

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE PRESIDENT, WESTERN CAPE DIVISION OF THE HIGH COURT

JUDGE TAKALANI VINCENT RATSHIBVUMO

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 Venda) during 1995

1.1.2. LLB (University of Venda) during 1999

1.1.3. LLM International Law (University of Johannesburg) 2004 – *cum laude*

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

1.2.1. public prosecutor in 1996

1.2.2. admitted as an advocate in 2006

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

1.3.1. Magistrate on 9 October 2000

1.3.2. Regional Magistrate from December 2009

1.3.3. Judge of the High Court (Mpumalanga Division, Mbombela) 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 man.

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 9 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 2 months' active service as Deputy Judge President.

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

5.1. The candidate has indicated in his *curriculum vitae* that he provides legal advice through community outreach programmes, including legal education through the medium of radio and on issues such as domestic violence and protection orders, children's rights and child law, marriage regimes, and wills and intestate succession.

5.2. The candidate has facilitated training of regional Magistrate on topics including the Trafficking of Persons Act, how the doctrine of common purpose applies in cases of rape, and judicial ethics.

5.3. The candidate records that he has participated in the training of personnel in the Mpumalanga Division on how to conduct legal research and has been a member of the Library Committee, which works to acquire library resources and provide legal information to the judges of the division.

5.4. The candidate has been recognised for his regular participation over the past ten years in UNISA's "Chance to Advance" project, in terms of which the candidate travels to rural communities and addresses community members on their rights in relation to evictions, arrest and detention, marital property regimes, and succession.

5.5. The candidate's *curriculum vitae* records extensive work training judicial officers through the Judicial Officers Association of South Africa.

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

6.1. The candidate' appears well versed in the law, having been a presiding officer for almost 23 years, and has presided over civil and criminal matters. His judgments are sound.

- 6.2. He has further published 4 articles between the period 2004 to 2014 in the field of criminal law and human rights law.
- 6.3. The candidate has presented papers, including internationally, on the independence of the judiciary, the relationship between the judiciary and journalists, the role of a judge in environmental law education, and the role and function of South Africa's equality courts.

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

- 7.1. The candidate has disclosed that 4 judgments have been taken on appeal, and the reviewers found a further judgment of the candidate that has been taken on appeal.
- 7.2. The candidate did not disclose the number of successful leave to appeal applications that have been brought in respect of his judgments.
- 7.3. On appeal, 2 judgments have been upheld and 3 judgments have been overturned. It is unknown whether any appeals remain to be decided.
- 7.4. The judgments of the candidate upheld on appeal are:
- 7.4.1. *Malope v Minister of Home Affairs and Others* (2358/2021) [2022] ZAMPMBHC 80 (21 October 2022). In the appeal judgment, being *NJE and Others v BPM* (A36/2023; 2358 of 2021) [2024] ZAMPMBHC 29 (26 April 2024), the full court held that the court *a quo*'s reasoning and its evaluation of the applicable customary law cannot be faulted.
- 7.4.2. *Zeelie v Mjejane Farm Management (Pty) Ltd and Others (Paradise Creek Investment 34 (Pty) Ltd intervening v Zeelie NO* (1534/2021) [2022] ZAMPMBHC 72 (27 September 2022). In the appeal judgment, being *Paradise Creek Investment 34 (Pty) Ltd intervening v Zeelie NO* (A80/2022 [2024] ZAMPMBHC] 23 (14 March 2024), the full court held that no misdirection exists in the court *a quo*'s judgment, having regard to the facts in totality.
- 7.5. The judgments of the candidate overturned on appeal are:
- 7.5.1. The Supreme Court of appeal in judgment of *Firm-O-Seal CC v Prinsloo and Van Eeden Inc and Another* (483/2022) [2023] ZASCA 107 (27 June 2023) held that:

7.5.2. *“The High Court appears to have misapprehended the enquiry. It approached the enquiry on the basis of the general rule that a contract or agreement which is expressly prohibited by statute is illegal and null and void. However, with respect to the High Court that was to misconstrue the enquiry”.*

“The High Court failed to consider whether, in each instance, the claim asserted was indeed in the nature of an action ...”.

“The conclusion reached by the High Court ... cannot be supported.”

“It remains to be observed that there is little to commend the approach of the High Court. In confining itself to the single issue, as it did, the approach of the High Court ‘opened the doors to a fractional disposal of proceedings and the piece meal hearing of appeals on each part so disposed of’.”

7.5.3. The candidate’s judgment could not be obtained but the full court on appeal in the appeal judgment *ICM Clearing and Forwarding (Pty) Ltd and Another v Croninent Chrome SA (Pty) Ltd* (A5036/2016) [2017] ZAGPJHC 245 (12 June 2017) held that “... *It is premature at this stage of exception to preclude the filing of the application as evidence might be led on the pleadings which could disclose a cause of action.*”

7.5.4. The candidate’s judgment could not be obtained, but the Supreme Court of Appeal in judgment *Duze v State* (272/15) [2015] ZASCA 170 (26 November 2015) held that the court *a quo* misdirected itself on the issue of identity. It should be noted that the reviewers were unable to establish which of the two judges in the court *a quo* wrote the court *a quo* judgment.

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

8.1. The candidate has been a judge for 3 years, which was preceded by several terms as an acting judge over a period of 7 years, 11 years as a regional Magistrate and 9 years as Magistrate.

8.2. The candidate’s *curriculum vitae* indicates that the candidate has participated extensively in professional bodies and other organisation over the course of his career.

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 no judgments were outstanding at the time of completing the questionnaire.

10.2. Of the 12 judgments of the candidate considered by the reviewers, none was 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.

11.2. On the candidate's ability to conduct proceedings efficiently and effectively the only known criticism is that set out by the Supreme Court of Appeal in *Firm-O-Seal CC v Prinsloo and Van Eeden Inc and Another* (483/2022) [2023] ZASCA 107 (27 June 2023) dealt with in paragraph 7.1.5 above.

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 demonstrated administrative ability.

13.2. The candidate's *curriculum vitae* indicates that he has held a multitude of leadership positions since his time as a student and throughout his career, including with the South African Magistrates Commission, the Association of Regional Magistrates of South Africa, and the Judicial Officers Association, of which he was the vice president and president for maximum terms.

13.3. The candidate was part of a delegation representing the South African judiciary on a "study tour" to the USA to further the project of developing a paperless court filing system. This project culminated in the implementation of the CaseLines system.

13.4. The candidate is a member of the Mpumalanga Division's Recruitment Committee responsible for recruiting staff to judicial and quasi-judicial roles.

- 13.5. He has been a member of a variety of boards and organisations.
- 13.6. From the various leadership roles fulfilled as contained in the questionnaire, it appears the candidate has strong leadership qualities.
- 13.7. From comments received, the candidate appears to be a direct and decisive leader.

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 that the efficient administration of the divisions of the High Court is a priority.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Prinsloo v MEC of the Department of Education, Mpumalanga Province* (2022 43 ILJ 211 8 (MM) (28 June 2022)
1. *Mathebula v S* 2020 (1) SACR 534 (ML) (22 July 2019)
2. *Arlow v S* (A68/2022) [2023] ZAMPMBHC 27; 2023 (2) SACR 102 (MM) (15 May 2023)

Unreported judgments

3. *Malope v Minister of Home Affairs and Others* (2358/2021) [2022] ZAMPMBHC 80 (21 October 2022)
4. *Zeelie v Mjejane Farm Management (Pty) Ltd and Others (Paradise Creek Investment 34 (Pty) Ltd intervening v Zeelie NO* (1534/2021) [2022] ZAMPMBHC 72 (27 September 2022)
5. *Firm-O-Seal CC v Wynand Prinsloo & Van Eeden Inc and another* 2023 JDR 3934 (GJ)
6. *Hoku Investment (Pty) Ltd v Dr Pixle Kaisaka Seme Municipality and Others* (69/2022) [2023] ZAMPMBHC 44 (22 December 2023)
7. *Shange v S* (A09/2024) [2024] ZAMPMBHC 35 (4 June 2024)
8. *Mashabela v National Director of Public Prosecutions and Others* (1718/2018) [2024] ZAMPMBHC 17 (7 March 2024)
9. *Capitec Bank Ltd v Mahlangu and Another* (A16/2020) [2021] ZAMPMBHC 28 (25 October 2021)
10. *Mathata General Trading v Head of Department Mpumalanga Department of Education and Another* (1352/2022) [2022] ZAMPMBHC 63 (5 August 2022)
11. *Sibanyone v S* (A32/2022) [2023] ZAMPMBHC 7 (14 February 2023)
12. *Noortman v Road Accident Fund* (517/2019) [2022] ZAMPMBHC 38 (1 June 2022)

Judgments upheld on appeal

13. *Malope v Minister of Home Affairs and Others* (2358/2021) [2022] ZAMPMBHC 80 (21 October 2022). The appeal judgment *NJE and Others v BPM* (A36/2023; 2358 of 2021) [2024] ZAMPMBHC 29 (26 April 2024)
14. *Zeelie v Mjejane Farm Management (Pty) Ltd and Others (Paradise Creek Investment 34 (Pty) Ltd intervening v Zeelie NO* (1534/2021) [2022] ZAMPMBHC 72 (27 September 2022). The appeal judgment *Paradise Creek Investment 34 (Pty) Ltd intervening v Zeelie*

NO (A80/2022 [2024] ZAMPMBHC] 23 (14 March 2024)

Judgments dismissed on appeal

15. *Firm-O-Seal CC v Prinsloo and Van Eeden Inc and Another* (483/2022) [2023] ZASCA 107 (27 June 2023)
16. *ICM Clearing and Forwarding (Pty) Ltd and Another v Croninent Chrome SA (Pty) Ltd* (A5036/2016) [2017] ZAGPJHC 245 (12 June 2017)