

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE, KWAZULU-NATAL DIVISION OF THE HIGH COURT

ADVOCATE MLULEKI MARTIN CHITHI

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

1.1. The candidate holds the following tertiary qualifications:

1.1.1. B Proc, University of Transkei (1999)

1.1.2. LLB, University of Transkei (2001)

1.1.3. LLM, University of South Africa (2003)

1.2. The candidate holds the following professional admissions and honours:

1.2.1. admitted as an attorney in 2002

1.2.2. admitted as an advocate in 2008

2. The candidate's integrity and ethics

2.1. No circumstances are known to the reviewers 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.

2.2. The candidate has disclosed that on 25 May 2020, the Land Claims Court made an order in which it disallowed the payment of the candidate's fees and those of his instructing attorney for the matter and further ordered that the candidate and the instructing attorney repay the fees already paid to the entity that funded the litigation.

2.3. On 16 August 2021, in a further judgment, the Land Claims Court ordered the candidate and his instructing attorney to pay the respondent's costs pursuant to an application for the recusal of the presiding officer.

2.4. The candidate has further disclosed that both judgments were appealed to the Supreme Court of Appeal under case numbers 1203/2021, 1334/2021, and 261/2022. The appeal was heard on 19 February 2024, and the judgments are still pending.

2.5. An appeal to the Supreme Court of Appeal against a similar finding by the Land

Claims Court made on 16 March 2020, was successful (judgment at p 205 ff of the application).

3. The racial and gender composition on the bench

3.1. There are currently 24 permanent judges of the KwaZulu-Natal Division of the High Court:

3.1.1. 8 black women (6 African, 1 Coloured, 1 Indian)

3.1.2. 10 black men (7 African, 3 Indian)

3.1.3. 3 white women, and

3.1.4. 3 white men.

3.2. According to the questionnaire, the candidate is an African man.

4. The maximum period the candidate could serve if appointed

4.1. At the time of the interviews, the candidate will be approximately 48 years old and will have completed a period of approximately 5 months of service as an acting judge.

4.2. If appointed, the candidate would be eligible to serve as a judge for approximately 21 years and 11 months until the age of 70.

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

5.1. The candidate has maintained strong ties with members of the community in his hometown of Cofimvaba, where he volunteers his legal expertise.

5.2. The candidate's professional employment background with the Unitra Law Clinic and Lawyers for Human Rights and the Legal Aid Board involved providing legal services to the disadvantaged communities in the former Transkei area.

5.3. The candidate has stated that from 2001 to present he continues to devote his private time, on a voluntary basis, to mentor and tutor candidate legal practitioners in bookkeeping in preparation for the Attorneys Board Examination.

5.4. The candidate has mentored pupils (three of them women) and is currently mentoring a pupil.

5.5. The candidate has assisted with pupillage training in criminal law and procedure in the pupillage programme.

5.6. Between 2012 to 2016, the candidate served as a nominee of the Advocates for

Transformation (“AFT”) in the Bar Council representing junior advocates under five years. The candidate has indicated that the primary function of this post was to safeguard and champion the interests of junior advocates at the Bar.

5.7. In 2017, the candidate served as a member of the Skills Transfer Sub-Committee of the Society of Advocates of KwaZulu-Natal.

5.8. In 2020 and 2021, the candidate served as a convenor of the Legal Aid Sub-Committee of the Society of Advocates of KwaZulu-Natal.

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

6.1. The candidate has acted as a judge in both civil and criminal matters in the Eastern Cape Division from 3 October 2022 to 18 November 2022.

6.2. The candidate has sat as an acting judge in both civil and criminal matters in the KwaZulu-Natal Division on four occasions:

6.2.1. From 16 January 2023 to 17 February 2023;

6.2.2. From 21 August 2023 to 15 September 2023;

6.2.3. From 06 November 2023 to 01 December 2023; and

6.2.4. From 20 May 2024 to 21 June 2024.

7. Judgments of the candidate that have been taken on appeal

7.1. The candidate has disclosed that none of the judgments of the candidate have been taken on appeal.

7.2. However, the candidate has disclosed that there are two applications for leave to appeal pending in respect of the following matters:

7.2.1. *Centep Trust & Another v Keystone Trust & Others*: Case No. D3808/2022; and

7.2.2. *Ulundi Local Municipality v Mbongeni Nicholas Sangweni*: Case No. D 2181/2021.

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

8.1. The candidate has six years’ experience as an attorney and approximately sixteen years’ experience as an advocate.

8.2. As a candidate attorney, he worked at the Unitra Law Clinic and thereafter worked for Lawyers for Human Rights and Legal Aid South Africa, primarily serving

disadvantaged members of the community.

- 8.3. According to the candidate's questionnaire, the principal areas of his practice are land restitution, general civil litigation which includes personal injury claims, unlawful arrest and detention, malicious prosecution, medical negligence, administrative law, customary law, and general criminal litigation.

9. The candidate's linguistic and communication skills

- 9.1. The candidate's judgments are written in English.
- 9.2. Nothing in the judgments and other writings considered by the reviewers indicates that the candidate's linguistic and communication skills are not adequate.

10. The candidate's ability to produce judgments promptly

- 10.1. The candidate indicated that 3 judgments were outstanding at the time of completing the questionnaire, viz:
- 10.1.1. Civil Appeal Judgment: *FD Halle v AH Downs*: Case No. AR 111/23 Reserved: 31 May 2024;
- 10.1.2. Bail Appeal Judgment: *Sandile Mzizi v State*: Case No. 657/24 Reserved: 05 June 2024; and
- 10.1.3. Civil Trial Judgment: *MTN Magubane obo MA v MEC for Health KZN*: Case No. 3597/2008. Reserved: 12 June 2024.
- 10.2. It could not be ascertained at the time of completing this review, how many of these judgments were still outstanding,

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

- 11.1. The reviewers received no adverse comments from colleagues relating to the candidate's ability to conduct court proceedings fairly, efficiently, and effectively.
- 11.2. The candidate has disclosed that on 15 September 2023, a complaint was lodged against him with the Judicial Conduct Committee on behalf of Kays Centre CC in respect of a matter he presided over on 15 September 2023. The basis of the complaint was that the candidate did not manage the proceedings efficiently and exerted pressure on the parties to force a settlement in contravention of Article 9(c)(i), (ii) and (d) of the Code of Judicial Conduct.

11.3. The candidate has attached a response to the complaint and has stated that the complaint is devoid of any merit.

11.4. The outcome of the complaint is still pending.

12. The candidate's independent mindedness

12.1. The reviewers received no adverse comments from colleagues relating to the candidate's independent mindedness.

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

13.1. The candidate has disclosed that from 1 December 2022, he was appointed as the Deputy Chairperson of the KwaZulu-Natal Municipal Bid Appeals Tribunal – uThukela District Municipality. The appointment is for the period until 30 November 2025.

13.2. The candidate was appointed as the chairperson of the NHBRC Disciplinary Committee for the period 1 July 2022 until 20 June 2025.

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

14.1. The candidate is an experienced legal practitioner with a background in public interest litigation and a demonstrated commitment to furthering transformation in the legal profession.

14.2. The candidate's appointment as a Judge would send a positive message to the public at large.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *S v Tyatyeka* 2002(1) SACR 193 (ECB)
2. *S v Xamntwana* 2002 JDR 3279 (ECB)
3. *S v Malman* 2022 JDR 3212 (ECB)
4. *Siphungu v Minister of Police & Another* 2023 JDR 0015 (ECM)

Unreported judgments

5. *Muzi Mdamba v Sisanda Mbuyisa and 2 others*: Case No. :13208/2023
6. *Trustee for the time being of the Centep Trust 7 Another v Ketstone Trust*: Case No.: D3808/2022

Judgments upheld on appeal

7. None

Judgments overturned on appeal

8. None