

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: DEPUTY JUDGE PRESIDENT, KWAZULU-NATAL

JUDGE JACQUELINE IRENE HENRIQUES

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 Natal, Durban (1991)

1.1.2. LLB, University of Natal, Durban (1993)

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

1.2.1. admitted as an attorney (1995 to 20 October 2000)

1.2.2. admitted as an advocate (December 2000 to November 2011)

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

1.3.1. Judge of the High Court (KwaZulu-Natal Division) on 17 November 2011

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 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. The Judge President of the division is an African woman.

3.3. According to the questionnaire, the candidate is a Coloured woman.

4. The maximum period the candidate could serve if appointed

4.1. At the time of the interviews, the candidate will be approximately 54 years and 2 months old and will have completed a period of approximately 12 years and 10 months of active service.

4.2. If appointed, the candidate would be eligible to complete a period of approximately 15 years and 9 months' active service as Judge President.

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

5.1. The candidate was a member of the Black Lawyers Association from 1993 until her elevation to the Bench in 2011. She was the secretary, treasurer, and chairperson of the Durban branch whilst she practised as an attorney and advocate, and she subsequently held the position of the national treasurer.

5.2. Whilst at the Bar, the candidate was involved in advocacy training of pupils. She lectured to pupils, and she was an examiner in the oral examinations. She has remained committed to assisting in the trial advocacy programme.

5.3. The candidate has served as a member of the Bar Council, in KwaZulu-Natal and in the Northern Cape. She was actively involved in *pro bono* work in KwaZulu-Natal and the Northern Cape.

5.4. Since 2020 the candidate has been an external council member of the University of KwaZulu-Natal. She became a member of the extended senior appointment committee that oversaw the appointment of the vice-chancellor. In 2022, she became a full member of the council membership committee.

5.5. The candidate was a mediator in the Cato Manor land claims process. Her tenure terminated when the process finalised.

5.6. The candidate was the chairperson of the Prosano Committee which terminated when her term of office ended.

5.7. The candidate was a member of the commission of enquiry into the Charlottedale train disaster and was appointed as facilitator into the enquiry set up by the then MEC of Transport.

- 5.8. The candidate was the chairperson of the Income Tax Appeal Board. Her tenure ended with her elevation to the bench.
- 5.9. The candidate is involved in fundraising activities for the St. Michael's Catholic Church as well and the Ngome Shrine. She has volunteered at the Brown's school fete and at the Mother of Peace Orphanage in Illovo.
- 5.10. The candidate has assisted with pupillage training whilst she was at the Bar and with legal education at SAJEI and by training staff at court. She has participated in the training for aspirant judges, specifically the women's programme. She has also presided over moot court finals for law students.

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

- 6.1. From the *curriculum vitae* submitted, the candidate has extensive experience in various legal fields, having practiced as an attorney for approximately 5 years and 11 years as an advocate. During her practice as an advocate, she held membership with the Society of Advocates KwaZulu-Natal and the Northern Cape Society of Advocates.
- 6.2. The candidate has served as a permanent Judge of the High Court for a period of approximately 13 years.
- 6.3. The candidate has stated that approximately 130 of her judgments are available on various platforms.
- 6.4. The candidate therefore has extensive experience and diverse knowledge and understanding of various areas of the law.

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

- 7.1. The candidate has disclosed that 10 judgments have been taken on appeal, and the reviewers found no further judgments of the candidate that have been taken on appeal. On appeal, 7 judgments were upheld, and 3 judgments were overturned. No appeals that were identified by the candidate remain to be decided.
- 7.2. The judgments of the candidate upheld on appeal are:
 - 7.2.1. *Secona Freight Logistics CC v Samie and Others* [2023] ZASCA 183;
 - 7.2.2. *Zuma v Downer and another* 2024 (2) SA 356 (SCA);

- 7.2.3. *Assmang Limited v Holden* [2019] JOL 47949 (KZP) *Holden v Assmang Ltd* 2021 (6) SA 345 (SCA);
- 7.2.4. *MT Pretty Scene: Galsworthy Limited v Pretty Scene Shipping SA and Another* 2021 (5) SA 134 (SCA);
- 7.2.5. *S v Soni* 2021 (2) SACR 241 (SCA);
- 7.2.6. *Majola and Another v S* [2016] ZAKZPHC 69; and
- 7.2.7. *Schwartz v Strauss Daly Incorporated* (13741/2017P) AR 25/2022.
- 7.3. In *Secona Freight Logistic*, the issue related to whether locus standi determined as a point *in limine* was appealable. The court found that the issue of *locus standi* was not dispositive of the matter, therefore the matter was not appealable and struck the matter from the roll with costs.
- 7.4. In *Zuma*, the issue before the SCA was whether Mr. Zuma should be permitted to continue private prosecution while an application for leave to appeal was pending. The court found that the harm asserted by the respondents was real and that the private prosecution was without any foundation in either fact or law and that the respondents, appearing as accused persons in an abusive prosecution, would undeniably compromise public confidence in courts and the administration of justice. The SCA dismissed the appeal.
- 7.5. In *Assmang Limited*, the candidate sitting as a court *a quo* dismissed two special pleas of jurisdiction and prescription. The full court upheld the decision and the Supreme Court of Appeal set the decision of the full court aside.
- 7.6. In *MT Pretty Scene*, the matter involved the consolidation of two matters that related to admiralty law. The Supreme Court of Appeal found that the full court erred in upholding the appeal against the candidate's judgment dismissing an application to set aside an arrest of a vessel, and set the order of the full court aside, upholding the appeal.
- 7.7. *S v Soni* concerned a criminal appeal against conviction and sentence relating to whether a pattern of evidence proved the guilt of an accused beyond a reasonable doubt. The Supreme Court of Appeal upheld the appeal in part and dismissed it in part.
- 7.8. The judgments of the candidate overturned on appeal are:

- 7.8.1. *Savoi and Others v National Prosecuting Authority and Another* (5867/2013P);
- 7.8.2. *S v Soni* (CC29/2014P) (Partly dismissed, partly upheld); and
- 7.8.3. *Umndeni Wenkosi of the Mkhwanazi Traditional Community at Mpukuyoni and another v Premier of KwaZulu-Natal and Others* (11037/2011) delivered 19 May 2020 (AR 636/2018).

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

- 8.1. The candidate has considerable experience in the legal field, as an attorney and as an advocate.
- 8.2. The candidate has been a permanent judge for approximately 13 years.
- 8.3. The candidate has acted as senior civil judge – 18 March 2024 to 28 March 2024.
- 8.4. The candidate as acted as deputy judge president.
- 8.5. The extensive and well-considered judgments of the candidate reflect her vast professional experience.

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 5 judgments were outstanding at the time of completing the questionnaire.
- 10.2. As far as could be ascertained at the time of completing this review, all of these judgments were still outstanding, of which 3 have been outstanding for more than three months.
- 10.3. Of the 6 judgments considered by the reviewers referred to in paragraph 16.2 of her application, at least 3 were handed down more than three months after hearing.
- 10.4. Of the 3 judgments annexed to the candidate's application only one was handed down more than three months after the hearing.

10.5. The reserved judgments report from the Chief Justice for the beginning of term 4 of 2023 reveals that three judgments are outstanding. At least one has been handed down. The other two could not be sourced online.

10.6. The candidate has disclosed that she has penned at least 130 judgments.

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. There has been a recent complaint, dated 16 August 2024, from Adv Sekati. Judge Henriques has not been given an opportunity to comment on the issue and therefore no comment is made herein.

11.3. Comments to the reviewers variously describe the candidate as cordial and respectful. She is praised for her excellent administrative skills and assistance to counsel and unrepresented parties. The candidate is efficient and is able to identify issues quickly and manages her court effectively and efficiently.

11.4. The candidate is known as a judge who is well prepared for hearings and is knowledgeable.

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 reports that she has made a significant contribution to the effective running of the KZN Division in respect of judicial case management and file audits and that her involvement has led to approximately 74 finalised matters and 114 archived matters for the period November 2023 to 14 June 2024.

13.2. Her tenure as acting Deputy Judge President saw a period of greater accessibility, efficiency and the appropriate prioritisation and the allocation of resources to ensure expedited hearings for matters deservedly requiring them.

13.3. She assisted in the drafting of practice directives during the COVID-19 pandemic, and is a member of the practice directive committee.

13.4. The candidate has listed extensive participation in various associations, committee, and councils, including frequently as chairperson or in other roles requiring sound administrative skills, such as secretary and treasurer of the Durban BLA and treasurer of the BLA nationally.

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

14.1. The candidate's appointment as the Deputy Judge President would send a positive message to the community at large given not only the candidate's experience as a judge, but in particular her demonstrated exceptional administrative skills and the ability and drive to bring about needed changes and enhanced efficiencies.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *S v Mkhize* 2012 (2) SACR 90 (KZD)
2. *FNB Fiduciary (Pty) Ltd NO v Annapa and 6 Others* [2020] 1 All SA 163 KZD

Unreported judgments

3. *S v Ebrahim* (CCD49/19) [2020] ZAKZDHC 64 (7 December 2020)
4. *Tansnat Durban (Pty) Ltd v eThekweni Municipality and others* (D4178/2020) [2020] ZAKZDHC 57 (8 February 2021)
5. *Standard Bank of South Africa Limited v Young and another* (D8880/2021) [2022] ZAKZDHC 30 (4 August 2022)
6. *WB v RB and another* (D8141/2022) [2023] ZAKZDHC 96 (18 December 2023)

Judgments upheld on appeal

7. *Secona Freight Logistics CC v Samie and Others* [2023] ZSCA 183
8. *Zuma v Downer and another* 2024 (2) SA 356 (SCA)
9. *Holden v Assmang Ltd* 2021 (6) SA 345 (SCA)
10. *MT Pretty Scene: Galsworthy Limited v Pretty Scene Shipping SA and Another* 2021 (5) SA 134 (SCA)
11. *S v Soni* 2021 (2) SACR 241 (SCA)
12. *Majola and Another v S* [2016] ZAKZPHC 69
13. *Schwartz v Strauss Daly Incorporated* (13741/2017P) AR 25/2022

Judgments dismissed on appeal

14. *Savoi and Others v National Prosecuting Authority and Another* (5867/2013P)
15. *S v Soni* (CC29/2014P) (Partly dismissed, partly upheld)
16. *Umndeni Wenkosi of the Mkhwanazi Traditional Community at Mpukuyoni and another v Premier of KwaZulu-Natal and Others* (11037/2011) delivered 19 May 2020 (AR 636/2018)