

JSC INTERVIEW ROUND: OCTOBER 2024

VACANCY: JUDGE, LIMPOPO DIVISION OF THE HIGH COURT, THOHOYANDOU

MS NOMFUNDO SIPUNZI

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 Proc (University of Transkei) (Walter Sisulu University) (1996)

1.1.2. LLB (UKZN) (2009)

1.1.3. LLM (Medical Law) (UKZN)

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

1.2.1. public prosecutor in 1997

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

1.3.1. Regional Magistrate (2011 to 2022)

1.3.2. Regional Court President (Western Cape) (2022 to date)

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.

2.2. On 31 September 2024, a retired Magistrate (Mr R R Naidu) delivered a letter of objection, *inter alia*, to the KZN Bar, in which a number of complaints were raised against the candidate's application. A copy of the letter of objection is annexed hereto, marked "A"

2.3. Whilst the letter records a number of allegations against the candidate in what is a transparent attack on the candidate's integrity, it is fair to categorise the allegations as unsubstantiated and speculative. The letter does not provide any evidence to substantiate such allegations and is grossly defamatory of the candidate.

2.4. However, for the sake of good order, these complaints will have to be investigated prior to the candidate's interview, as these allegations are extremely serious and potentially impact the candidate's application.

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. 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 49 years and 1 month old and will have completed a period of approximately 1 year and 3 months of service as an acting judge.

4.2. If appointed, the candidate would be eligible to serve as a judge for approximately 20 years and 10 months until the age of 70.

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

5.1. The candidate prosecuted a number of high-profile criminal cases involving corruption and organised crime.

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

6.1. The candidate has extensive knowledge of criminal law, having been a prosecutor and having presided in regional courts for a number of years.

6.2. The candidate has limited experience in civil law, except for her experience in presiding in the motion court, over RAF matters, dealing with chamber applications, and hearing full bench appeals during her various stints as an acting judge since 2022.

6.3. The candidate presided over a number of cases, as a regional Magistrate and as an acting judge, that involved competing interests in respect of land, including the Ingonyama Trust, the interpretation of a political organisation's constitution, and the

adjudication of the dispute between the provincial structure and the Provincial and National Executive of the political organisation.

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

7.1. The reviewers found no judgments of the candidate during her time as an acting judge, which have been overturned, upheld, or commented on, on appeal.

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

8.1. The candidate has extensive experience in criminal law, having been a prosecutor and senior state advocate and having presided as a regional court Magistrate, including her current position as the Regional Court President in the Western Cape. Since being appointed as regional court president in 2022, the candidate has acted as a judge in the High Court in KwaZulu-Natal and Gauteng continuously, save for the terms from February to March 2023 and July to September 2023.

8.2. The candidate has served several acting stints in the KZN High Court since August 2022 and has intermittently served for 35 weeks in that capacity, presiding in both criminal and civil courts in Durban and Pietermaritzburg, respectively.

8.3. The candidate is currently serving as an acting judge in the Gauteng High Court, performing civil court duties.

9. The candidate's linguistic and communication skills

9.1. Nothing in the judgments and other writings considered by the reviewers indicates that the candidate's linguistic and communication skills are inadequate.

10. The candidate's ability to produce judgments promptly

10.1. The candidate has listed two judgments which are outstanding in the Gauteng Division, namely:

10.1.1. *TJ Mokoena v SA LPC & Others* (This judgment has been outstanding since 24 May 2024); and

10.1.2. *Dlamini SC v The State* (Case No A271/2022) (This judgment has since been handed down on 31 July 2024).

10.2. The candidate records that she has no outstanding judgments in the KwaZulu-Natal Division. However, the judgment in *Soldizn Estate Agency v Ridgeville Investments*

1008 (Pty) Ltd (Case No. D811/2023) was reserved on 23 November 2023 and recorded as yet to be delivered as of 21 June 2024, some seven months later.

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. By all accounts, the candidate appears to have conducted court proceedings in the KZN Division fairly, efficiently, and effectively.

12. The candidate's independent-mindedness

- 12.1. A complaint recorded in the letter of objection (*vide* Annexure "A" hereto) attacks the candidate's independent-mindedness and suggests that she panders to political interests. This allegation is untested, uncorroborated, and still to be investigated.
- 12.2. The candidate has been involved in a number of politically charged cases and cases relating to organised crime during her time as a prosecutor and regional court Magistrate.

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

- 13.1. The candidate would appear to have administrative ability, given her experience as the President of the Regional Court, managing approximately 60 regional court Magistrates, and dealing with the case flow forum and training of colleagues.
- 13.2. However, it should be noted that the candidate has been acting in various high courts almost continuously since her appointment as President of the Regional Court. She has accordingly not fulfilled the role and administrative function of her position as President of the Regional Court.

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

- 14.1. The candidate's appointment would send a positive message to the public at large in that she is a senior Magistrate with additional significant experience as a prosecutor.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. None

Unreported judgments

1. *Ethekwini Municipality v Msizi Security CC & Others* 2024 JDR 2538 (KZD)
2. *Golden Rewards 120 CC v M3 Holdings (Pty) Ltd* 2024 JDR 2053 (KZD)
3. *Investec Bank Limited v MFBK Properties (Pty) Ltd* 2024 JDR 2049 (KD)
4. *Khoza & Others NEC, ANC Women's League and Others* 2024 JDR 0486 (KZD)
5. *Chetty v Gihwala & Another* [2024] ZAKZDHC 25 (18 March 2024)
6. *Southern Spirit Properties 227 (Pty) Limited v Afro Joinery (Pty) Limited & Others* [2024] ZAKZPHC 41 (18 January 2024)
7. *Matatiele Local Municipality v Zincede Ngokwakho (Pty) Limited & Others* [2023] ZAKZPHC 150 (24 November 2023)
8. *Mtambo v S* [2023] ZAKZPHC 134 (3 November 2023)
9. *Redefine Properties Limited v Intrepid- Heights (Pty) Limited & Others* [2023] ZAKZDHC 95 (14 June 2023)
10. *Tlhatsi v Minister of Police* [2022] ZAKZDHC 47 (11 November 2022)

Judgments upheld on appeal

11. None

Judgments dismissed on appeal

12. None

2 Watson Street
Gandhinager, Tongaat
KwaZulu Natal
Date: 31 September 2024

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KZN BAR and related organizations: kznbar@law.co.za;

**In re: Objection to the appointment of Ms. Nomfundo Sipunzi as a Judge in KZN
Division and in any Division of the High Court in South Africa**

Dear JSC and the JP KZN

1. I am writing to bring to your attention a matter of grave concern and utmost importance to the entire justice system of our Country regarding the corrupt, unethical and criminal conduct of aspirant Judge Ms. Sipunzi. I have known Sipunzi for over 15 years from the time she was a state advocate at the KZN DPP's office. During that time, she made solid relations with corrupt police officers in Durban and later at Empangeni. Her relationship with these police officers prompted an investigation against her where she was suspected of colluding with police officer to sell police dockets to criminals. This information is within my knowledge because I authorised a search warrant for one of the police officers and I read the statements and other documents implicating Sipunzi. Unfortunately, there was no concrete evidence against her, and she was not prosecuted. However, her conduct was known within the DPP's office. At the time, she had strong ambitions of becoming a DPP however, her efforts were frustrated as afore said. Needless to say, she left the DPP's office as a disgraced Prosecutor.
2. From there she made close acquaintance with the disgraced regional court Magistrate Ndzimande. They were members of the same money stokvel. Sipunzi bribed her way to acting as a regional court Magistrate at Port Elizabeth overlooking all the district

court magistrates who were waiting for their turn in the regional division. Her presence was not welcomed by many in PE as she clearly showed everyone that she had a close relationship with the head of that court through her connections with Ndzimande. The acting stint in PE was preparing for her escape to the bench.

3. Ultimately, she was appointed to the bench. Even there her character dominated. A complaint was made against her for favoring hardened criminals in her court. During this period Sipunzi was involved with her former lover, an attorney in the Eastern Cape, Queenstown, Mr. Milile Mpambaniso. Milile Mpambaniso was struck off the roll of attorneys on account of defrauding the Government through dodgy social grants lawsuits and RAF. Sipunzi was aware of Mpambaniso's criminal activities, and she turned a blind eye. She benefitted from Mpambaniso's criminal activities in that Mpambaniso funded to purchase of Sipunzi's Durban Westville home and sustained her expensive lifestyle. Mpambaniso was controlling and abusive to Sipunzi's children to the extent that one of them struggled with emotional anxiety and is now estranged with Sipunzi.
4. Sipunzi is a multi-millionaire who is not afraid to socialize with businesspersons in KZN to climb the financial ladder to the top. She has now taken cover in the Western Cape Province as the Regional Court President a position she took less than 4 years ago. Her difficulty is that there is no room for corruption in the Western Cape. She has not made powerful connections yet.
5. Sipunzi rekindled a close relationship she had with Mngadi J of the KZN Division. They met at the time she was a state advocate, and the Judge was with Legal Aid SA. This is how she managed to obtain information about acting opportunities in KZN. I do not know the extent of connections she has with the management of KZN Division but rest assured, Sipunzi is never without a solid plan or connections. She has been a favorite of the KZN bench and has been parachuted to the top for judgeship. This is so despite her obvious lack of knowledge of civil court work.
6. Her acting judge appointments are not without controversy. Before handing down judgement in the case of KZN ANCWL she met with Mtolo of KZN ANC. Those closer to Sipunzi describe their relationship as a "sizzling hot love affair" with golden benefits. One of such benefits would be an appointment as an ANC Judge in KZN. Sipunzi has informed me that she is poised to sit in the *AKA- Forbes* murder trial as she possesses impressive skills in the criminal court.

7. I called for a lifestyle audit of Sipunzi long before she escaped to the WC however that has been blocked.
8. I stand for Justice and clean governance. Sipunzi's conduct, character and compromise ethical standards would undermine the integrity of the judiciary and erode public trust in the justice system. Sipunzi is a disgrace that the community of KZN would never benefit from. I object to her candidature and appointment as a Judge.

Yours sincerely

RR Naidu 

Retired Magistrate and a warrior for Justice