

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: DEPUTY JUDGE PRESIDENT, MPUMALANGA DIVISION OF THE HIGH COURT

JUDGE MOIRA THANDOLUHLE MANKGE

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. B.Iuris (University of Zululand, 1996)

1.1.2. LLB (University of Zululand, 2001).

1.1.3. LLM (Human Rights and Constitutional Practice) (University of Pretoria, 2007)

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

1.2.1. public prosecutor in December 1997

1.2.2. admitted as an advocate in 2014.

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

1.3.1. District Court Magistrate in 2004

1.3.2. Judge of the High Court (Mpumalanga Division, Middelburg) on 1 July 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. There are currently 7 permanent judges of the Mpumalanga Division of the High Court:

3.1.1. 4 African women

3.1.2. 3 African men

3.2. The Judge President is an African woman.

3.3. 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 50 years and 4 months old and will have completed a period of approximately 3 years and 3 months of active service.

4.2. If appointed, the candidate would be eligible to complete a period of approximately 19 years and 8 months' active service as Deputy Judge President.

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

5.1. The candidate has, since 2021, been a volunteer of the Care Village Children's Home situated in Middelburg. She volunteers her time to the children of this home educating children between the ages of 6 and 11 on essential topics such as human rights and the Constitution through interactive sessions and assisting with homework.

5.2. She was previously involved in presiding in mock trials and trial advocacy with Legal Education and Development (LEAD) and Advocacy Training of the Black Lawyers Association's legal education centre. She also served as an examiner of the General Council of the Bar.

5.3. The candidate was a member of Advocates for Transformation from 2015 to 2016.

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

6.1. The candidate is well versed in the law, including constitutional law, as is evident from:

6.1.1. her LL.M degree which was obtained in the field of Human Rights and Constitutional Practice during 2007;

6.1.2. her career as a legal representative acting in matters involving different fields of law, particularly civil and criminal proceedings; and

6.1.3. her career as a prosecutor for 7 years and a Magistrate for 9 years, acting stints as a judge and her permanent appointment as a judge since July 2021.

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

7.1. The candidate has disclosed that one judgment has been taken on appeal, and the reviewers found no further judgments of the candidate that have been taken on appeal.

On appeal, the judgment was overturned by the full court. It is unknown whether any appeals remain to be decided.

7.2. The judgment of the candidate was overturned in *Evander Gold Mining (Pty) Ltd v Nomatiki Trading (Pty) Ltd* (A11/2022; 616/2021) [2023] ZAMPMHC 8 (24 March 2023).

7.2.1. The matter related to the sale of immovable property. The candidate had ordered the transfer of the property to the respondent (who had made an offer to purchase the property). There were several issues before the court *a quo*, including whether the description of the property was sufficiently detailed to allow the property to be purchased. It appears that the candidate purported to rectify the agreement in order to cure the defect caused by the vagueness, but granted an order in which the property description was not rectified.

7.2.2. The full court commented on this as follows:

“What is peculiar in the paragraph above is that the improper description of the property continues to show even in the court order as the property remains not properly described, and thus vague. This begs a question as to whether a proper case to rectify the agreement was made, and if it was, why was the description of the property as contained in the title deed, not incorporated in the order. I am of a respectful view that in rectifying the agreement, the court a quo erred as rectification was not prayed for in the papers before it, no proper case for rectification was made, and the Appellant was not afforded an opportunity be heard on rectification. Without a rectification of the agreement, the court a quo had to decide if the application sought could be granted on papers with the vague property description.”

7.2.3. The appeal was apparently upheld on the grounds that the property description remained defectively vague, though it is not clear from the appeal judgment whether the court also found that the candidate had failed to decide a dispute of fact on the papers.

7.2.4. In this regard, the appeal judgment records *“To the extent that the court a quo, did not hold that there was a dispute of fact on this aspect, I would uphold the appeal.”*

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

8.1. Before her appointment to the bench in 2021, the candidate had 15 years' experience as a legal practitioner, comprising 7 years as a prosecutor, and 6 years as a practicing advocate. She was a Magistrate for 9 years and has been a judge for 3 years.

8.2. The candidate has no experience acting as Deputy Judge President.

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 four judgments were outstanding at the time of completing the questionnaire, having been reserved during April 2024, May 2024, and June 2024.

10.2. Of the nine judgments of the candidate considered by the reviewers, none were delivered more than three months after hearing.

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. From comments received, the candidate has an inclusive management style and encourages sub-ordinated court official to participate in decision-making.

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 has indicated in her questionnaire that she served as an executive member of the Gauteng branch of the Judicial Officers Association of South Africa, and as the Secretary of Advocates for Transformation, Gauteng.

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

- 14.1. Members practising in the Mpumalanga Division note that all matters in the division, except for judicial case management meetings, currently proceed on a virtual platform. It would send a positive message to the public at large if the candidate appointed to the position of Deputy Judge President had a strategy for returning to conducting proceedings in open court.
- 14.2. The candidate's appointment would send a positive message to the public at large.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Van Der Merwe v S* (BA10/2022) [2022] ZAMPMHC 9; 2023 (1) SACR 94 (ML) (29 July 2022)
2. *S v Mavimbela and Others* (R113/19) [2020] ZAMPMBHC 35; 2021 (1) SACR 145 (MM) (22 April 2020)

Unreported judgments

3. *Evander Gold Mining (Pty) Ltd v Nomatiki Trading (Pty) Ltd* 616/2021
4. *Bongani Similane v State* (A44/2021) 25 November 2022
5. *Altimax (Pty) Ltd v Msukaligwa Local Municipality* (437/2017) [2023] ZAMPMHC 18 (5 May 2023)
6. *Bidvest Protea Coin Security (Pty) Ltd v Mabena* (A10/2020) [2023] ZAMPMHC 22 (2 June 2023)
7. *Mutsweni v Loop en Staen Beleggings CC and Another* (791/18) [2019] ZAMPMHC 8 (23 October 2019)
8. *Capitec Bank Limited v Mahlangu* 2021 JDR 2640 (MN)

Judgments upheld on appeal

9. *Evander Gold Mining (Pty) Ltd v Nomatiki Trading (Pty) Ltd* 616/2021 – Appeal judgment *Evander Gold Mining (Pty) Ltd v Nomatiki Trading (Pty) Ltd* (A11/2022; 616/2021) [2023] ZAMPMHC 8 (24 March 2023)

Judgments overturned on appeal

10. None