

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE, GAUTENG DIVISION OF THE HIGH COURT

ADVOCATE RICHARD BONAKELE MKHABELA 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. BA (Philosophy and Law) – University of the Witwatersrand, Johannesburg (1998)
- 1.1.2. LLB – University of the Witwatersrand, Johannesburg (2000)
- 1.1.3. LLM – University of the Witwatersrand, Johannesburg (2008)
- 1.1.4. Certificate in Construction Arbitration – Arbitration Foundation of South Africa (2019).

1.2. The candidate holds the following professional admissions:

- 1.2.1. admitted as an advocate in 2005
- 1.2.2. conferred senior counsel status in May 2022.

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. As far as could be ascertained, there are currently 76 permanent judges of the Gauteng Division of the High Court:

- 3.1.1. 24 black women (19 African, 2 Coloured, 3 Indian)
- 3.1.2. 23 black men (17 African, 2 Coloured, 4 Indian)
- 3.1.3. 14 white women

3.1.4. 15 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 59 years and 2 months old and will have completed a period of approximately 5 months of service as an acting judge. Full details of the candidate's acting stints were not provided.

4.2. If appointed, the candidate would be eligible to serve as a judge for 15 years from appointment.

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

5.1. The candidate played a role in establishing the Wits School of Law Writing Centre, which has – in his view – contributed to the development of many law students at the university. That he sees this as one of his most significant contributions to the law and the pursuit of justice in South Africa indicates a strong personal commitment to key constitutional values.

5.2. He has also displayed his commitment to the values of the Constitution by training and lecturing pupils, conducting advocacy training, and mentoring young members of the bar and law students at universities.

5.3. Under the auspices of Advocates for Transformation, led by its national chairperson and other advocates from the Bridge Group, he has made a contribution to school moot competitions.

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

6.1. Although the candidate appears to specialise in criminal law and medical malpractice, his practice also includes *foci* on administrative, labour, and local government law. He has also worked on construction, tax, and competition law matters.

6.2. Given the relatively limited number of judgments the candidate has handed down, the judgments themselves cannot be used as a measure of his knowledge of the law. Nonetheless, these judgments reflect a working knowledge of the areas of the law they consider.

6.3. The limited number of judgments is ameliorated by and must be seen in the context of his professional experience, which is considered more extensively below. It is to be

pointed out that in his 19-year legal career, which culminated in his elevation to senior counsel status, the candidate has clearly acquired knowledge of a number of different areas of the law.

- 6.4. The candidate's knowledge of constitutional law is unclear, with its accounting for only 2% of his practice as an advocate. However, as an acting judge, he notes that he has dealt with administrative and constitutional law matters "*mainly in the form of review applications under the doctrine of legality and under the Promotion of Administrative Justice Act*".

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

- 7.1. The candidate states that an application for leave to appeal against one of his judgments is pending before the Supreme Court of Appeal (SCA), with another such application having been abandoned. (The candidate's application form refers to the losing parties having petitioned the SCA.)
- 7.2. None of the candidate's judgments has (yet) been the subject of an appeal.

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

- 8.1. The candidate has almost 19 years' experience as an admitted advocate. Prior to his pupillage in 2004, he worked in a wide variety of jobs, including as a security constable, farm worker, a golf caddy, gardener, a tutor, a sales assistant, a legal advisor, and a store manager.
- 8.2. The candidate states that his practice began with a focus on administrative law, mining law, procurement law and insolvency law. However, in the past ten years his practice has, in addition to these areas, focused on criminal law and medical negligence, and has earned him a reputation as an expert in these fields.
- 8.3. Between 2019 and July 2023, the candidate acted (*pro bono*) as a judge of the High Court on six occasions, each lasting only a week or two. In 2023, he acted for a full term, and in 2024, for two full terms. As an acting judge, he sat in both civil and criminal courts, dealing with civil and criminal trials, criminal appeals, opposed and unopposed motions, urgent applications, and family court matters.
- 8.4. The candidate's professional experience demonstrates an admirable commitment to the attainment of his goals and his elevation to senior counsel status by the Johannesburg Bar signifies his competence.

9. The candidate's linguistic and communication skills

- 9.1. The candidate's judgments indicate that he has a good command of the English language and can communicate his thoughts both clearly and effectively.
- 9.2. Nothing in the judgments 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 has indicated that eight judgments were outstanding at the time of completing the questionnaire. As far as could be ascertained at the time of completing this review, six of these judgments remain outstanding, of which five have been outstanding for more than three months.
- 10.2. Of the ten judgments of the candidate considered by the reviewers, five were handed down more than three months after judgment was reserved.

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.

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. No adverse comments on the candidate's administrative ability have been received.

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

- 14.1. The candidate's appointment would send a powerful message to the public at large that the bench includes judges drawn from a diverse range of socio-economic backgrounds.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. None

Unreported judgments

2. *LK v PK* (21/19630) [2022] ZAGPJHC 194(2 February 2022)
3. *Malinga v Minister of Police* [2021] ZAGPJHC 858 (22 July 2021)
4. *Engen Petroleum Limited v Sing* [2021] ZAGPJHC 724 (12 November 2021)
5. *Labuschagne, Jolien & BCSD Prime Investments (Pty) Ltd v Vliegmasjien (Pty) Ltd & Vormbaum, Cheryl Ann* (case number 20/26416 (attached to previous application))
6. *Goosebay Farm (Pty) Limited v Icon Civil Engineering (Pty)Limited and Another* [2022] ZAGPJHC 193 (4 February 2022)
7. *Madzivhanana v Road Accident Fund* 2023 JDR 1129 (GJ)
8. *Jocelyn De Bruyn v The Master of the High Court, Pretoria and Others* [2024] ZAGPPHC 206 (7 March 2024)
9. *Mkhwanazi Cyriel Khulekani and Others v The State* (case number A43/2024 (attached to the application))
10. *Du Preez and Others v Master of the High Court & Others* [2024] (45184/2021) ZAGPPHC299 (26 February 2024)
11. *Excellent Nkowane v HJ Bosch and Sons (Pty) Ltd* ZAGPPHC 542 (14 June 2024)

Judgments upheld on appeal

12. None

Judgments dismissed on appeal

13. None