

VACANCY: DEPUTY JUDGE PRESIDENT OF THE EASTERN CAPE DIVISION OF THE HIGH COURT¹

Candidate: Judge Buyiswa Majiki

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 Transkei (1992);
- LLM, University of South Africa (2007).

1.2. The candidate is believed to have been admitted as an attorney in May 1995.

1.3. The candidate was permanently appointed as a Judge of the High Court in the Eastern Cape Division on 13 February 2013.

2. The candidate's integrity and ethics
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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 of the bench
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3.1. As far as could be ascertained, there are currently 27 permanent judges of the Eastern Cape Division of the High Court:

- 8 black women (7 African, 1 Indian)
- 11 black men (8 African, 1 Coloured, 2 Indian)
- 3 white women
- 5 white men

3.2. According to the questionnaire, the candidate is an Indian woman.

¹ Editor's note: The review committee to which this candidate was assigned failed to undertake a review of the candidate's nomination pack and legal writing or to provide any comments on the candidate. This review is based on a review previously completed for the candidate. No adverse inferences should be made as to the candidate's merit.

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 8 months old and will have completed a period of approximately 11 years and 8 months' of active service. If appointed, the candidate would be eligible to complete a further period of up to 13 years and 3 months' of active service.

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

- 5.1. There is no reason to doubt the candidate's commitment to the values of the constitution.
- 5.2. The candidate's curriculum vitae reflects that she was a founding member of the South African Women Lawyers Association and its first national president and is actively involved in training legal practitioners and students, as well as general community outreach work.
- 5.3. The candidate was actively involved in the first democratic elections in 1994, as a member of the IEC, and has demonstrated ongoing commitment to democratic values through her roles in electoral dispute resolution, including serving as a member of the Electoral Court for more than a year up to her elevation to the bench.

6. The candidate's knowledge of the law, including constitutional law
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- 6.1. The candidate is well versed in the law, and it is apparent from the judge's questionnaire, that she has been involved in matters involving different fields of law, which requires of her to apply constitutional law principles.

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

- 7.1. The candidate has disclosed two judgements that were upheld on appeal and six judgments that were overturned. The reviewers found no further judgments.
- 7.2. However, with regard to the one judgment, listed as not overturned on appeal (*Long Beach Homeowners Association v MEC: Economic Development, Environmental Affairs and Tourism (Eastern Cape) and Others* 2020 (2) SA 257 (ECG)), the full court set aside the candidate's order in terms whereof the candidate only allowed the costs of one counsel. In this regard the full court, at paragraph 45, stated the following:
- 7.3. 'The learned Judge did not deal, however, in her judgment with any of the submissions made for or against an award of the costs of two counsel, merely ordering that the application be dismissed with costs. We were informed that she gave no reasons for

granting applicant leave to appeal her judgment nor did she do so in granting first respondent leave to appeal the costs order. Her failure to have given any such reasons and to elucidate the basis upon which she made her costs order is, with respect, most regrettable as this Court is now in the dark as to whether in granting the costs of only one counsel, she had overlooked the first respondent's submissions that the costs of two counsel were justified or whether she had been of the view that in fact they were not.'

- 7.4. In *I.S v H.C.P.S* (CA38/2020; 3075/2020) [2021] ZAECGHC 16 (16 February 2021), a
- 7.5. full bench found that the appellant was substantially successful in her counterclaim (at first day of trial the respondent agreed to an accrual sum in favour of the appellant and on appeal the full court increased rehabilitative maintenance and medical aid from 12 months to 48 months) and ordered that the respondent had to pay costs in both the court a quo and on appeal.
- 7.6. In *Mazina v The State* (494/2016) [2017] ZASCA 22 (24 March 2017), the majority per Zondi JA overturned the conviction of the accused on a charge of murder in terms of a judgment per Beshe J in which the candidate had concurred. The conviction was overturned on the court a quo had erroneously treated a section 115 CPA statement by the accused as a formal admission, and that the conviction had been founded on 'conceptual confusion' about what is required for an admission in terms of section 220 of the CPA. The majority held that the State had failed to lead sufficient evidence to meet its onus, in light of the fact that the accused had not formally admitted all the facts required to convict him of murder.
- 7.7. The minority per Coppin AJA (as he was at the time) held that:
- 7.8. 'Even though the exculpatory part of a plea explanation may not be ignored in determining, at the end whether, in light of all the evidence, the State had discharged its onus, it did not have to be given any weight as it was not repeated under oath and the State had had no opportunity to test it in cross-examination. Accordingly, the court below cannot be faulted in its approach to the appellant's plea explanation and its ultimate conclusions concerning it.'
- 7.9. In *LH v ZH* 2022 (1) SA 384 (SCA), the SCA had to consider an appeal relating to the
- 7.10.
- 7.11. interpretation and application of section 18(a) of the Matrimonial Property Act. In a full bench appeal in the court a quo, the candidate (Jaji J concurring) interpreted s18(a) as excluding from joint matrimonial property not only non-patrimonial damages awarded

to a spouse during the currency of a marriage, but also non-patrimonial damages awarded to a spouse before the conclusion of a marriage. The majority of the SCA per Hughes JA overturned the candidate's decision and held that non-patrimonial damages accrued prior to marriage form part of the joint estate upon conclusion of a marriage. In a dissenting judgment, Mocumie JA would have upheld the candidate's judgment.

- 7.12. In *Minister of Police v Nontsele* (547/2022) [2024] ZASCA 137; [2025] 1 All SA 44 (SCA) (11 October 2024) the majority of the SCA per Dambuzza JA set aside the candidate's order in a delictual action for wrongful arrest, detention, and malicious prosecution. The candidate had found that the plaintiff a quo's detention had been unlawful from the date of refusal of bail to the date of his release and had awarded him damages accordingly. The majority of the SCA held that the plaintiff a quo's pleaded cause of action was malicious deprivation of liberty, not unlawful detention, and that the plaintiff had failed to lead sufficient evidence to prove his claim.

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

- 8.1. According to the candidate's curriculum vitae, she has served in the legal field as a candidate attorney from February 1993 to May 1995, as a professional assistant from May 1995 to December 1997, and as director in a firm where she was a named partner from December 1997 to 2013. She was also a part-time lecturer during the 1998 academic year and a member of various legal organisations, including the Butterworth Region Attorney's Association, NADEL, the Cape Law Society, and the South African Women Lawyers Association.

9. The candidate's linguistic and communication skills

- 9.1. The candidate's judgments are written in X.
- 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 three judgments were outstanding at the time of completing the questionnaire.

- 10.2. The first judgment was reserved on 4 March, 13 March and 18 May 2026.
- 10.3. One judgment has been delivered exactly 6 months after it was reserved, being *Mbalikwana Trading (Pty) Ltd and Another v MEC: for Finance, Economic Development, Environmental Affairs and Tourism and Others* (406/2022) [2026] ZAECBHC 16 (13 August 2026).

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.

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.

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

- 13.1. The candidate's involvement with various community and professional organisations, together with her directorship of a law firm, indicate that she has adequate administrative abilities.
- 13.2. The candidate acted as Deputy Judge President in the Mthatha High Court for approximately seven weeks in the fourth term of 2024.

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

- 14.1. The candidate's appointment would send the message that there is a commitment to advancing women to leadership roles within the judiciary.

ANNEXURE: LIST OF JUDGMENTS CONSIDERED

Reported judgments

1. *Long Beach Homeowners Association v MEC: Economic Development, Environmental Affairs and Tourism (Eastern Cape) and Others* 2020 (2) SA 257 (ECG)
2. *LH v ZH* 2022 (1) SA 384 (SCA)

Unreported judgments

3. *I.S v H.C.P.S* (CA38/2020; 3075/2020) [2021] ZAECGHC 16 (16 February 2021)
4. *Mazina v The State* (494/2016) [2017] ZASCA 22 (24 March 2017)
5. *Minister of Police v Nontsele* (547/2022) [2024] ZASCA 137 (11 October 2024)

Judgments upheld on appeal

6. *Long Beach Homeowners Association v MEC: Economic Development, Environmental Affairs and Tourism (Eastern Cape) and Others* 2020 (2) SA 257 (ECG)

Judgments overturned on appeal

7. *LH v ZH* 2022 (1) SA 384 (SCA)
8. *I.S v H.C.P.S* (CA38/2020; 3075/2020) [2021] ZAECGHC 16 (16 February 2021)
9. *Mazina v The State* (494/2016) [2017] ZASCA 22 (24 March 2017)
10. *Minister of Police v Nontsele* (547/2022) [2024] ZASCA 137 (11 October 2024)