

## **INTERVIEW ROUND: OCTOBER 2024**

### **VACANCIES:**

#### **JUDGE, EASTERN CAPE DIVISION OF THE HIGH COURT, MTHATHA**

#### **JUDGE, KWAZULU-NATAL DIVISION OF THE HIGH COURT**

#### **ADVOCATE PRETORIUS VUSUMZI MSIWA SC**

##### **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. BJuris (University of Transkei) (1987)

1.1.2. LLB (University of Pretoria) (1993)

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

1.2.1. admitted as an advocate in 1997

1.2.2. conferred Senior Counsel status in 2021

##### **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.

##### **3. The racial and gender composition on the bench**

3.1. According to the questionnaire, the candidate is a black African man.

3.2. There are currently 28 permanent judges of the **Eastern Cape Division** of the High Court:

3.2.1. 8 black women (7 African, 1 Indian)

3.2.2. 11 black men (8 African, 1 Coloured, 2 Indian)

3.2.3. 8 white women

- 3.2.4. 6 white men.
- 3.3. There are 7 permanent judges appointed to the **Mthatha** seat of the division:
  - 3.3.1. 4 black women (3 African, 1 Indian)
  - 3.3.2. 2 African men
  - 3.3.3. 1 white man
- 3.4. There are currently 24 permanent judges of the **KwaZulu-Natal Division** of the High Court:
  - 3.4.1. 8 black women (6 African, 1 Coloured, 1 Indian)
  - 3.4.2. 10 black men (7 African, 3 Indian)
  - 3.4.3. 3 white women, and
  - 3.4.4. 3 white men.

#### **4. The maximum period the candidate could serve if appointed**

- 4.1. At the time of the interviews, the candidate will be approximately 65 years and 7 months old and will have completed a period of approximately 4 months of service as an acting judge.
- 4.2. If appointed, the candidate would be eligible to serve as a judge for approximately 9 years and 4 months until the age of 75.

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

- 5.1. The candidate has indicated that he has represented litigants *pro bono* in constitutional matters relating to the rights of learners to water and sanitation and the alleviation of classroom congestion, as well as proceedings to compel National Government to construct facilities for learners in disadvantaged communities in Transkei (*Thobile Mawayi & four other schools v Premier; MEC for Education*) and the rights of women and traditional leadership in a constitutional dispensation.

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

- 6.1. The candidate has extensive experience in constitutional law, which, according to the candidate, comprises approximately 35% of his practice. He has been involved in several important constitutional law cases.
- 6.2. The candidate additionally has extensive experience in the field of criminal law,

having been employed as a prosecutor and control prosecutor from 1985 to 1997. He has also been involved in criminal cases during his career at the Bar.

6.3. The candidate also appears to have extensive experience in civil law, including administrative law, in matters involving both local and national government.

6.4. The reviewers were unable to locate and therefore could not consider judgments in the matters referred to by the candidate in which he specifically represented vulnerable litigants in affirming their constitutional rights.

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

7.1. The candidate has listed one judgment that has been taken on appeal, namely *Y M Essack NO v V A Thangavelu* (case number D9022/2007), in which he granted leave to appeal. The appeal has been enrolled for hearing on 15 November 2024.

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

8.1. The candidate commenced his professional career as a prosecutor in 1985 and was promoted to control prosecutor in 1988, where he served until 1997.

8.2. The candidate was then called to the Transkei Bar in 1997, where he practised as a junior counsel until 2021.

8.3. The candidate then attained senior counsel status in 2021, and he has practised as such since then.

8.4. The candidate has served several stints as an acting judge in both the Eastern Cape and KZN Divisions, as follows:

8.4.1. Eastern Cape Division 2014 (First Term);

8.4.2. Eastern Cape Division 2018 (Fourth Term);

8.4.3. KZN Division January 2023 to March 2023; and

8.4.4. Eastern Cape Division 17 May 2024 to 21 June 2024.

## **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 inadequate.

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

- 10.1. The candidate indicated that he had no reserved judgments outstanding at the time of completing the questionnaire.
- 10.2. The 2 November 2023 report from the Office of the Chief Justice for reserved judgments outstanding at the start of Term 4 2023 recorded that the candidate's judgment in the case of *Phumlani Vilakazi v State* AR 400/2021 in the Pietermaritzburg High Court had been reserved for 6 months and was still outstanding at that stage.

**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 judgments the candidate annexed in the matters of *Deschaney Investments (Pty) Ltd v Ardain Commercial CC* [2023] ZAKZDHC 29 (31 May 2023) paras 21 to 28 and *Newlands Sporting FC and others v Durban Central Local Football Association and others* 2024 JDR 0964 (KZD) paras 50 – 53, reveal that the candidate can be robust and places great importance on compliance with the rules and deprecates matters he views as wasting a judge's time.

**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 served as chairperson of the Advisory Board of the Small Claims Court from 2012 to 2014 and attended to the administrative tasks that accompany such a position.
- 13.2. The candidate additionally served as a presiding judicial officer and member of the SARU judicial committee from 2011 to 2015.
- 13.3. The candidate served as the chairperson of the Audit and Advisory Committee for the Eastern Cape Legislature from 2011 to 2015 and as a member of such committee from 2015 to 2018.

- 13.4. The candidate served as the convenor of the LLB sub-committee for the GCB from 2013 to 2014. The reviewers have no knowledge of there having been such a GCB sub-committee.
- 13.5. The candidate served as the chairperson of the Society of Advocates (Transkei Bar) from 2013 to 2014.
- 13.6. The candidate served as the chairperson of the Society of Advocates (Transkei Bar) Audit Committee from 2017 to 2019.
- 13.7. The candidate served as the chairperson of the Investigating Commission in respect of the mismanagement of funds and cash for jobs in the Department of COGTA, Eastern Cape in 2015.
- 13.8. The candidate further served as the chairperson of the Financial Misconduct Disciplinary Board (Treasury Regulations) in Aspire in 2019.

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

- 14.1. The candidate's appointment would continue to advance the cause of transformation within the judiciary.

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

### Reported judgments

1. There do not appear to be any reported judgments of the candidate from his several acting stints in the Eastern Cape and KZN, respectively

### Unreported judgments

2. *Consupaq, a division of Astrapak Manufacturing Holdings (Pty) Ltd v Sohawan and another* [2023] ZAKZDHC 13 (23 March 2023)
3. *Newlands Sporting FC and others v Durban Central Local Football Association and others* 2024 JDR 0964 (KZD)
4. *Deschaney Investments (Pty) Ltd v Ardain Commercial CC* [2023] ZAKZDHC 29 (31 May 2023)
5. *Zulu and others v Zulu and others* [2023] ZAKZDHC 25 (6 April 2023)
6. *Essack N.O. v Thangavelu* [2023] ZAKZDHC 26 (27 March 2023)

The candidate has referred to several other unreported judgments, which have not been published in JDR, SAFLII or JOL, which are attached to his application. These judgments are in respect of criminal matters which are not significant in nature.

### Judgments upheld on appeal

7. None indicated

### Judgments dismissed on appeal

8. None indicated

### Academic writings

9. The candidate was the co-author and contributor to the “Manual of Faith for Uniting Presbyterians of Southern Africa” Constitution (see chapters dealing with the rules of natural justice – ‘*audi alterum partem*’ and ‘*nemo iudex in sua causa*’) reviewed by Professors Kerr and Koyana.