

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE OF THE SUPREME COURT OF APPEAL

JUDGE MAHENDRA RAMASAMY CHETTY

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 (Law) (UDW) (1983)

1.1.2. LLB (UDW) (1985)

1.1.3. LLM (New York University) (1989) with focus on labour law and human rights law (as a Fulbright scholar).

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

1.2.1. admitted as an attorney on 2 March 1988

1.2.2. qualified as an arbitrator and mediator (IMSSA) in 1994 (thereafter with Tokiso)

1.2.3. appointed as chairperson of the Development Facilitation Appeals Tribunal for KZN in 2007

1.2.4. appointed as chairperson of the Town Planning Appeals Board for KZN in 2008

1.2.5. appointed as a trustee (now patron) and advisory board member of the Legal Resources Centre Trust in 2014

1.2.6. appointed as a member of the Supervisory Board of the Foundation for Human Rights in 2021.

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

1.3.1. Judge of the High Court, KwaZulu-Natal Division on 30 May 2014.

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 Indian man.

4. The maximum period the candidate could serve if appointed

4.1. At the time of the interviews, the candidate will be approximately 61 years and 4 months old and will have completed a period of approximately 10 years and 4 months of active service.

4.2. If appointed, the candidate would be eligible to complete a period of approximately 8 years and 7 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. From a very early stage in the candidate's career, he was involved in the protection and advancement of socio-economic rights and in cases involving constitutional rights.

5.2. The candidate practised as an attorney in the following fields.

5.2.1. 1990 to 1994: damages claims against the police, inquests in respect of police brutality, employment discrimination law, litigation in the area of HIV/AIDS, and extensive labour litigation in the Industrial Court.

5.2.2. 1995 to 2014: litigation on the protection and advancement of socio-economic rights, including education, housing, health, access to court (refugee rights), environmental law on behalf of indigent communities suffering the effects of industrial pollution, access for communities to water, electricity and sanitation, gender rights in the workplace, sexual harassment, discrimination on the grounds of pregnancy, cases of sexual abuse and domestic violence and labour tenant and land claims. He further represented clients in cases involving

discrimination against people with disabilities, the protection of economic rights, on behalf of (street) market traders, representing victims in proceedings before the Truth and Reconciliation Commission's Amnesty Committee in the Putco Bus Shootings, and inquest(s) following murders at the instance of the notorious Vlakplaas Unit.

- 5.2.3. During his career at the Legal Resources Centre, the candidate presented discussion papers on a range of socio-economic rights, including the first national conference on AIDS (*The law and the right to a fair trial in Africa*, September 1999).
- 5.2.4. The candidate presented papers at the International Conference on the Convention of the Rights of the Child (Geneva, November 2009) and at The Exposure Dialogue on Law and Informality (Ahmedabad, January 2013), which focused on models of informal trade and organising amongst waste pickers and street vendors in India, Latin America, and Africa.
- 5.3. The candidate additionally served as a member of the drafting committee of the Charter Rights and Duties of Persons with HIV/AIDS and is a former trustee of the AIDS Consortium.
- 5.4. The candidate's *curriculum vitae* reveals that he devoted his career as a practising lawyer to serving the poor and marginalised.
- 5.5. The candidate served as a Regional Director of the Legal Resources Centre from 1999 to 2014.

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

- 6.1. From the *curriculum vitae* submitted, the candidate has extensive legal experience in several legal fields, including constitutional law, administrative law, land claims law, labour law, town planning law, personal injury law, and commercial law.
- 6.2. The candidate has served as a permanent Judge of the High Court for a period of approximately ten years.
- 6.3. The candidate, therefore, has extensive experience, diverse knowledge, and an understanding of various areas of the law.
- 6.4. Furthermore, as a lawyer, the candidate was involved in several important cases that contributed towards the development of our jurisprudence, including *Governing Body*

of Juma Masjid Primary School & Others v Essay NNO & Others (Centre for Child Law and Socio-Economic Rights Institute of South Africa as Amici Curiae) 2011 (8) BCLR 761 (CC); *Director of Public Prosecutions, Transvaal v Minister of Justice Constitutional Development & Others* 2009(4) SA 222 (CC); *Ndlovu v Ngcobo & Bekker v Jika* 2003 (1) SA 113 (SCA) and *Applicant v Administrator of Transvaal* 1994 (4) SA 733 (T).

- 6.5. Recently, in *African National Congress v Umkhonto Wesizwe Party and Another* [2024] ZAKZDHC 13; [2024] 3 All SA 137 (KZD), the candidate had to negotiate not only complicated areas of trademark law, but also electoral law, and the relationship between the two (which raises the difficult question of jurisdiction). He handed down a well-reasoned judgment in just under a month. Although the matter could have been resolved on the basis of urgency or jurisdiction alone, he delivered a full judgment on the merits, mindful of the likelihood of the matter going on appeal.
- 6.6. In *RM v RB* 2015 (1) SA 270 (KZP), a matter relating to defamation in the context of social media, the candidate considered the constitutional perspective provided by section 16 of the Constitution (freedom of expression), and its implications for granting a permanent interdict. Like his judgment in *ANC v MKP*, this case shows that he is well-attuned to the role the Constitution ought to play and is comfortable in considering and applying it when appropriate.

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

- 7.1. The candidate has disclosed the details of six judgments that were taken on appeal. According to the candidate, four of the six judgments were upheld on appeal, while two judgments were dismissed. There do not appear to be any outstanding appeals as far as can be ascertained.
- 7.2. Since the questionnaire was completed, a further judgment has been taken on appeal. On 8 August 2024, the candidate granted leave to appeal (to the SCA) in *African National Congress v Umkhonto Wesizwe Party*, handing down a full written judgment ([2024] ZAKZDHC 50) just a week after hearing oral argument.
- 7.3. The judgments of the candidate overturned on appeal are as follows:
 - 7.3.1. *Moonisami & Another v Palani & Others* (case number: 3266/2019) with the appeal judgment cited at *Blendrite (Pty) Limited & Another v Moonisami & Another* 2021 (5) SA 61 (SCA).

- 7.3.2. *Shoprite Checkers (Pty) Limited v Member of the Executive Council for Tourism and Environmental Affairs: KwaZulu-Natal & Others* (case number 1633/2014). The Appeal judgment is cited at *Shoprite Checkers (Pty) Limited v Member of the Executive Council for Economic Development, Tourism and Environmental Affairs: KwaZulu-Natal & Others* [2017] 1 All SA 429 (SCA).
- 7.4. The judgments of the candidate that were upheld are:
- 7.4.1. *Jeany Industrial Holdings (Pty) Limited & Others v Zungu–Elgin Engineering (Pty) Limited* (case number D4936/18). The appeal judgment is *Zungu-Elgin Engineering (Pty) Limited Jeany Industrial Holdings (Pty) Limited & Others* (case number 1138/2019) [2020] ZASCA 160 (3 December 2020).
- 7.4.2. *Scott & Others v Scott & Another* (case number D5946/2019). The full court heard this appeal on 25 November 2022 under case number AR147/2021 and the appeal was dismissed on 19 July 2023.
- 7.4.3. *Wattpower Solutions CC v Transnet SOC Limited* (case number D6346/2019) [2022] 1 All SA 892 (KZD). The unsuccessful litigant’s petition to the SCA was refused.
- 7.4.4. *Mzansi Fire & Security (Pty) Limited v Durban University of Technology & Others* (case number D1464/2020) reported at 2022 (5) SA 510 (KZD). The petition to the SCA was refused.

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

- 8.1. The candidate held internships in New York, Michigan, and Washington in 1989 after being admitted as attorney.
- 8.2. The candidate has considerable professional experience as an attorney from 1988 to 2014.
- 8.3. The candidate additionally has extensive experience in the fields of constitutional law, administrative law, town planning law, land claims law, labour law, pension law, town planning law, and personal injury law, and commercial law. In this regard, the candidate litigated in these areas of the law and was a member of and chaired tribunals and appeal tribunals. The candidate was appointed as an arbitrator in a number of matters during his time as an attorney.

- 8.4. The candidate was the Regional Director of the Legal Resources Centre in Durban from 1999 to 2014.
- 8.5. The candidate has served as a permanent Judge of the High Court for a period of approximately ten years.
- 8.6. The candidate was appointed as an Acting Judge of the Supreme Court of Appeal for 3 sessions during the following periods:
- 8.6.1. 1 June to 30 September 2022
- 8.6.2. 1 October to 30 November 2022
- 8.6.3. 1 October to 30 November 2023.
- 8.7. The candidate's extensive and well-considered judgments reflect his extensive professional legal 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 recorded that he had one outstanding reserved judgment, namely *M. A. Gumede & Another v Master of the High Court and Others* (Case No. 16141/2013P), which was reserved on 9 May 2024. This judgment was handed down on the anticipated date, being 14 June 2024, and is reported at *Gumede and Another v Master of the High Court, Pietermaritzburg and Others* [2024] ZAKZPHC 46 (14 June 2024).
- 10.2. Of the 16 High Court judgments of the candidate considered by the reviewers, 10 were handed down more than three months after hearing. Of these, four were handed down in under four months, two in under five months, and four in under six months.
- 10.3. Of the six SCA judgments of the candidate considered by the reviewers, only one took longer than two months to be handed down, namely five months. On average, the other five judgments were handed down six weeks 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. His recent judgment in *ANC v MKP*, handed down in a highly-charged political atmosphere in the run-up to the 2024 national and provincial elections, suggests that he is fiercely independent.

12.2. The candidate's extensive career as an attorney, representing and protecting the vulnerable in society, underscores his independent-mindedness. He regularly litigated against the government, the police, and corporate interests on behalf of marginalised clients. See in this regard the judgments in which he was involved as the attorney: *Governing Body of Juma Masjid Primary School & Others v Essay NNO & Others (Centre for Child Law and Socio-Economic Rights Institute of South Africa as Amici Curiae)* 2011 (8) BCLR 761 (CC); *Director of Public Prosecutions, Transvaal v Minister of Justice Constitutional Development & Others* 2009(4) SA 222 (CC); *Ndlovu v Ngcobo & Bekker v Jika* 2003 (1) SA 113 (SCA) and *Applicant v Administrator of Transvaal* 1994 (4) SA 733 (T).

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

13.1. The candidate has held positions of leadership within and outside of the legal profession that indicate that he is a competent administrator.

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

14.1. The candidate has a long career in the legal profession, steadily building his practice as an attorney in the public interest domain, and later serving on the High Court bench for more than 10 years.

14.2. His appointment would send a strong message that the bench, including at the highest levels, values a broad range of life and professional experiences.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *African National Congress v Umkhonto Wesizwe Party and Another* [2024] 3 All SA 137 (KZD)
2. *Mhlontlo Municipality v Ngcangula and Another* 2024 (3) BLLR 239 (SCA)
3. *Siyangena Technology (Pty) Limited v Passenger Rail Agency of South Africa & Others* 2023 (2) SA 51 (SCA)
4. *The Lieutenant Colonel KB O'Brien N.O. v The Minister of Defence and Military Veterans and Others* [2023] 1 All SA 341 (SCA) (Co-Scribe with Ponnan JA)
5. *Mzansi Fire & Security (Pty) Limited v Durban University of Technology & Others* 2022 (5) SA 510 (KZD)
6. *Zikalala Body Corporate, Selma Court and Another* 2022 (2) SA 305 (KZP)
7. *Scott & Others v Scott and Another* 2021 (2) SA 274 (KZD)
8. *Union-Swiss (Pty) Ltd v Govender & Others* 2021 (1) SA 578 (KZD)
9. *Airport Co. SA Ltd v Spain N. O. & Others* 2021 (1) SA 1997 (KZD)
10. *Klipriver Taxi Association & Others v MEC for Transport, KZN & Another* 2020 (3) SA 447 (KZP)
11. *Jeany Industrial Holdings (Pty) Limited & Others v Zungu-Elgin Engineering (Pty) Limited* 2020 (2) SA 504 (KZD)
12. *Minister of Police & Others v Silver Moon Investments 145 CC & Others* 2020 (6) SA 586 (KZD)
13. *R M v R B* 2015 (1) SA 270 KZP
14. *Wattpower Solutions CC V Transnet SOC Limited* [2022] 1 All SA 892 (KZD)
15. *Rinaldo Investments (Pty) Limited v Minister of Public Works* [2021] 2 All SA 541 (KZD)
16. *Kruger & Another v Rayner & Others* [2020] 2 All SA 138 (KZP)
17. *Mohan v Director of Public Prosecutions, KZN & Others* 2017 (2) SACR 76 (KZD)
18. *Jerrier v Outsurance Insurance Co Ltd* 2015 (5) SA 433 (KZD)
19. *Millcreek Trading CC t/a Pro Arm Firearm Trading Academy v Passenger Rail Agency of South Africa (PRASA) t/a Metrorail* [2016] 2 All SA 537 (KZD)

Unreported judgments

20. *M M obo G M v Member of the Executive Council for the Department of Health, North West Province* (2024) ZASCA 52 (18 April 2024)
21. *Nhlapo v The State* [2022] ZASCA 125 (26 September 2022)
22. *MEC for Health, Eastern Cape v N H obo A* (2022) ZASCA 181 (15 December 2022)

Judgments upheld on appeal

23. *Jeany Industrial Holdings (Pty) Limited & Others v Zungu–Elgin Engineering (Pty) Limited* (case number D4936/18). Upheld in *Zungu-Elgin Engineering (Pty) Limited Jeany Industrial Holdings (Pty) Limited & Others* (case number 1138/2019) [2020] ZASCA 160 (3 December 2020)
24. *Scott & Others v Scott & Another* (case number D5946/2019). The Full Court heard this appeal on 25 November 2022 under case number AR147/2021) and the appeal was dismissed on 19 July 2023
25. *Wattpower Solutions CC v Transnet SOC Limited* (case number D6346/2019) [2022] 1 All SA 892 (KZD). The unsuccessful litigant’s petition to the SCA was refused
26. *Mzansi Fire & Security (Pty) Limited v Durban University of Technology & Others* (case number D1464/2020) reported at 2022 (5) SA 510 (KZD). The petition to the SCA was refused

Judgments set aside on appeal

27. *Moonisami & Another v Palani & Others* (case number 3266/2019). The appeal judgment is cited as *Blendrite (Pty) Limited & Others v Moonisami & Another* 2021 (5) SA 61 (SCA)
28. *Shoprite Checkers (Pty) Limited v Member of the Executive Council for Tourism & Environmental Affairs: KwaZulu-Natal & Others* (case number 1633/2014). The appeal judgment is cited as *Shoprite Checkers (Pty) Limited v Member of the Executive Council for Economic Development, Tourism & Environmental Affairs: KwaZulu-Natal & Others* [2017] 1 All SA 429 (SCA)

Academic writings

29. *AIDS & Human Rights*, South African Journal of Human Rights, Vol. 9 (1) 1993

30. *Applicability of the Prevention of Illegal Eviction Act: Ndlovu v Ngcobo & Bekker & Bosch v Jika*, ESR Review, Vol. 3, No. 3 (November 2002)
31. *Implementation of Economic Rights for Informal Workers: Warwick Junction and the Durban Early Morning Market* (case study with Caroline Skinner), Development Report (WDR) 2013
32. *Urban Informal Workers: Representative Voice & Economic Rights*, a background paper to which the candidate contributed for the World Development Report on Jobs 2013.