

VACANCY: JUDGE OF THE COMPETITION APPEAL COURT

Candidate: Judge Mokgere Masipa

1. The candidate's tertiary qualifications, professional admissions, honours, and permanent judicial appointments
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1.1. The candidate holds the following tertiary qualifications:

- B.Proc – University of the North (1996);
- LLB – University of KwaZulu-Natal (1998).
- LLM (Labour Law) – University of KwaZulu-Natal (2015).

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

- admitted as an attorney presumably in 2003.¹

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

- Judge of the High Court, KwaZulu-Natal Division in June 2016.

1.4. The candidate has acted in the following roles:

- Competition Appeal Court since January 2022;
- Supreme Court of Appeal (approximately five terms);
- Acting Judge of Appeal in the Labour Appeal Court (approximately five months);
- Acting Deputy Judge President of the High Court, KwaZulu-Natal Division (approximately one term).

2. The candidate's integrity and ethics
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2.1. While an attorney, a complaint was lodged against the candidate relating to her failure to supervise a junior attorney, which was initially upheld. The High Court reversed the

¹ The date is unclear from the candidate's application and is presumed on the basis of a 2-year article period that commenced in 2000.

finding on review. There are no professional misconduct findings against the candidate at this stage.

- 2.2. 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.

3. The racial and gender composition of the bench

- 3.1. As far as could be ascertained, there are currently 23 permanent justices of the Supreme Court of Appeal:
- 9 black women (6 African, 2 Coloured, 1 Indian)
 - 7 black men (3 African, 3 Coloured, 1 Indian)
 - 3 white women
 - 4 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 52 years and 7 months old and will have completed a period of approximately 10 years and 4 months' of service as a judge. If appointed, the candidate would be eligible to serve as Justice of the Supreme Court of Appeal for a period of up to 17 years and 5 months.

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

- 5.1. The candidate has shown commitment to constitutional values throughout her career. She has advanced dignity, equality, and access to justice in her judgments, and has been active in professional organisations such as the International Association of Women Judges.
- 5.2. Outside of the courtroom, the candidate has represented the judiciary at a procedural law colloquium in Mozambique and presented a paper on strengthening judicial responses to terrorism and drug trafficking during 12 – 15 February 2025. She has also represented the KZN judiciary at an event for women of the KZN Bar, where she delivered a paper on transformation in the legal profession on 8 June 2024.

- 5.3. She has served as a council member of the University of Limpopo, as a council representative responsible for employment law issues, including dispute management and the employment of staff, including senior personnel.
- 5.4. The candidate serves on the Information Technology Committee of the KwaZulu-Natal Division of the High Court. She has been actively involved in implementing and overseeing the Court Online and CaseLines system within the division. She has also contributed to discussions concerning the ethical and responsible use of emerging technologies in the judiciary, including serving on a committee tasked with developing an artificial intelligence policy for the South African judiciary.

6. The candidate's knowledge of the law, including constitutional law
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- 6.1. The candidate has delivered a substantial number of judgments during her career, demonstrating sound and evolving knowledge of the law, including the interpretation of statutes and civil procedure, labour and constitutional law.
- 6.2. Notable judgments that illustrate the candidate's knowledge of constitutional law include *NM v John Wesley School and Another* 2019 (2) SA 557 (KZD) (advancing children's rights to dignity and education), and *Freedom Under Law v Judicial Service Commission and Another* [2023] 3 All SA 631 (a dissenting judgment reflecting independent constitutional reasoning).
- 6.3. *School Governing Body, Paarlzicht Primary School v MEC for Education, Western Cape* [2021] 2 All SA 241 (WCC) exemplifies the candidate's exercise of judicial restraint in review proceedings. The candidate condoned a 17-day delay on an application of the interests-of-justice standard (including *Gijima*), but dismissed the merits of a rationality and bias challenge to the Head of Department's appointment of a school principal, holding that the functionary need not rubber-stamp the governing body's preference and that the decision was rationally connected to the reasons given for it.
- 6.4. In *NM v John Wesley School and Another* 2019 (2) SA 557 (KZD), the candidate conducted an analysis of a school's right to collect school fees and the constitutional rights enshrined in section 28 (children) and section 29 (education) of the Constitution, namely the right that places the child's best interest paramount in all matters concerning them, and the right to basic education. The candidate held that, while a school is not prohibited from suspending or expelling learners for non-payment of school fees, it

must exercise that right in such a manner that it does not encroach on section 28 and section 29 constitutional rights.

- 6.5. Another noteworthy judgment penned by the candidate is *Discovery Insure Limited v Masindi* (534/2022) [2023] ZASCA 101 (14 June 2023), in which the candidate interpreted two clauses of an insurance policy and determined the effect of that interpretation on accrued rights under the contract. The candidate departed from the interpretation by the court *a quo*, indicating an independent-mindedness worthy of an appeal judge.
- 6.6. A further important judgment is *National Director of Public Prosecutions v Panday and Others* [2026] ZAKZNPHC 2. The appeal concerned the proper interpretation and application of section 26(6) of the Prevention of Organised Crime Act 121 of 1998, which permits the release of restrained assets for reasonable living and legal expenses in certain circumstances. The judgment is significant because it interprets an important provision of the act and clarifies the nature of the court's supervisory role in restrained proceedings. The judgment emphasises the importance of judicial oversight and adherence to statutory safeguards when balancing asset preservation against the rights of affected persons.

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

- 7.1. The candidate has disclosed that two judgments have been taken on appeal. On appeal, both judgments have been overturned.
- 7.2. There appear to be no judgments of the candidate upheld on appeal.
- 7.3. The judgments of the candidate overturned on appeal are:
- *Assegaai River Properties (Pty) Ltd v Derby Downs Management Association* (5986/2015) [2016] ZAKZDHC 39 (28 September 2016) overturned in *Derby Downs Management Association v Assegaai River Properties (Pty) Ltd and Another* 2022 (2) SA 71 (KZP)
 - The appeal court found that the candidate had erred in finding that Gorven J declared a resolution void when, in fact, he held that it was void because the Companies Act made it so. This would not have changed the result.

- However, the appeal court found that a second (later) resolution had achieved the necessary regularisation of the affairs of the appellant's members. That finding turned on an interpretation of section 20(2) of the Companies Act, which the full court noted had not been brought to the candidate's attention, and appears in fact to have been raised *mero motu* by the appeal court.
- *Extra Dimensions 121 (Pty) Ltd v Body Corporate of Marine Sands and Another* Case No. 12586/2013 overturned in the full court as *Extra Dimensions 121 (Pty) Ltd v Body Corporate of Marine Sands and Another* (AR121/2017) [2018] ZAKZPHC 34 (24 August 2018) and in the SCA in *Body Corporate of Marine Sands v Extra Dimensions 121 (Pty) Ltd* 2020 (2) SA 61 (SCA)
- This was an application where Extra Dimensions challenged the body corporate's special resolution modifying the levy system. The candidate's judgment was overturned, in the first instance, by a full court in the KwaZulu-Natal division, based on a point of law that the full court had raised with the parties after oral argument and which the appellant contended had not been properly canvassed in the evidence. The full court upheld the appeal because it found that the special resolution did "adversely affect" the respondent in terms of section 32(4) of the Sectional Titles Act 95 of 1986. The SCA analysed whether a special resolution that alters a levy contribution requires the owner's written consent, confirmed that the full court was correct in overturning the initial position, and concluded that if an amendment forces an owner to pay more, they are "adversely affected" and their written consent is required. The SCA found that the candidate's reasoning was "*clearly wrong*" and that her approach "*resting as it does on nebulous notions of fairness, brings uncertainty into the Act*".
- The reviewers note that, in reaching her decision, the candidate followed the reasoning of Theron J in *Algar v Body Corporate of Thistledown and Others* KZP 575/02 at 3 on the same issue. She ought not, therefore, to be unduly criticised for having done so.

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

- 8.1. The candidate has over two decades of professional legal experience, beginning as a judges' associate, then attorney, director of her own law firm, and later as a High Court judge where she has presided over constitutional, commercial, insolvency, criminal, delict, family, customary, administrative, civil and maritime law matters.
- 8.2. She has also acted in the Supreme Court of Appeal since 2022, gaining valuable appellate exposure and experience. She has also acted in the Labour Appeal Court (for five months in 2026) and the Competition Appeal Court (since 2022), gaining significant experience in labour and competition law.

9. The candidate's linguistic and communication skills

- 9.1. The candidate's judgments are written in English.
- 9.2. The candidate's judgments are generally clear, well structured, well reasoned, and accessible, with strong analytical depth in constitutional and rights-based cases.

10. The candidate's ability to produce judgments promptly
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- 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 these judgments were still outstanding, and both had been outstanding for more than three months.
- 10.3. Of the 14 judgments of the candidate considered by the reviewers, one was handed down more than three months after hearing, being *Nortje v Road Accident Fund* 2022 (4) SA 287 (KZD), where the matter was argued in May 2020 (according to the judgment itself rather than the date reflected on Juta) and judgment delivered on 4 February 2022.

11. The candidate's ability to conduct court proceedings fairly, efficiently, and effectively
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- 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. The candidate's judicial record shows balance and compassion, particularly in cases involving children and survivors of gender-based violence.

12. The candidate's independent-mindedness

- 12.1. There is no reason to believe that the candidate, if appointed, would not bring an independent mind to bear on issues presented for judicial determination, nor that the candidate would be unduly influenced in any way, including by the executive or legislative branches of government.
- 12.2. The candidate has displayed independence of thought, including in her dissenting judgment in *Freedom Under Law v Judicial Service Commission and Another* [2023] 3 All SA 631, where the majority judgment was authored by a permanent appeal judge.
- 12.3. In particular, the candidate held a different view as to the appropriate order that the court ought to have made. The candidate was of the view that the matter ought to be referred back to the original decision-maker, rather than to the Commission to decide based on the representations already made, as contemplated in section 20(2) of the Judicial Service Commission Act 9 of 1994.

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

- 13.1. No adverse comments were received regarding the candidate's administrative ability.
- 13.2. The candidate served as Acting DJP of the High Court, KwaZulu-Natal Division, for a term. The candidate therefore has proven administrative capability in coordinating conflicting judicial schedules, ensuring that panel members receive records promptly, and managing the logistical workflow of multiple decision-makers.
- 13.3. In the role of Acting DJP, the candidate managed high-volume court rolls and enforced judicial norms and standards in a busy division like KwaZulu-Natal and has the proven self-discipline and organisational systems required to handle the workflow at the SCA.

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

- 14.1. Judge Masipa's appointment to the SCA would affirm that independent-minded black women with diverse career trajectories are recognised and valued at the highest levels of the judiciary.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *NM v John Wesley School and Another* 2019 (2) SA 557 (KZD)
2. *SED v S* 2020 (1) SACR 78 (KZP)
3. *Nortje v Road Accident Fund* 2022 (4) SA 287 (KZD)
4. *Freedom Under Law v Judicial Service Commission and Another* [2023] 3 All SA 631
5. *Maughan and Another v Zuma* 2023 (5) SA 467 (KZP)
6. *Coughlan NO v Health Professions Council of South Africa and Others* [2025] 1 A SA 20 (SCA)
7. *Spar Group Limited and Others V Twelve Gods Supermarket (Pty) Ltd and Others* 2025 (3) SA 137 (SCA)
8. *Retmil Financial Services (Pty) Ltd v Sanlam Life Insurance Company Ltd and others* [2013] 3 All SA 337 (WCC)

Unreported judgments

9. *Allied Steelrode (Pty) Ltd v Dreyer and Another* (1120/2022) [2023] ZASCA 181 (21 December 2023)
10. *Discovery Insure Limited v Masindi* (534/2022) [2023] ZASCA 101 (14 June 2023)
11. *Louw v Patel* (245/2021) [2023] ZASCA 22 (9 March 2023)
12. *National Director of Public Prosecutions v Panday and Others* [2026] ZAKZNPHC 2

Judgments upheld on appeal

13. None.

Judgments overturned on appeal

14. *Assegaai River Properties (Pty) Ltd v Derby Downs Management Association* (5986/2015) [2016] ZAKZDHC 39 (28 September 2016) overturned in *Derby Downs Management Association v Assegaai River Properties (Pty) Ltd and Another* 2022 (2) SA 71 (KZP)
15. *Extra Dimensions 121 (Pty) Ltd v Body Corporate of Marine Sands and Another* Case No. 12586/2013 overturned in the full court as *Extra Dimensions 121 (Pty) Ltd v Body Corporate of Marine Sands and Another* (AR121/2017) [2018] ZAKZPHC 34 (24 August

2018) and in the SCA as *Body Corporate of Marine Sands v Extra Dimensions 121 (Pty) Ltd* 2020 (2) SA 61 (SCA)

Academic writings

16. None.