

## Judicial Services Commission interviews

6 October 2015, Morning session

### Gauteng High Court

**DISCLAIMER: These detailed unofficial transcripts were compiled to the best of the abilities of the monitor. However due to capacity constraints they have not been fully edited. We have therefore made the audio recordings available that were taken during the interviews available. Those wishing to cite or quote from the transcript are encouraged to check accuracy with reference to the audio file.**

### Interview of Adv R Strydom SC

Chairperson (Deputy Chief Justice Moseneke): Welcome Adv Strydom SC. You will have forty-five minutes and will do most of the talking in order to persuade the Judicial Service Commission (JSC) to recommend you to the President for permanent appointment. Why do you want to be a judge?

Adv Strydom: I have been practicing law for thirty-five years, in various fields of the law, and that I want to do something different at this stage in my life. I have a real interest in the law; I feel that I can advance that interest by being a judge. Simultaneously, I would try to do my best and to serve the people of South Africa.

Chairperson: What are the important attributes of a judge?

Adv Strydom: A judge must realise his position: he is there to serve the public and the people of South Africa. In doing so, he must do it without fear, favour, or prejudice. A judge should be hardworking, diligent, and have a feel for the people in front of him. He must create confidence and ensure litigants that they have a fair hearing. He must have patience to listen, consider and reflect properly, and always give a reasoned judgment. That, in a nutshell, illustrates the task of a judge.

Chairperson: I would like to explain the American school of jurisprudence concept of the inarticulate premise, which is a part of a judge's subconscious that can affect a judge's decision-making. My inarticulate premise would be that I grew up in a township near Pretoria, went to high school there before democracy, and thought it wise to participate in change in our society from my youth. This experience sits in my subliminal brain and reasoning. So when I come to the judicial function, this school of thought argues that I bring this inarticulate premise. Everyone brings this subconscious. What do you think about this in general terms? How will it affect you as a judge?

Adv Strydom: One can never divest oneself from one's subjective situation. I came from a privileged background and I recognise this. I want to correct what went wrong in the past. I will always be conscious of this privilege and, to the extent that I can, amend this situation. I am very much aware of this situation. I will always warn myself of my subjective views because of my upbringing; I must divest myself from those views and serve all the people in my judgments.

Chairperson: This subjective limitation affects everyone. This even affects counsel. Everyone wants to achieve impartial objectivity.

Adv Strydom: I had criminal matters when on circuit in East Transvaal; I had a long matter relating to initiation school and crimes committed during that schooling. One must get a feel for the situation in each context. One cannot walk into such situations with a pre-conceived idea of right and wrong.

Chairperson: This is not just about race, but also class, gender, and religion for example. How do you best divest yourself from these factors?

Adv Strydom: You must first be aware of these matters and address them.

Chairperson: I agree. I will say nothing about your experience; your vast practice is impressive. You clearly had a good education. How much of your practice is conducted from Mpumalanga?

AdvStrydom: I do not really practice there because there is not a high court. I have done criminal cases at regional courts there throughout the years. We have started a new initiative there because they are building a new, very impressive high court. My colleagues and I thought to start a bar there. I wanted to stay at the Johannesburg bar, and only open an office in Mpumalanga to see how things develop. Maybe later I would go to that court. I have not been practicing in Mpumalanga.

Chairperson: I see here that you play golf.

AdvStrydom: I play every Saturday.

Dustan Mlambo, Judge President of the Gauteng Division of the High Court: I heard about your recent matter in Mpumalanga. I have given you a spreadsheet. This spreadsheet tries to capture all of your acting stints as a judge. I hope I have captured everything.

AdvStrydom: The number of weeks on the spreadsheet is correct. Apart from this, I have done two long criminal matters. Due to these lengthy matters, another five weeks should be included. I must also mention that some of these judgments mentioned are not mine.

JP Mlambo: Your judgments are in a separate document. During recesses, you have been doing criminal cases?

AdvStrydom: I had started during term, but because I had one case with 100 witnesses and another with 30 or 40. One matter in Palm Ridge regarded a serial rapist with 27 different dockets. This was an enormous matter and we ran out of time. I cannot let this matter go or else it will build up. I estimate about five further weeks.

JP Mlambo: I appreciate this time estimate for these long criminal trials. I have requested additional acting judges in the past for similar situations. There were three other similar matters in Johannesburg that were over a term long.

AdvStrydom: I agree that matters have been very long. Though I try to address ten matters in a term, this is difficult. I can effectively dispense criminal matters if elected to the bench.

JPMlambo: Do you have an affinity for Mpumalanga?

AdvStrydom: Yes. I spent time there as a child.

JP Mlambo: The high court will be finished by next year June hopefully. I am building a pool of future judges for that province.

AdvStrydom: I would be interested, but due to my extensive work in Johannesburg I would be happy in Gauteng as well.

JP Mlambo: Your work on the high court has been in the civil section. You have done five weeks in the opposed motion court, eight weeks of civil trials, and five weeks of appeals.

AdvStrydom: That is correct.

JP Mlambo: These show that you can do both civil and criminal cases.

AdvStrydom: The bulk of my experience is in civil cases. I have been involved in administrative law on big matters. I know many applicable Acts through and through. I have been briefed by the Johannesburg Stock Exchange for the past ten years. This is very specific work involving rules and listing requirements. I know quite a lot of this regulatory kind of work.

JPMlambo: What about transformation? You have received work from the stock exchange. Are there black members of the bar that have been similarly briefed?

AdvStrydom: No, but that I do not know all the people that do the work either. This is very limited work; not many people are involved. I have only ever seen four or five people do this kind of work.

JP Mlambo: How many black or female juniors have you had?

AdvStrydom: I almost never have juniors. My work is usually on my own.

JP Mlambo: Transformation and briefing culture are connected. Some senior advocates go out of their way to involve black juniors, have you considered this?

AdvStrydom: I have not had the opportunity, but would definitely in the future. There are many competent black juniors; at the first opportunity I will get them involved, without a doubt. My neighbours and I discuss this.

JP Mlambo: Thank you for your help with criminal cases.

Mr M Masutha, Minister of Justice and Correctional Services: Judge President Mlambo has made me sign 28 acting appointments recently.

Chairperson: There is clearly more money needed to appoint more judges.

Mr Andrek Lesufi, MEC Education Gauteng: When asked by Chairperson why you want to be a judge, you said that you acknowledge your privileges and that you would use the bench to pass judgments that would help rectify the past. What do you mean?

AdvStrydom: When making judgments, I will bear in mind the rule of law and then apply the law. I cannot correct a situation with the wrong application of the law. I will follow the objective of the Constitution to develop the common law in light of the Bill of Rights. I will apply the values of the Constitution and the Bill of Rights. In my experience, the opportunity does not always arise. If a legal principle common law must be corrected, I will do that within the framework of the law.

MEC Lesufi: Do you want to serve all people in South Africa?

AdvStrydom: Definitely, and without prejudice. In my mind, all people are equal and I will treat them as such, fairly and to the best of my ability.

MEC Lesufi: Please provide examples of your views on equality or your work to support all South Africans in your daily responsibilities.

AdvStrydom: At the beginning of my practice, I went to Johannesburg without any contacts and the only way I could move forward was to start doing pro deo criminal work. For many years, I served people who could not afford legal services. I tried my best in every matter. In those days, Brixton murder and robbery was actually in control of the crime in Johannesburg and unfortunately sometimes they used means that were unacceptable. I stood up for those accused people and ensured that they had a proper trial and that the case was fought properly. I also, through the bar, have done pro bono work for indigenous people and poor people. Many people did not want to participate, so I had to make sure all those t: were allocated and completed. This took a couple hours a week. I voluntarily became a commissioner at a small claims court for eight years. I was also a lecturer for pupils for ten years and sat in on their interviews. I have contributed something, though thinking back probably not enough; I realise that I should have done more.

MEC Lesufi: you have said that "police brutality was rife, confessions were regularly obtained from suspects more so in matters other than evidence" Why the choice of criminal cases and not political prisoners?

AdvStrydom: Pro deo work does not involve political matters; this pro deo system does not provide a choice in what kind of matter.

Commissioner Mabunda: There was a past question on your contribution to black and female counsel. You said that, given the opportunity, it is something that you would look into. Did I understand you correctly?

AdvStrydom: The Johannesburg bar does need transformation. There is something wrong with the briefing pattern at all bars. Previously disadvantaged people do not get enough work; they rely too heavily on state attorney's work. I have been a Senior Counsel (SC) since 2010. I have not been briefed in matters that would

have the opportunity for a junior. I want to involve juniors. There are female black members. I wanted to use these members, but have not had the opportunity.

Commissioner Mabunda: In thirty-five years, five as an SC, you are not one of those counsel who have a clear agenda for transformation and helping remedy this problem. Is that correct?

AdvStrydom: That is not correct. I was a part of a group of advocates, my current one, for the last fifteen years. Throughout these fifteen years, we have realised that we must help black people starting at the bar. From the word go, we were looking for black candidates to get into our group. We financially supported them and still do. We try to, in a micro-sphere, have affected transformation. In electing members, the group has also tried to reflect transformation.

Chairperson: He has answered the questions. You must accept his answers and evaluate them.

Dr M Motshekga, Member of the National Assembly: President Mandela said that one should be the change that they seek. In the past, people who wanted change attended the Black Lawyers Association, the National Association of Democratic Lawyers (NADEL), and Lawyers for Human Rights. Did you?

AdvStrydom: I have long attended meetings of the Black Lawyers Association and have received correspondence from them ever since, though I never paid membership fees. I am cc'ed on all the emails and attend as many meetings as I can.

Dr Motshekga: Progressive lawyers contribute to public interest law practice. This indicates a spirit of social justice. Have you done this?

AdvStrydom: I have not.

Dr Motshekga: Even during apartheid, some jurists were experts in procedural or formal law. However, the JSC now needs people who are experts in substantive or social justice. If you do not understand with the society that you serve and you have not interacted with it, it would be difficult to meet the requirement of substantive justice. Do you agree?

AdvStrydom: I must assure the JSC that I understand this. My farm manager started on my farm at a very young age and grew into the position of manager. I connect very well with my labourers. I am aware of social injustices and will always remember that these need correction.

MsANDoni: The reverse of judicial independence is judicial accountability. Should judges be accountable? If so, to whom and how?

AdvStrydom: Judges must absolutely be accountable. Judges are accountable to the people first and foremost. What judges must do is instill and maintain the pride and independence of the judiciary. Second, judges are accountable to the litigants. This also includes the accused. Even the losers or the convicted must feel that he has had a proper, fair hearing. Third, judges are accountable to other judges. Sometimes judges work with other judges; each judge must pull his weight and is properly prepared. Also, judges must be accountable to their own conscious. If I do a matter, I must know that I have applied my mind and prepared properly. Judges are finally accountable to this JSC and the general assembly. If I do something wrong, there should be consequences.

Chairperson: A judge has never been impeached in South Africa. I would prefer that Parliament forget that it has this power.

Adv L Nkosi-Thomas SC: The JSC does not get enough qualified people from disadvantaged backgrounds because of briefing patterns. When you were asked about this, you admitted that you should have done more. You did provide financial support of some sort to people of colour in your group. Some of your colleagues have actually joined my group. In my group, the Silks have established a junior fund. So, when you get briefed and you do not have a junior and there is an individual who has potential of going to the SCA or the Constitutional Court, you will have a junior, previously disadvantaged, getting exposed to the attorneys, work, and courts, and the group will pay. This way, you teach people to fish. Could your group do this?

AdvStrydom: My group actually has something similar. Unfortunately, this fund is under-utilised because juniors have become successful that they do not need assistance. They have their own practices now.

MsT Didiza, Member of the National Assembly: What is your view on women in the judiciary? Does it matter to have women on the judiciary?

AdvStrydom: The judiciary should reflect the demographics of the country. I think that it definitely is a good thing, without a doubt. It is required by the Constitution. I know many very competent women. Even if slightly less qualified, women should be appointed. We need more women on the bench. All women on the bench that I know are very diligent and an asset to the bench.

MsDidiza: Has your group's programme helped women, especially women of colour?

AdvStrydom: We first consider candidates that need assistance. If there were a black male or female, our group would assist the woman first. However, I am not on the committee that makes the decision.

MsDidiza and the Chairperson: Does your group have a deliberate policy promoting gender balance?

AdvStrydom: Gender is one criterion that would give a candidate preference. A person that meets the criteria on more than one ground would be preferred.

Chairperson: Inequality is the biggest issue of our land. Inequality has to do with equal access to power, resources, skills, and ultimately quality of life. The impact of inequality between men and women is serious. There must be collective combative strategies to make society more equal.

AdvStrydom: I subscribe to that principle. It is now the age of women and that everyone must support them. He will assist where he can.

Chairperson: People must consistently combat this stubborn, persistent inequality.

AdvStrydom: I agree that this is of utmost importance.

Mr C Fourie, Attorney: I see that you were previously interviewed on 10 October 2013. You were asked at this time about black juniors. At that time, you said that "Yes I am. When I started in Johannesburg I later became the group leader of our group. Our group is still in town. We assisted black juniors financially. Some of them could not afford their monthly rental. I can think of two specific incidents; both of these people we assisted through and are now two successful advocates. Later on I joined another group and we started a programme of financial contribution. Every month I contribute financially to help candidates. I must say, the transformation candidates in our group have really made it. They are now successful advocates, and some did not even need assistance. I have assisted where I can." Would you like to elaborate?

AdvStrydom: I have been a member of two groups in my thirty-five years. When we were still in Johannesburg, in the beginning stage of my career, the transformation candidates coming into the bar could not afford their monthly fees and so we paid for them. Those two got established and they are still in the bar and very successful. Then I went to another group that I have spoken about today; this group has also contributed financially. I have always been trying to intervene for transformation, and will continue.

Prof Nomthandazo Ntlama: Your response to MsDidiza outlined a commitment to ensure that even less experienced people should be helped and should be appointed to the bench. Some are concerned that those with less experience would weaken the capacity of the bench. Those arguments come not only from ordinary people, but also from senior members of the bench and SCs. How do you balance your position with these arguments? Second question: you are committed to serve all South Africans. For customary laws, what remedies from the constitutional courts that seek to address disputes that arise from customary law imparting common law values. How would you ensure that customary law is developed in its own right as a legal system that is also subject to the Constitution?

AdvStrydom: Customary law is acknowledged in the Constitution and has been developed over many years. If you do a matter, you must first understand the customary law and then decide if it fits within legal principles and the Constitution. Customary law has an important role, but you must properly understand and apply it. As for the

other question, it is a matter of time before these women gain experience. Those candidates should be given time to learn to swim in the deep end. Women should act as often as possible to gain confidence.

Deputy President Mandisa Maya of the Supreme Court of Appeal: Your résumé is quite impressive, but it took you thirty years to become a SC. In your application, you say that you have appeared before the Supreme Court of Appeal (SCA) and the Constitutional Court with others. Why in five years have you not appeared on your own, even perhaps as a junior?

AdvStrydom: I started in criminal work with no contacts in Johannesburg. Then, for twelve years I did criminal work; if I had carried on with criminal work I would have become a Silk much sooner. But, I made a deliberate choice to do other branches of law. It took me a long time to work up my civil practice, so it took me a long time to get to SC. I eventually had knowledge of both criminal and civil and thus became an SC. I have appeared in the SCA and have reported judgments in about fifteen appearances in the SCA on my own. The only court in which I have not appeared alone is the Constitutional Court. I have been there with a couple matters as a junior for one and a second Silk for the other.

Chairperson: Thank you, AdvStrydom. This is the end of the interview. This is your opportunity to give closing remarks.

AdvStrydom: I am committed, hard working, and will do a proper job. I will be efficient and cost effective and not waste court powers. I have seen on the Eastern Circuit that if we lose a day, the fiscus loses an enormous amount of money. It is so important to reduce expenses. I will dispense justice effectively and efficiently.

Chairperson: This is AdvStrydom's second attempt at nomination.

AdvStrydom: I am more ready for the job this time.

Chairperson: You are free to leave. Welcome, Mr Malema. You will not be able to vote on the Gauteng positions.