

Judicial Services Commission interviews

6 October 2015, Afternoon session

Northern Cape High Court

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Interview of Ms M C Mamosebo

Chairperson (Deputy Chief Justice Moseneke): The task of the JSC is to determine whether to recommend you to the President for nomination to the High Court in the Northern Cape. The JSC will ask questions for forty-five minutes so as to allow you to express yourself and explain why you should be nominated to be a judge.

Chairperson: What is your home language, where were you born, what is your maiden name, and what do you think about your childhood? Was your childhood happy or challenging?

MsMamosebo: My home language is Tswana. I was born near Pretoria. I was MsMtobi before marriage. I come from a mixed culture: my father was a reverend that moved often. I was exposed to many cultures. The family would stay in areas for around two years. I learned to speak Afrikaans when I lived in an Afrikaans culture. I have been exposed to both a poor and elite urban background.

Chairperson: How do rank your primary and high school education?

MsMamosebo: I attended public schools. People came from struggling backgrounds. My high school was multi-racial and a high quality school. It exposed me to different learning curves.

Chairperson: Please explain your university degrees. You seem to have done four degrees and one diploma.

MsMamosebo: I strive to work and learn at all times. For my first degree, I had limited choices. I chose the BJuris degree in 1992. I thought that this was a better profession to pursue. When I moved to Gauteng, I heard about other paths and was exposed to labour relations, and got a Masters in labour law, but eventually moved back to regular law because that is where I belong. I got my LLB much later in 2010. Having only a BJuris is like standing on one foot at all times. Labour law knowledge is very useful wherever you work. In 2004 when I was at African Life, a doctor in Pretoria assessed me; he encouraged me to pursue my LLB in order to keep me busy.

Chairperson: So you spent ten years in the Department of Justice. Why?

MsMamosebo: The experience in the Department has been very formative. I started there as a clerk. I learnt the ropes and gained exposure there; they paid for my diploma in dispute resolution. I had a meaningful role in that conducive environment.

Chairperson: After a detour into the private sector, you became a magistrate in 2005. Why?

MsMamosebo: Even though I left the Department, I have always wanted to be on the high court bench. I thought that I might go through the labour courts originally.

Chairperson: You have been an acting judge since 2012 to date continuously after seven years as a magistrate. Which division?

MsMamosebo: That is correct. I am just short of three years acting.

Chairperson: Why do you want to become a judge?

MsMamosebo: When I was 12, I was staying with the army and I realised that different people were receiving different treatment. I asked a minister about this separation at that age. The minister said that everyone should be treated the same. I learned then that equality is important and that independent thinking is important. I have been questioning and an independent thinker from an early age. The Constitution says that anyone properly qualified who represents the demographics of the country can be a judge. I am an independent thinker, I can think and decide fairly and impartially, I have the integrity, I have a good judicial temperament and work ethic, and I am committed to the values of the Constitution. I will bring a diverse view due to my life experience.

Chairperson: The Northern Cape Bar Council does not support your candidacy due to your lack of experience. Please respond.

MsMamosebo: I wish that the report would have been more specific about their unhappiness with my achievements. My judgments in the past three years speak for themselves; I have learned so much, even though it is true that I was not on the bench before that. The report speaks to my potential. Potential has nothing to do with experience. I can really give more to the Northern Cape. The Northern Cape has been very mentoring and supportive.

Chairperson: How did you end up in the Northern Cape? Your home is in Mafikeng.

MsMamosebo: The Judge President invited me.

DJP Tlaetsi: Have you integrated into the society of the Northern Cape? What role do you play?

MsMamosebo: I have integrated well. I am a member of the Women's Manyano. I assist the provincial coordinator of the International Association of Women Judges (IAWJ). We invited different groups to come to the Northern Cape so that the IAWJ could raise awareness around various issues that face women and children. Recently there was a gala dinner with a psychiatrist from Stellenbosch who spoke about spousal abuse. Many parents brought their children. The IAWJ is also coordinating other programmes. I am active in Gahleshi. I have interacted the elderly in helping them understand their rights. Also, there is a problem of children growing up and not leaving their homes. I have raised awareness about human trafficking. The IAWJ frequently engages with high school students to encourage them to pursue a career in law. I hope to take this active participation to the Northern Cape.

DJP Tlaetsi: These skills along with your labour law background will benefit the bench.

MsMamosebo: One uses these skills everywhere. I would be willing to be called to serve in the Labour Court.

DJP Tlaetsi: How will you treat the Northern Cape Bar, knowing that they have criticised you?

MsMamosebo: They have every right to criticise me; they are dealing with an issue that they think needs to be dealt with. I will not treat them differently. I will continue to look at them as counsel. I will be the bigger person; I must be able to take criticism.

DJP Tlaetsi: Do you feel confident enough after three years experience to take this position?

MsMamosebo: I have grown over these three years and feel ready. My confidence has grown.

DJP Tlaetsi: Where do you spend your evenings.

MsMamosebo: I often stay in my chambers until eleven or later at night with a dinner break.

DJP Tlaetsi: This could be dangerous. Do you feel that this is the only way that you can cope? Do you always bring this energy?

MsMamosebo: The environment where I am is safe. I currently only walk two minutes to work.

MEC Shushu: Given the demographics of the Northern Cape Bench, why should we appoint you? Why do you think that the Northern Cape Bar has made this negative suggestion?

MsMamosebo: As for representivity, I would bring diversity to the bench. The country has more women than men. There should be more women on the bench to remedy past discrimination against women. We need the fresh perspective of more women.

Chairperson: There are already three women of colour on the bench in the Northern Cape. Why should you be preferred in circumstances where diversity has been achieved?

MsMamosebo: To say that diversity has been achieved is not enough; more is required. The Northern Cape has been predominately white. The court does not have a white female, but the JSC should look further than colour. There other Constitutional values to consider; it would not be wrong to have another African woman. I can speculate that the Bar Council supported its own member. This reflects pre-Constitution thinking, perhaps. I am not certain.

Dr Motshekga: You seem like a self-taught social activist whose judicial temperance is informed by a deep sense of social justice.

MsMamosebo: You may say so.

Dr Motshekga: Good lawyers are those who understand the law well. In you, however, there is a marriage of qualification and social awareness. Should it not be important to teach social science in the law curriculum so that we can produce people like you?

MsMamosebo: It does not have to be the social sciences, because law is pure; what will take people far is an awareness of social context. This will allow lawyers to treat people well.

Dr Motshekga: You have educated me. Social context is precisely what I meant. You are a good example of that.

MsDidiza: The Northern Cape is vast and rural. How will you promote access to justice for that population?

MsMamosebo: The Courts must be taken to the people. Courts should sit outside the main city. The Access to Justice Conference in 2011 addressed this issue.

MsDidiza: I have looked at your career. What message does this send to magistrates in regards to the ability of magistrates to move to the bench?

MsMamosebo: The message I should share is that hard work and study is important. If you add value to your environment, you will be noticed. When you write good judgments, these judgments add value to your environment.

Mr Singh: I want to follow up on access to justice. What about access to justice from a financial point of view? For some, legal aid is unaffordable. Can poor people get good representation?

MsMamosebo: The situation is better in urban areas. In the Northern Cape, there is not a proper University and thus there are not law clinics. It would make more sense to assist legal aid to make it more accessible for indigenous people and those who are already incarcerated. However, they have limited resources. Legal aid should be more accessible more widely. It is a vehicle for people.

Mr Singh: I am glad you said this. Parliament often questions the Executive in this regard. My view is that you are soft-spoken and kind. How would you react if you were presented with someone who has only had three years of experience? I see that you have done some very high-profile cases. One case had 37 respondents.

MsMamosebo: Their statement was general and subjective and pointed to no specific errors. I disagree with their assessment. I have had a great many judgments reported in three years. You can spend twenty years as a judge with no reported cases.

Mr Singh: You changed career paths. What prompted this? Your thesis focused on barriers to female magistrates. What are the barriers for females to become senior magistrates? What did your research show at that time?

MsMamosebo: There was discrimination in terms of appointing female magistrates when they indicated that they intended to fall pregnant or get married. In general, women are adequately qualified, but these prejudices prevent women from progressing to more senior positions. I passed on my research to the then-Minister of Justice and the Magistrates Commission so that they could review the shortcomings I identified. If not for that research, I do not think that they would have corrected this problem.

Mr Singh: So, in short, you were frustrated with the system, you went out of the system to the private sector and you proved your point. Well done.

Mr Fourie: In your questionnaire, you say that you have no reserved judgments older than three months as at 31 July 2015. So, therefore, at that date, you had reserved judgments. How many? What is their status?

MsMamosebo: At the time of submission on 31 July, I was busy writing two judgments. They are finished, but I have picked up two judgments that are less than a month old. Another quantum judgment is about two months old.

Mr Fourie: Why is the quantum judgment not finished?

MsMamosebo: It is at an advanced stage. Motion Court rolls took precedence.

Mr Fourie: The top position of magistracy is regional magistrate. Is that correct?

MsMamosebo: Actually, there are two separate areas for magistracy. In the district court, the highest position is chief magistrate. In the regional court, the highest position is the regional court president.

Mr Fourie: So senior magistrates do not necessarily aspire to be regional magistrates. Why did you not aspire to be a regional magistrate? Is the fact that you have not been a regional magistrate a disadvantage?

MsMamosebo: My aspiration is to be on the higher court. I have acted as a chief magistrate in the district court.

Mr Malema: Are you a member of the ANC?

MsMamosebo: I am not a member of the ANC or any political party.

Mr Malema: You would be the fourth black woman on the bench in the Northern Cape. Does this advance transformation?

MsMamosebo: There are two African women and one coloured woman. It advances transformation.

Mr Malema: Is there a problem of racism in the Northern Cape legal fraternity?

MsMamosebo: The Northern Cape has its own unique issues. The dominance of the Afrikaans language is a problem. Trying to brief in an indigenous language is difficult. These barriers take time to dissolve.

Mr Malema: Does the Bar Council criticise you because it is racist?

MsMamosebo: I do not know.

Mr Malema: Would your appointment be a positive message for magistrates?

MsMamosebo: It would be.

Chairperson: Mr Malema's skill in asking leading questions is well known.

Minister Masutha: So your thesis was on the barriers for female magistrates. Did the thesis focus on the situation pre or post 1994?

MsMamosebo: It focuses on post-1994.

Minister Masutha: What time period specifically?

MsMamosebo: I did the thesis in 2002, but my questionnaire that I sent to all magistrates focused on their entire careers. I wanted to know about their frustrations as magistrates.

Minister Masutha: I served on the Appointment Committee for magistrates in the previous term of Parliament. Is this pointed at the process of appointment? Where was this prejudice experienced?

MsMamosebo: The problem was a historical problem that was inherited. Nothing was done about it because the problem is very old. I wanted to explore why women were stagnating in one position. There was a time when the judiciary was only male.

Minister Masutha: I am asking because the Magistrates Commission has as one of its performance indicators as how many females, especially black females, it is able to elevate in law and judiciary. This objective is in line with the Constitution. Does the problem you point out still prevail in the selection of candidates currently? We want to eradicate this problem.

Chairperson: You must assure the Minister that this problem did not occur during his term. He is doing his best to break the gender ceiling.

MsMamosebo: I may say that those blockages have been removed. In response to my research, they worked to remove the barriers. The numbers have improved since then.

Chairperson: It is now time for final remarks from MsMamosebo.

MsMamosebo: I have said all that I need to. Thanks to the JSC.