 8.2. The judgments of the candidate reflect extensive and broad professional legal experience.

9. The candidate's linguistic and communication skills:

- 9.1. From the judgments penned by the candidate it is apparent that she possesses the necessary linguistic and communication skills.
- 9.2. The judgments penned by her are clearly crafted and easy to follow, from the exposition of the facts to the reasoning and the conclusions reached in the matter.

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

- 10.1. The candidate demonstrates the ability to deliver judgments promptly. Her judgments are produced within a reasonable time.

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

11.1. The candidate is known to be well prepared and committed to dispensing justice in a manner that is fair and transparent. She is known for being hardworking and engages with counsel appearing before her in a manner that is fair and courteous at all times.

12. The candidate's independent mindedness:

12.1. The candidate is confident to express her views in a clear and concise manner. She has an acute sense of social justice which she brings into her judgments where relevant.

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

13.1. There is no reason to believe that the candidate does not have the appropriate administrative ability required for an appointment to the Supreme Court of Appeal.

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

14.1. The candidate's credentials are beyond reproach and her judgments reflect a commitment to constitutional values and principles. Her appointment would send a positive message to the community at large.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

The list below represents only those judgments with verifiable neutral or other citations. The candidate did not provide neutral citations for all judgments referred to in or annexed to the questionnaire.

1. Reported judgments:

- 1.1. *Khohliso v S* (86/2011, A790/10) [2013] ZAECMHC 36 ; 2014 (2) SACR 49 (ECM) (12 December 2013)

2. Unreported judgments:

- 2.1. *Spagni v The Director of Public Prosecutions, Western Cape and Others* (455/2022) [2023] ZASCA 24 (13 March 2023)
- 2.2. *Zwelithini Maxwell Zondi v The State* (1232/2021) [2022] ZASCA 173 (1 December 2022)
- 2.3. *Jikijela and Another v Mhlontlo Local Municipal Council and Others* (1698/10) [2011] ZAECMHC 7 (9 May 2011)

3. Judgments upheld on appeal:

- 3.1. *MEC for Health, Eastern Cape v N H obo A* (513/2021) [2022] ZASCA 181 (15 December 2022) dismissed an appeal against the candidate's judgment. No citation provided for the candidate's judgment.
- 3.2. *Municipal Manager O.R. Tambo District Municipality and Another v Ndabeni* (CCT 45/21) [2022] ZACC 3; [2022] 5 BLLR 393 (CC); (2022) 43 ILJ 1019 (CC); 2022 (10) BCLR 1254 (CC); 2023 (4) SA 421 (CC) (14 February 2022) ultimately found the candidate's order lawful and ordered compliance therewith, after the order had been successfully appealed in the SCA. No citation provided for the candidate's judgment.

- 3.3. *Khohliso v S* (86/2011, A790/10) [2013] ZAECMHC 36 ; 2014 (2) SACR 49 (ECM) (12 December 2013) was referred by the candidate to the CC for confirmation of the candidate's declaration of constitutional invalidity. In *Khohliso v S and Another* (CCT 12/14) [2014] ZACC 33; 2015 (2) BCLR 164 (CC); 2015 (1) SACR 319 (CC) (2 December 2014), the CC dismissed the application on the grounds that the declaration did not require confirmation because the relevant decree was not of the status of a provincial act.
- 3.4. *Jikijela and Another v Mhlontlo Local Municipal Council and Others* (1698/10) [2011] ZAECMHC 7 (9 May 2011) appeal dismissed by full bench in *Mhlontlo Local Municipality v Jikijela and Another* (CA 47/12) [2012] ZAECMHC 16 (29 November 2012).

4. Judgments overturned on appeal:

- 4.1. *Democratic Alliance v Rulumeni* (88/2021) [2023] ZASCA 1 (13 January 2023) overturned the candidate's judgment.
- 4.2. *Haarhoff and Another v Director of Public Prosecutions Eastern Cape (Grahamstown)* (1192/17) [2018] ZASCA 184; [2019] 1 All SA 585 (SCA); 2019 (1) SACR 371 (SCA) (11 December 2018) overturned the candidate's judgment.