

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: DEPUTY JUDGE PRESIDENT, KWAZULU-NATAL DIVISION OF THE HIGH COURT

JUDGE NKOSINATHI EMMANUEL CHILI

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 Juris, University of Zululand (1989)

1.1.2. LLB, University of Zululand (1992)

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

1.2.1. public prosecutor (May 1995 to October 1997)

1.2.2. state advocate (November 1997 to November 2000)

1.2.3. senior state advocate (December 2000 to February 2005)

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

1.3.1. Magistrate in March 2005

1.3.2. Judge of the High Court (KwaZulu-Natal Division) on 1 June 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 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 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 60 years and 1 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 9 years and 10 months' active service as Deputy Judge President.

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

5.1. Before his elevation to the bench, the candidate was a member of the Society of State Advocates, Judicial Officers Association of South Africa, and Black Lawyers Association. He was also a member of a committee called "Agents of Change" established in the year 2000 with a view to facilitating transformation in the workplace.

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

6.1. From the *curriculum vitae* submitted, the candidate has a long history in the practice of law, having practised as a prosecutor for 2 years, state advocate for 8 years and Magistrate for 9 years. It is not clear to the reviewers to what extent the candidate has been involved in constitutional matters.

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

7.1. The candidate has disclosed that 5 judgments were taken on appeal, and the reviewers found no further judgments of the candidate that have been taken on appeal. On appeal, 3 judgments were upheld, and 2 judgments were overturned. There appear to be no appeals that remain to be decided.

7.2. The judgments of the candidate upheld on appeal are:

7.2.1. *Snowy Owl Properties 284 (Pty) Ltd and Others v Mziki Shareblock Limited* (642/2022) [2024] ZSCA 79 (24 May 2024) (the candidate's judgment could not be located)

- 7.2.2. *Khanyile v S* (12428/2016) [2016] ZAKZPHC 114 (22 December 2016) (the appeal judgment could not be located)
- 7.2.3. *Hume Housing v Hibiscus Coast Municipality 2015 JDR 0271 (KZP)* upheld in *Hibiscus Coast Municipality v Hume Housing* (638/15) [2016] ZASCA 71 (23 May 2016)
- 7.3. In *Snowy Owl Properties*, the court found that the court *a quo* had correctly granted a final interdict and rejected the arguments concerning a long-standing dispute between neighbours. The court held that the basis of the final interdict was an admitted breach of servitude rights.
- 7.4. The judgments of the candidate overturned on appeal are:
- 7.4.1. In *KwaDukuza Municipality v Lahaf (Pty) Ltd* (940/18) [2020] ZASCA 9; [2020] 2 All SA 356 (SCA) (18 March 2020), the Supreme Court of Appeal overturned a judgment by the candidate.
- 7.4.2. In *National Police Commissioner & Another v Ngobeni* 2018 (2) SACR 142 (SCA) the Supreme Court of Appeal, having granted leave to appeal after the candidate refused it, overturned a judgment by the candidate. The candidate's judgment could not be located.
- 7.5. In *Lahaf*, the appeal was upheld by a majority of the court in two judgments per Plasket JA and Mbatha JA (Leach JA concurring in both). The minority per Zondi JA (Petse DP concurring) would have dismissed the appeal. The court held that land management or town planning lay in the hands of the municipality through the scheme. Applications for rezoning and special consents were to be made by the municipality. In considering how the term "gross lettable area" should be defined, a material consideration was placed on the nature of the shopping complex which was not a conventional one due to its various facilities. The court ultimately held that the gross lettable area applied to all lettable areas. On appeal two judges would have dismissed the appeal but three judges upheld the appeal.

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

- 8.1. From the *curriculum vitae* submitted, the candidate has a long legal career. After obtaining his legal qualifications, he worked as a court interpreter for several years before practising as a prosecutor for two years, and thereafter as a state advocate.
- 8.2. The candidate was a Magistrate of the Durban Magistrates' Court for nine years before being appointed as a Judge of the High Court more than ten years ago.
- 8.3. The candidate has a wide range of experience and has knowledge in diverse areas of the law.
- 8.4. The candidate has acted as Deputy Judge President for one term.

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 two 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, both of these judgments were still outstanding, of which one has been outstanding for more than three months.
- 10.3. Of the four judgments considered by the reviewers, two were handed down more than three months after hearing. These were:
 - 10.3.1. *Zululand District Municipality and Others v MEC: Cooperative Governance and Traditional Affairs, KwaZulu-Natal and Another* (5660/2020) [2022] ZAKZPHC (6 May 2022, date of hearing 21 January 2022 judgment delivered 6 May 2022; and
 - 10.3.2. *Member of the Executive Council for Health of KwaZulu-Natal v Mqadi* (AR501/2018) [2020] ZAKZPHC (15 December 2020), date of hearing 29 July 2019 judgment delivered 15 December 2020.

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. The candidate is the chairperson of his church as well as of a traditional tribunal authority.

13.2. The candidate has been the chairperson of the Appeal Records subcommittee of the KwaZulu-Natal division since the latter half of 2023.

13.3. According to his *curriculum vitae*, during the candidate's acting stint as Deputy Judge President, he ensured an equitable distribution of cases to his colleagues.

13.4. During his time as a senior state advocate in the office of the Directorate of Special Operations (Scorpions) in Durban, the candidate gained experience managing a team of prosecutors and investigators.

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. The candidate has a long legal career, including wide-ranging experience in the workings of the courts from his years working as a court interpreter and public prosecutor through his time sitting as a Magistrate and High Court judge.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Cele v The State* 2016 (2) All SA 75 (KZP)

Unreported judgments

2. *Member of the Executive Council for Health of KwaZulu-Natal v Mqadi* (AR 501/2018) [2020] ZAKZPHC 79 (15 December 2020); 2020 JDR 2806 (KZP)
3. *Khanyile v S* (12428/2016) [2016] ZAKZPHC 114 (22 December 2016)
4. *Zululand District Municipality & Others v MEC: Cooperative Governance and Traditional Affairs, KwaZulu-Natal & Another* 2022 JDR 1451 (KZP)

Judgments upheld on appeal

5. *Snowy Owl Properties 284 (Pty) Ltd & Others v Mziki Shareblock Limited* (642/2022) [2024] ZSCA 79 (27 May 2024)
6. *Khanyile v S* (12428/2016) [2016] ZAKZPHC 114 (22 December 2016)
7. *Hume Housing v Hibiscus Coast Municipality* 2015 JDR 0271 (KZP) upheld in *Hibiscus Coast Municipality v Hume Housing* (638/15) [2016] ZASCA 71 (23 May 2016)

Judgments overturned on appeal

8. *National Police Commissioner & Another v Ngobeni* 2018 (2) SACR 142 (SCA)
9. *Lahaf (Pty) Ltd v KwaDukuza Municipality* 2020 (2) All SA 358 (SCA)