

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE SUPREME COURT OF APPEAL

JUDGE GLORIA NOZUKO ZUKISWA MJALI

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, University of the Western Cape (1987)

1.1.2. LLB, University of the Western Cape (1990)

1.1.3. LLM, Cardiff University of Wales.

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

1.2.1. admitted as an advocate in 1991.

1.3. The candidate was permanently appointed to the following judicial roles:

1.3.1. Judge of the High Court (Eastern Cape Division, Mthatha) – October 2010.

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. There are currently 23 permanent judges on the Supreme Court of Appeal bench, comprising:

3.1.1. 10 black women (8 African, 1 Coloured, 1 Indian)

3.1.2. 7 black men (4 African, 2 Coloured, 1 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 woman.

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 3 months old and will have completed a period of approximately 14 years of active service.
- 4.2. If appointed, the candidate would be eligible to complete a period of approximately 10 years and 8 months' active service as a judge of the Supreme Court of Appeal.

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

- 5.1. The candidate's years in public service (including as a public prosecutor and a state advocate) indicate a personal commitment to serve the public and the values of the Constitution.

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

- 6.1. The candidate has delivered judgments in several different fields of the law.
- 6.2. We note that the candidate has very few (if any) reported judgments and relatively little experience acting in the SCA. This was previously raised with the candidate by the JSC, and the candidate has taken steps to remedy that deficiency by accepting an acting position in the SCA, which she is currently fulfilling.
- 6.3. The reviewing team notes further that there are a substantial number of unreported judgments that appear on Juta (JDR) from which it is clear that the candidate routinely produces concise, well-reasoned judgments on a wide variety of matters. The judgments attached to the candidate's application are, in some cases, of somewhat poorer quality than those found by the reviewing team on Juta.
- 6.4. Although many of her judgments have not been reported, the candidate appears to have a keen knowledge of criminal law, customary law, and procedural law. She has very few judgments in the field of constitutional and administrative law.
- 6.5. The care with which her judgments are written and referenced (with careful attention to legal precedents and the rules) demonstrates her fidelity to the rule of law and the Constitution.

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

- 7.1. The reviewers note that, in her application, in response to the question at 9.4 (paginated page 16), the candidate states that her judgments have been taken on appeal but that none of the appeals was successful. The below appeal (handed down by the SCA on 1 December 2023) was, however, successful.
- 7.2. In *Kouga Local Municipality v St Francis Bay (Ward 12) Concerned Residents Association and others* (2024 (4) SA 70 (SCA)), the SCA overturned the judgment of the candidate. We have been unable to find a copy of the candidate's judgment in the court *a quo*.
- 7.2.1. The matter concerned the legality of the establishment by the Kouga Local Municipality of a special rating area ("SRA") in St Francis Bay. The respondents (applicants in the court *a quo*) sought a declaration that part of the Municipality's rates policy was unconstitutional and an order setting aside the declaration of the SRA. The candidate in the High Court granted the order sought.
- 7.2.2. The Supreme Court of Appeal upheld the appeal, holding that the applicants in the court *a quo* had failed to make out a case for the relief sought. It did not comment directly on the candidate's reasoning.
- 7.3. The candidate's judgment in *Ndabeni v Municipal Manager, OR Thambo Municipality and Another* Case Number 1775/2013 (ECHC, Mthatha) was considered indirectly by the Supreme Court of Appeal and the Constitutional Court, both of which were called upon to consider the validity of the candidate's order for purposes of an application for a declaration of contempt of the candidate's order.
- 7.3.1. The candidate had granted an unopposed order to Ndabeni, the applicant. The respondents failed to comply with the order. Ndabeni brought an application for contempt of court. The High Court (per Griffiths J) heard the contempt application. It held that the candidate was not empowered to grant the unopposed order and that the order was, therefore, a nullity. The judgment of Griffiths J was then taken on appeal to both the SCA and the Constitutional Court.

7.3.2. The SCA, in *Ndabeni v Municipal Manager: OR Tambo District Municipality and Another* (1066/19) [2021] ZASCA 8 (21 January 2021), held that the order of the candidate was not a nullity and that the elements for an order of civil contempt of court were established. It overturned the order of Griffiths J and granted the appeal. On the merits of the candidate's order, the majority of the SCA confirmed part of the order and deleted part of it. It held (at paragraph 24) that:

“The final issue to consider is whether this Court should confirm the Mjali J's [sic] order in its entirety without falling foul of usurping a power that it does not have. As discussed above, paragraph 1 of that order is in line with Council's resolution 10/11. Paragraphs 4 and 5 are consequential to paragraph 1. Insofar as paragraph 2 is concerned, different considerations apply. In my view, the terms of paragraph 2 are overbroad to the extent that they in effect create a permanent post in the second respondent's staff establishment when the power to do so is an exclusive preserve of a municipal Council. Thus, to that limited extent paragraph 2 of the Mjali J's order falls to be deleted.”

7.3.3. The Constitutional Court, in *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), held that the candidate's court order was not a nullity and that the merits of that order were not on appeal before the SCA. As a consequence, it held that the SCA erred in deleting paragraph 2 of the candidate's order (at paragraph 35):

“All that Ms Ndabeni seeks is compliance by the Municipal Parties with the Mjali J order. That order was not on appeal before the Supreme Court of Appeal when it considered the appeal in the present proceedings. Consequently, it was not open to the majority to exclude paragraph 2 of the High Court order. Having found that the majority also erred in declaring the Municipal Parties to be in contempt of the Mjali J order, it will be necessary to uphold the appeal against the Supreme Court of Appeal in these respects.”

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

8.1. The candidate has significant professional experience in criminal law and investigations. She appears to have experience, through her time acting as a judge, in various different areas of the law.

9. The candidate’s linguistic and communication skills

9.1. The candidate’s judgments are written in English. The candidate has excellent linguistic skills.

10. The candidate’s ability to produce judgments promptly

10.1. The candidate indicated that two judgments were outstanding at the time of completing the questionnaire. In the first, judgment was reserved on 6 May 2024. In the second (in respect of which the candidate notes that she is not the scribe but is the presiding judge), judgment was reserved on 10 May 2024. The reviewers could not ascertain whether these judgments have been handed down.

10.2. The judgments considered by the reviewers (as listed in the annexure to this document) were handed down promptly.

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. There is no indication of the candidate’s administrative ability from the candidate’s CV or judgments.

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

14.1. The candidate’s appointment to the Supreme Court of Appeal would send a positive message to the public at large to the extent that the candidate is an African woman who commenced practice as a public prosecutor and a state advocate. The candidate

also has experience in the High Court divisions in the Eastern and Northern Cape, and has acted as an appeal judge in the Supreme Court of Appeal.

- 14.2. It appears that the candidate has a committed history in the public service.
- 14.3. The candidate has relatively few reported judgments and limited experience acting in the Supreme Court of Appeal. This may affect public confidence regarding whether she is ready for elevation to the SCA.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *S v Van Rooyen* 2012 (2) SACR 141 (ECG) (Local Appeal)
2. *Scheepers v Minister of Safety & Security* 2015 (1) SACR 284 (ECG) (Local Appeal)
3. *S v Papu* 2015 (2) SACR 313 (ECB) (Local Appeal)

Unreported judgments

4. *Cekiso v The Master of the High Court, Mthatha* 2017 JDR 1815 (ECM)
5. *De Jager NO v Van Onselen NO* 2019 JDR 0224 (ECG) (Local Appeal)
6. *Diamond Hill Trading 97 CC v Regional Magistrate Sihlahla: Mthatha* 2021 JDR 0353 (ECM) (Local Appeal)
7. *Empilweni Home v Lusu* 2017 JDR 1622 (ECM) (Local Appeal)
8. *Helderberg Car and Propshaft Centre CC v Nexor 519* 2012 JDR 0933 (ECG) (Local Appeal)
9. *J.A. Le Roux Attorneys v Madaza* 2017 JDR 0303 (ECM)
10. *Jikijela v Mhlontlo Local Municipality Council* 2011 JDR 0561 (ECM)
11. *Lowery v Jordan* 2013 JDR 0089 (ECG) (Local Appeal)
12. *Mehlwempi v Unity Insurance Limited* 2015 JDR 2018 (ECM) (Local Appeal)
13. *Mkono v Executor of the Estate Late: Mkono* 2017 JDR 1092 (ECM)
14. *Msindwana v Kili and Others* 2011 JDR 0674 (ECM)
15. *Ninja Protection Services & Security and another v Private Security Regulatory Authority* 2024 JDR 2243 (ECM)
16. *Padayachee v The Road Accident Fund* 2020 JDR 1113 (ECG)
17. *Road Accident Fund v Zilwa Attorneys Incorporated and others* (Leave to Appeal) 2024JDR 2211 (ECM)
18. *S v Dlova* 2014 JDR 1114 (ECG)
19. *S v Haarhoff* 2017 JDR 1503 (ECG)

20. *S v His Majesty King Dalindyebo* v 2017 JDR 0311 (ECM)
21. *S v Hoogstander* 2009 JDR 1195 (NCK)
22. *S v Khohliso* 2014 JDR 0361 (ECM) (Local Appeal)
23. *S v Leve* 2013 JDR 0110 (ECG) (Local Appeal)
24. *S v Mazitshana* 2019 JDR 0663 (ECG) (Local Appeal)
25. *S v Poswa* 2016 JDR 2332 (ECG) (Local Appeal)
26. *S v Tshantsani* 2016 JDR 0270 (ECG) (Local Appeal)
27. *S v Venter* 2014 JDR 1307 (ECG)
28. *S v Zondi* 2022 JDR 3632 (SCA)
29. *SA Truck Bodies (Pty) Ltd v The Minister of Safety and Security* 2010 JDR 0850 (NCK)
30. *Spagni v Acting Director of Public Prosecutions Western Cape and others* 2023 JDR 0737 (SCA)
31. *Vorster v Clothing City (Pty) Ltd* 2022 JDR 1355 (ECMA) (Local Appeal)
32. *Zikhundla v Malala and another* 2024 JDR 2297 (ECM)

Judgments upheld on appeal

33. *Municipal Manager, or Tambo Municipality and Another v Ndabeni* 2023 (4) SA 421 (CC)

Judgments overturned on appeal

34. *Kouga Local Municipality v St Francis Bay (Ward 12) Concerned Residents Association and others* 2023 JDR 4539 (SCA)