

INTERVIEW ROUND: OCTOBER 2024

VACANCIES:

**JUDGE, EASTERN CAPE DIVISION OF THE HIGH COURT,
MTHATHA**

**JUDGE, KWAZULU-NATAL DIVISION OF THE HIGH
COURT**

**JUDGE, LIMPOPO DIVISION THOHOYANDOU HIGH
COURT**

JUDGE, WESTERN CAPE DIVISION OF THE HIGH COURT

MR IRFAAN KHALLIL

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 Durban-Westville (1991)

1.1.2. LLB, University of Durban-Westville (1994)

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

1.2.1. admitted as an advocate in 1995

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

1.3.1. Additional Magistrate on 1 October 2006

1.3.2. Senior Magistrate on 1 October 2013

2. The candidate's integrity and ethics

2.1. No circumstances known to the reviewers 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 of the courts to which the candidate has applied

3.1. According to the questionnaire, the candidate is an Indian man.

3.2. There are currently 28 permanent judges of the **Eastern Cape Division** of the High Court:

3.2.1. 8 black women (7 African, 1 Indian)

3.2.2. 11 black men (8 African, 1 Coloured, 2 Indian)

3.2.3. 8 white women

3.2.4. 6 white men.

3.3. There are 7 permanent judges appointed to the **Mthatha** seat of the division:

3.3.1. 4 black women (3 African, 1 Indian)

3.3.2. 2 African men

3.4. 1 white man.

3.5. There are currently 24 permanent judges of the **KwaZulu-Natal Division** of the High Court:

3.5.1. 8 black women (6 African, 1 Coloured, 1 Indian)

3.5.2. 10 black men (7 African, 3 Indian)

3.5.3. 3 white women, and

3.5.4. 3 white men.

3.6. There are currently 7 permanent judges of the **Limpopo Division** of the High Court:

3.6.1. 1 African woman

3.6.2. 4 African men

3.6.3. 1 white woman

3.6.4. 1 white man

3.7. It appears that 3 judges are assigned to the **Thohoyandou** seat of the division. They are all African men.

3.8. As far as could be ascertained, there are 27 permanent judges of the **Western Cape Division** of the High Court:

- 3.8.1. 10 black women (4 African, 6 Coloured)
- 3.8.2. 12 black men (5 African, 5 Coloured, 2 Indian)
- 3.8.3. 2 white women
- 3.8.4. 3 white men

4. The maximum period the candidate could serve if appointed

- 4.1. At the time of the interviews, the candidate will be approximately 56 years and 6 months old and will have completed a period of approximately 7 months of service as an acting judge.
- 4.2. If appointed and if the candidate's service as an acting judge is taken into account, the candidate would be eligible to complete a period of approximately 13 years and 5 months' active service as a judge. Alternatively, if the candidate's acting stints are not taken into account, the candidate would be eligible to serve as a judge for 15 years from appointment.

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

- 5.1. The candidate has undertaken various community outreach programs and initiatives to assist the public in providing information about courts and access to justice.
- 5.2. The candidate has assisted in enhancing access to justice in the Durban Magistrates' Court by facilitating more courts sitting to assist with the backlogs experienced in those Magistrates' Courts.
- 5.3. The candidate has assisted in identifying, recruiting, training, and mentoring legal practitioners to act as Magistrates, some of whom have progressed to permanent positions.

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

- 6.1. The candidate has experience in criminal matters and has written a reported judgment dealing with the scope of section 304(4) of the Criminal Procedure Act (i.e. reviews referred by Magistrates) (*S v Singh* 2013 (2) SACR 372 (KZD)).
- 6.2. He has written judgments addressing a number of different areas of the law: administrative law and the permissibility of an organ of state raising a collateral challenge to the validity of an SLA (*Only if Management v Maphumulo Municipality*); impeachable transactions in insolvency (*Stewart NO v Pillay NO*); and Equality Court

matters concerning hate speech (*IFP v Kriel* and *ANC v Sparrow*).

- 6.3. These judgments demonstrate a sound grasp of commercial, administrative, and constitutional law – his Equality Court judgments show a good grasp of constitutional jurisprudence.
- 6.4. The candidate decided the case of *African National Congress v Penny Sparrow*, sitting in the Equality Court, where he found that the respondent’s infamous Facebook post constituted hate speech.
- 6.5. His judgment, handed down *ex tempore*, carefully considered the constitutional and historical context in which the decision had to be made. The reviewers believed that he showed a careful consideration of the Constitution’s values of *inter alia* equality and respect for human dignity in his judgment.

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

- 7.1. The candidate has disclosed that two judgments have been taken on appeal.
- 7.2. The candidate reports that on appeal, one judgment was upheld (on conviction and sentence) and the other judgment was overturned.
- 7.3. The judgment of the candidate upheld on appeal is *S v Ntshongwana*.
 - 7.3.1. In *Ntshongwana*, the candidate convicted the accused of murder and rape having found that the accused (who accepted in the course of the trial that he had committed the acts) had not discharged his burden of proving that he suffered from a mental illness or mental defect during the commission of the offences and that the mental illness or mental defect resulted in a lack of criminal capacity (section 78(1A) of the Criminal Procedure Act).
 - 7.3.2. The candidate’s findings and judgment were upheld by the Full Court (Nkosi AJ with Vahed and Steyn JJ concurring) and by the Supreme Court of Appeal (Windell AJA, Molemela P and Mocomie and Mbatha JJA concurring and Ponnann JA concurring separately) [[2024] 1 All SA 345 (SCA)]. The SCA stated that certain “conclusion[s] by the trial court [i.e. the candidate] cannot be faulted”.
- 7.4. The candidate does not list the name of the judgment overturned on appeal but states that it pertained to his refusal to grant bail.

7.5. The candidate does not specify whether any of his decisions as a Magistrate have been taken on appeal and, if so, the outcome.

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

8.1. The candidate articulated as a candidate attorney and thereafter practised as an advocate for approximately 7 years.

8.2. From 2003 onwards, the candidate has acted or been permanently appointed as a Magistrate and received a number of promotions. He has acted as a judge in the KwaZulu-Natal Division of the High Court on five occasions since 2012, most recently in 2022.

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. Of the judgments of the candidate considered by the reviewers, one was handed down more than three months after hearing (*S v Ntshongwana*).

10.2. The candidate handed down the *Sparrow* judgment *ex tempore*.

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 served on the Lower Court Management Subcommittee on Court and Caseflow Management and assisted in preparing various guidelines for the administrative management of cases.

13.2. The candidate served on the Magistrates' Commission and presided over misconduct

proceedings involving Magistrates.

- 13.3. The candidate has also been involved extensively in administrative work associated with the Magistrate's Court in rotating Magistrates, training and mentoring Magistrates, convening additional court sittings and conducting quality assurance in criminal, civil and family divisions and monitoring courts within the cluster at Durban, Empangeni, KwaDukuza, Umlazi, Verulam and Port Shepstone and reporting to the Cluster Head.

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

- 14.1. The candidate has a good record as a Magistrate and has handed down judgments as an acting judge in different areas of law. This shows that he is a committed jurist and constitutionalist.
- 14.2. His appointment would strengthen the bench.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *S v Singh* 2013 (2) SACR 372 (KZD)

Unreported judgments

2. *ANC v Sparrow* (01/16) [2016] ZAEQC 1 (10 June 2016)
3. *Only If Management v Maphumelo Municipality* (10108/2013) KZP (September 2023)
4. *Stewart N.O and Others v Pillay N.O and Another* (8855/2017P) [2022] ZAKZPHC 49 (16 September 2022)

Judgments upheld on appeal

5. *S v Ntshongwana* KZD (CC13/2012) (4 June 2021)

Judgments overturned on appeal

6. Details of the case overturned on appeal not provided