

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE, GAUTENG DIVISION OF THE HIGH COURT

MR MUDUNWAZI SAMUEL MAKAMU

1. The candidate's tertiary qualifications, professional admissions, honours, and permanent judicial appointments

1.1. The candidate has the following qualifications:

1.1.1. Dip. Juris – 1985 (University of Zululand)

1.1.2. B Juris – 1991 (University of Zululand)

1.1.3. LLB – 1999 (University of Zululand).

1.2. The candidate has held the following judicial positions:

1.2.1. Additional Magistrate, Giyani: 1985 to 1996

1.2.2. Senior Magistrate and Head of Office, Benoni: 1996 to 2010

1.2.3. Regional Court Magistrate: 2010 to date.

2. The candidate's integrity and ethics

2.1. No circumstances are known 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.

2.2. The candidate did disclose that he had been arrested on a charge of fraud during 2002. He was subsequently found guilty by the trial court and sentenced to six months imprisonment or R 10 000.00. The entire sentence was suspended. The candidate has successfully appealed to the High Court to set aside his conviction of fraud. The case is reported as *S v Samuel* (A2006/409) [2007] ZAGPHC 102 (15 June 2007).

2.3. At page 15 of the candidate's application, the candidate has disclosed that a civil judgment was granted against him in 2006. The judgment granted related to a home loan and the candidate attributes the judgment to the "*challenges with the Magistrates Commission in 2006 which is fully ventilated on my CV...*". The judgment was

rescinded by agreement between the candidate and the bank. The candidate does however not deal with the “*challenges*” in his CV as alleged and we regrettably cannot provide further input in this regard.

3. The racial and gender composition on the bench

3.1. As far as could be ascertained, there are currently 76 permanent judges of the Gauteng Division of the High Court:

3.1.1. 24 black women (19 African, 2 Coloured, 3 Indian)

3.1.2. 23 black men (17 African, 2 Coloured, 4 Indian)

3.1.3. 14 white women

3.1.4. 15 white men

3.2. According to the questionnaire the candidate is an African man.

4. The maximum time period the candidate could serve if appointed

4.1. At the time of the interviews, the candidate will be approximately 66 years and 7 months old. No details of the candidates acting stints were provided.

4.2. If appointed, the candidate would be eligible to serve as a judge for approximately 8 years and 4 months until the age of 75.

5. The candidate’s personal commitment to the values of the constitution

5.1. The candidate has a demonstrated commitment to the values of the Constitution. This is illustrated by the many instances in which he has been involved in both community organisations and initiatives established by the Department of Justice and Constitutional Development. In this regard:

5.1.1. the candidate indicates that he was a founding member of the Judicial Officers Association of South Africa;

5.1.2. the candidate assisted in establishing the Community Justice Forum in 1997, the purpose of which was to educate the community about the law and how it works. The candidate indicates that this model was rolled out to various districts in Gauteng by the Regional Office of the Department of Justice and Constitutional Development;

- 5.1.3. the candidate chaired an Inter-Sectoral Committee in 1999 that was aimed at reducing the number of children detained in correctional facilities;
- 5.1.4. the candidate headed the implementation of correctional supervision as a sentencing option in his district;
- 5.1.5. the candidate sat on the management board of the SANCA Horizon Clinic from 1999 to 2019. He rejoined the SANCA Horizon Management Board in September 2022;
- 5.1.6. the candidate indicates that he was appointed as the project manager (2006 – 2018) to establish a church shelter for abused women and children; and
- 5.1.7. the candidate has also assisted in developing various training manuals for the Department of Justice and Constitutional Development. These include: The Bench Book for Equality Courts; The Civil Court Bench Book; and The Child Law Manual for Judicial Officers.

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

- 6.1. Since 2022, the candidate, has as far as could be ascertained, penned 11 written judgments which were published during his various acting appointments in the Gauteng Division. It was noted that none of them have been reported and none of them dealt with an issue considered novel or unique. These judgments deal, in the main, with criminal and civil matters.
- 6.2. The candidate describes criminal law as his forte.

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

- 7.1. As far as could be ascertained, only one judgment has been taken on appeal, namely: *Mzangwa v Road Accident Fund* (37617/16) [2017] ZAGPPHC 381 (6 June 2017). The appeal judgment is reported as *Dhliwayo v Road Accident Fund* (A598/17) [2020] ZAGPPHC 544 (7 August 2020).
- 7.2. The candidate had dismissed a pedestrian's claim against the RAF where the pedestrian crossed a well-lit dual carriage way and where nothing obstructed the view of the insured driver.

- 7.3. The candidate found that, and in the main, due to the pedestrian's failing to keep a proper look-out, the insured driver did not contribute to the cause of the collision.
- 7.4. On appeal, it was said that "*on the probabilities it appears that the court a quo misdirected itself in favour of the version of the insured driver with regard to the cause of the collision, in light of its finding that the insured driver's evidence was to some extent contradictory.*" It went on further to say that the insured driver's evidence that the plaintiff appeared from nowhere is improbable when one considers her evidence that nothing obstructed her view of the road and that there was evidence that there was a bus stop near the scene of the accident. The insured driver did not provide evidence that the plaintiff was running and was drunk. The appellant gave a plausible explanation why after being knocked down, he was confused, hence he stood up and ran or that he was initially not willing to get medical assistance. The candidate, in dismissing the plaintiff's claim, reasoned inter alia that the plaintiff did not keep a proper lookout as he was surprised when the vehicle hit him, and that the plaintiff fled the scene as he (plaintiff) "*knew that he had done something that is not correct*". The plaintiff denied that he was drunk. The appeal court found that both parties should have kept a proper lookout for other road users and that both parties were equally to blame for the collision. The appeal was accordingly upheld, and the order of 2017 was substituted. The RAF was held liable for 50% of the plaintiff's proven or agreed damages.

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

- 8.1. The candidate has had an extensive legal career. The candidate was appointed as a prosecutor in 1983, a Magistrate in 1985, and regional court Magistrate in 2013. The candidate has also attended various courses and seminars geared towards developing skills as a member of the judiciary.
- 8.2. Having regard to the length of time, and the different positions that the candidate has held, the candidate understands the workings of the Magistrates' courts and that he has gained the necessary skills to have become a seasoned Magistrate.
- 8.3. The candidate has also acted as a judge of the High Court. These acting stints were undertaken at the Pretoria and Johannesburg High Courts since the beginning of 2016. The candidate states that during these acting stints, he has presided over various matters, including criminal and civil trials, full bench appeals, full court appeals, bail

appeals, reviews, petitions, admission applications, and matters pertaining to mental ill health patients.

9. The candidate's linguistic and communication skills

9.1. In 2022 the candidate unsuccessfully applied for a position as a judge of the Gauteng Division of the High Court of South Africa. At the time of the candidate's interview, the General Council of the Bar of South Africa ("GCB") raised the following concerns:

9.1.1. The candidate has delivered several judgments. The overriding view is that they are not well or sufficiently reasoned and have, on occasion, relied on incorrect legal assumptions.

9.1.2. The candidate tends to combine his analysis of the facts inconveniently or inelegantly with the reasons for the decision reached. There are also instances where a reader cannot distinguish the ratio of the judgment from obiter remarks or findings.

9.1.3. The candidate will, respectfully, benefit from a clearer structure in his judgments.

9.2. The candidate has listed eight judgments to his application for consideration. Four of the judgments are made up of two criminal matters that comprise of a merits and sentencing judgment in each matter.

9.3. In addition to the judgments listed by the candidate, the following judgments were also considered:

9.3.1. *Waterford Estate Homeowners Association NPC v Riverside Lodge Body Corporate and others* 2023 JDR 3145 (GJ).

9.3.2. *Waterford Estate Homeowners Association NPC v Riverside Lodge Body Corporate and others* 2024 JDR 0927 (GJ) (Leave to Appeal).

9.3.3. *City of Tshwane Metropolitan Council and others v Guiamba* 2023 JDR 2202 (GP).

9.4. The following is relevant when considering the three additional judgments above:

9.4.1. *Waterford Estate Homeowners Association* (Leave to Appeal), the candidate granted the applicants leave to appeal on 27 February 2024.

- 9.4.2. In *City of Tshwane Metropolitan Council and others v Guiamba* 2023 JDR 2202 (GP) as a case to his application although he did list *Guiamba v City of Tshwane Metropolitan Council and others* Case Number 64408/2022 (Leave to Appeal) to his application.
- 9.4.3. In *Guiamba v City of Tshwane Metropolitan Council and others*, the candidate was required to consider the City's counter application for security for costs against Guiamba, amongst others. The candidate granted an order directing Guiamba to furnish the city with security for costs in the amount to be determined by the Registrar.
- 9.4.4. It was not evident from the judgment that the candidate had considered the applicable legal principles in concluding that Guiamba was to furnish the City with security for costs.
- 9.4.5. Guiamba sought leave to appeal the candidate's finding that he was required to furnish the City with security for its costs. The application for leave to appeal was dismissed with costs.
- 9.5. The reviewers remain of the view that the candidate's judgments:
- 9.5.1. are still not well or sufficiently reasoned;
- 9.5.2. combine his analysis of the facts inconveniently or inelegantly with the reasons for the decision reached;
- 9.5.3. will still, respectfully, benefit from a clearer structure although there has been a slight improvement in this regard; and
- 9.5.4. appear have amplified the amount of authority referred to. This does not contribute to an improvement in reasoning or structure.

10. The candidate's ability to produce judgments promptly

- 10.1. The judgments considered did not include the date on which evidence was heard; however, during his 2022 interview the candidate indicated that he always reserves a judgment to a specific date and usually completes the judgment within a month.
- 10.2. The candidate does not currently have any outstanding judgments; it therefore seems that the candidate does produce judgments promptly.

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. No concerns appear from the judgments by the candidate that were considered.

12. The candidate's independent-mindedness

- 12.1. There is nothing to indicate that the candidate is not independently-minded.

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

- 13.1. When appointed as the Head of Office (Senior Magistrate) in 1996, he was seen as a good leader and proved to have excellent managerial skills and proved to have good dispute resolution attributes.
- 13.2. The candidate's administrative ability can be determined with reference to some current and previous positions held. The candidate:
 - 13.2.1. served as the President of the Association of Regional Magistrates of Southern Africa from 2015 till 2019; and
 - 13.2.2. is currently a member of the Lower Court Remuneration Committee, the Deputy Chairperson of the Magistrate's Commission and is a member of both the Appointments and Ethics Committees of that Commission.

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

- 14.1. The candidate has been in the employment of the Department of Justice for the whole of his working career, starting as a court interpreter in 1980 at the Giyani Magistrate's Court to being appointed as an acting judge for various terms since 2016 to date. He has dedicated his working life to the Department of Justice. The recognition of consistent service is a positive message.
- 14.2. A potentially negative message may result from the criticism of the candidate's reasoning and structure of his judgments.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. None

Unreported judgments

2. *Khumalo v S* (A262/16) [2016] ZAGPPHC 685 (11 August 2016)
3. *Manana v S* (A890/2015) [2017] ZAGPPHC 1217 (30 October 2017)
4. *Hlungwana v Road Accident Fund* (2814/2014) [2017] ZAGPPHC 410 (13 June 2017)
5. *Mazangwa v Road Accident Fund* (37617/16) [2017] ZAGPPHC 381 (6 June 2017)
6. *Kruger v Road Accident Fund* (31685/14) [2017] ZAGPPHC 337 (15 June 2017)
7. *Molai v Pule Incorporated* (31533/2015) [2016] ZAGPPHC 695 (12 August 2016)
8. *Molefe v Road Accident Fund* (86183/2014) [2016] ZAGPPHC 693 (12 August 2016)
9. *Masilela v Road Accident Fund* (87122/14) [2016] ZAGPPHC 693 (12 August 2016)
10. *Ndzimande v Minister of Police and Another* (56349/2012) [2016] ZAGPPHC 795 (2 September 2016)

Judgments upheld on appeal:

11. None

Judgments overturned on appeal:

12. *Dhliwayo v Road Accident Fund* (A598/17) [2020] ZAGPPHC 544 (7 August 2020)