

Judicial Service Commission interviews

8 October 2015, morning session

Chairperson: Chief Justice Mogoeng Mogoeng

KwaZulu-Natal Division of the High Court Deputy Judge President vacancy

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Judge GN Kruger Interview

Chief Justice MogoengMogoeng: For how long have you been a judge now?

Judge Kruger: For 12 and half years.

Mogoeng: Without being unduly polite boast about your readiness to assume the position, assume the responsibilities attached to the position in case you are appointed. Just tell how ready you are, and what has enabled you to assume that you are as ready as you assume you are.

Kruger: From the time I commenced practice, on my own account, I have always managed at being administrative partner of my business and more recently, particular for the entire year thus far, I have been the senior judge on duty in both Durban and Pietermaritzburg. An administrative role was held by myself; preparing court rolls, rosters, delegation work to judges etc. I think I have been doing this job for nine months this year.

Mogoeng: Any challenges in the manner in which the division operates which you would want to share with us?

Kruger: Yes Chief Justice. There has been a problem with the allocation of court dates and clearing the backlog in both civil and criminal matters. We have identified a few of the problems and tried to address them. One of them is the case flow management system, which I am happy to say is one of the most wonderful things being introduced because the waiting time for trials is being reduced in KZN from 24 months to three months. When it comes to matters of opposed motions, we have found that there is a backlog there; I have made a suggestion and I am glad that it is being implemented. The other thing that has helped to clear the backlog is that in Pietermaritzburg, in the past, that on Tuesdays and Wednesdays there would be no post-motions sit downs and this was simply because on Tuesdays and Thursdays criminal appeals would be heard and the judge presiding in the motion court would have to hurry up and complete the motion court and move onto the criminal appeal court. We now have sufficient judges, please don't get me wrong because I am sure the judge president will say we need more, but we have sufficient judges on duty. We have changed the system that the judge who presides on Tuesdays and Thursdays in motion courts will also have to hear those motions. Just implementing that alone means it greatly reduces the role. As far as criminal matters are concerned, there is always a problem with that because of the readiness of the accused person's state representative. We are trying to implement the case flow management system in criminal matters as well where we can certify that the matter is ready to proceed and finalised within the timeframe set up.

Mogoeng: One of the reasons behind seeking to have a case flow management is to ensure that there is proper accountability in relation to how reserved judgements are done and how trials are dealt with. It is to determine with a measure of certainty that the available judicial capacity is used so that when we ask for more judges there is not room for anybody successfully countering that request on the basis that some of the judges are idling. Have you ensured that the judicial case management is properly implemented and do judges account for their work in a manner that can help you say that more judges are required or are we not there yet?

Kruger: I implemented a procedure in drawing up the roster when I was tasked to and in drawing up the roster I tested the schedule which set out the names of the judges on duty and the amount of work that each judge had to do so they could see that the work was distributed on a fair and equitable manner. To achieve that which you have asked for one has to have control of the roster and if you're not in control of the roster things go haywire. If you're in control of the roster you would be able to ascertain on any given day that a judge is idle or not. If the judge becomes idle because a case collapses you can always slot the judge in something else to assist. I have also, with the permission of the judge president, drawn up the roster and excluded the motion courts and post-motions.

Mogoeng: One of the things that we have agreed on as heads of court is each must have a register of places that are being heard with particular emphasis on reserved judgements and cases which are being finalised to enable the head of court to identify areas where there is a problem before the public is given a reason to be concerned. Now have you as a division, without naming people, come to the conclusion that there are usual suspects that are not finalising trials timelessly, delivery judgements timelessly and what is being done to address the problem?

Kruger: Yes, there are the usual suspects.

Mogoeng: But you are certainly not one of them?

Kruger: I am regarded by my colleagues and friends as being a workaholic; if I do not work I may commit suicide. If the role is properly managed and you find that the judge is not completing the case you can find the time in that session for the judge to complete it; it is very easy to do once you have control of the roster. If you have no clue or idea as to the cases that are being set out for this session it is impossible. You will always find if you speak with the judges and enquire from them if they are having any difficulty you can always adjust that roster to ensure that they have more time to complete it. The judge president judges the system but I am willing to put my head on the block to state that the system that I had employed by personally managing court rolls has ensured that there are few reserved judgements ever since I have been in charge.

Mogoeng: My experience is that judges are very responsible people but they are still human beings and therefore make mistakes like all of us. When the judges are on circuit, what is it that can be done to ensure that there is work done every day without the head of court, or the deputy, making it look like the judges are not trusted or they are being policed?

Kruger: That is very difficult to answer Chief Justice because as judges I believe that we have a responsibility and have taken an oath, therefore it is incumbent upon us to honour that oath to do the work that is assigned to us. Either than that you will have to have the judge president of the division policing what the judges are doing - that in my mind is uncalled for.

Mogoeng: Well, I won't be specific but I was told of an incident where a case was just not getting finalised. When the judge president became suspicious about the length of the trial he visited the place where the trial was supposed to take place and found that the judge had fallen asleep. How do you accommodate human error? How do you accommodate complacency? How do you accommodate human weakness when it creeps in because we are not perfect; purely on the basis on the important of accountability?

Kruger: Chief Justice If I was as tasked with it I would call the particular judge and...

Mogoeng: Sorry to interrupt, but I mean; how do you make sure that you keep regular contact with the judges to avoid that from happening?

Kruger: I must say that I do not know. We are all judges and it is difficult for the judge president to police every circuit as we have five circuits. I would see it as an intrusion on my part if I was out on circuit and doing my work diligently was asked every day if I was in court or not.

Mogoeng: What is the best way to avoiding that problem? When I was as a trial judge it was all about the way that the division operated; as soon as you're free you call your judge president and ask if there is work for me. What should be done to avoid the temptation to do something else?

Kruger: I am tempted to say do not send them out to circuit and keep them in the division of Pietermaritzburg or Durban but we are all judges and have to sit in courts. If you find that a judge is behaving in a particular manner it is better to not send them out on circuits again.

Mogoeng: reserved judgements? Are you aware that I regularly ask for a list of reserved judgements if they have been reserved for more than three months so I can familiarise myself with the magnitude of the problem. How should that situation be resolved; especially for those that keep judgements out for six months or even a year?

Kruger: Once again Chief Justice I can speak from my experience. At the end of each session I ask every single judge on duty to inform me of outstanding judgements and then I ask the question them why are there outstanding judgements? I may at times come across as a hard master but the work needs to be done on time. If they cannot give me an adequate answer they are reported to the judge president. I am sure we don't have any outstanding judgements now more the past three months.

Judge Achmat Jappie, Judge President of KZN: You've been a judge for 12 and half years, and as you correctly pointed out that for the last nine months in the division; you have a very practical approach. Is that correct?

Kruger: Yes.

Jappie: Now, the difficulty that I see in our division, like as you have said that both in Durban and Pietermaritzburg we have nine judges, and over the past couple years and particularly the past two years there has been an increase in the work of the courts.

Kruger: Yes, there has been a great increase in the volume and we need more judges to deal with it and unfortunately we do not have the courtrooms to accommodate the judges. We are caught between a rock and a hard place.

Jappie: Because we only have nine judges, and in one division it will be the judge president and the deputy judge president in the other. There is a demand that the administrative judge will also have to the court work. What is your view on that?

Kruger: It is important that we should do it. I have always allocated myself to leading from the front; when it comes to trials I generally take the first one and allocate the rest to the judges.

Jappie: I have never heard any complaints from the judges about the way you allocate your work. They generally view that your allocations to be fair and you do your fair share of work. What is your relationship with the rest of the judges in the division?

Kruger: I think I get on very well with my colleagues. I believe that unity is important in our division and in my short time of nine months I have tried my utmost to achieve that. If I may give you an example judge president; on Thursdays we have judges lunch, for those who are unfamiliar with what transpires is all the judges get together and have lunch. We bring our own lunch; it is not provided for. I start the session by enquiring whose birthday it is and ask them to provide lunch for everyone. As I said, it may seem insignificant but it has had an effect in unifying the judiciary in KZN.

Jappie: In my view, we don't have enough meeting as we should. How important would you say is the role that a judge plays?

Kruger: It is extremely important – we get to meet with each other and exchange views. We get to learn of the difficulties that each judge encounters, their opinions and how they resolve their issues.

Jappie: How would you see your role as deputy judge president in the division as circumstances presently are?

Kruger: My role would mostly be assisting you. I know I am mindful of the fact that there are many meetings to attend and duties to attend – the administration of the court rolls and rosters will generally be within my domain. My role as the deputy judge president is ensuring that the court rolls are drawn up and the judges are allocated work in a fair and equitable manner, and that the goals and standards set out in the norms are achieved.

Jappie: And perhaps this might be a bit of a curve ball. Your relationship with the practitioners; how would you describe that?

Kruger: I have a good relationship with the practitioners, as I like to believe. I note that some of them may say that I am harsh at times but I believe that I am firm and not harsh, and if one has to be in a position such as deputy judge president or judge president one has to be firm at times. I respect all practitioners who appear before me

Jappie: In fact your relationship with the profession goes back many years. You were the president of the KZN Law Society for a number of years, is that correct?

Kruger: Yes that is correct. I represented the Black Lawyers Association (BLA) and I was elected

Jappie: I believe you were the president of BLA in KZN.

Kruger: No, I was only a member.

Mr Cyril Xaba, MEC for KZN: You have just said that you relate to one with your colleagues, is that correct?

Kruger: Yes.

Xaba: Well, you are wrong judge. Have you ever been accused of being discourteous to counsel? In fact I want to understand why do you think it's important to be polite to counsel?

Kruger: You can't be seen to be rude to anyone, it is not ethical and it's not the expected demeanour of a judge.

Xaba: Have you ever been accused of being discourteous?

Kruger: Yes there is a complain that has been logged to say I am discourteous.

Xaba: Would you consider yourself as being polite?

Kruger: I would like to believe that I am polite to everyone who comes before me.

Commissioner Michael Masutha, Minister of Justice and Correctional Services: Let me start by saying that the impression of role so far and on papers is that you're a task master and a diligent person, hence the task that are set before you are dealt with expeditiously, is that correct?

Kruger: Yes, I'd like to believe so.

Masutha: I must say I have an interest in this because apart from the extensive engagement on this matter by the Chief Justice, my interest as Minister of Corrections relates to the impact of delays on demand retention where the accused persons impact on overcrowding as matters delay. What would you suggest could be done to minimise this prolonged waiting trial detentions?

Kruger: I think the prosecution authority needs to identify matters and prepare them for trial earlier. What we have found is that matters are sent to the high court but they are far from being ready to process; we find that investigations are not complete and there are outstanding statements. I believe this adds to the overcrowding.

Masutha: There have been instances where the accused person they aid to the prolonging of finalisation of matters, such as firing their representatives. What would you do in such circumstances?

Kruger: I suggested the pre-trial consultations to ensure that the representatives have the confidence of their client and are ready to proceed so that we can avoid the adjournment of matters. If I may Minister relate this to a very humorous story; the accused person appeared before me who fired his legal representative and then pleaded with me that he remained in the waiting trial so that he would not start his case in case he was convicted before Christmas. On the enquiry he told that he would be treated with Christmas pudding.

Masutha: There is a perception that particular judges have particular dispositions which tends to influence their judgements and this becomes a common course with the result that their representatives manipulate the system whichever way they can with the effect that their case comes before a certain judge that will have empathy towards them. As a head of court what do you believe that such perceptions have merit and is there anything that you can do to amend such tendencies?

Judge Kruger: There is that tendency to 'follow shop' and one of the ways of avoiding that is the manner in which I describe of drawing up a court roll. I believe that we are all judges and are to act impartially without fear or favour and therefore any judge should be capable of presiding in any matter before them.

Commissioner Narend Singh, Member of the National Assembly: In response to your reserved judgements in 16.5; I see that there are no reserved judgements and we've been hearing in the last hour about the number of reserved judgement and the time taken to make judgements. What is the secret of your success of not having judgements?

Kruger: I make sacrifices; I am up at 3am every morning. If it calls for it I work the entire weekend. I cannot sleep if I have this hanging over my head and I believe and that is why I have never had an outstanding judgement for more than three months.

Singh: The Minister in his question also reflected to you being a task master and one can see that, there is nothing wrong with that. One written complaint that we have received as the JSC – what do you make of that complaint?

Kruger: I think it's mischievous.

Judge President Kgomo: The complaints and a member of judicial conduct committee are held in secret, except when the Chief Justice allows it to open and there are other conditions. I'm just referring to this so that you could be mindful of that.

Kruger: It was not a complaint which was logged with the JSC, so there's no objection from my appointment.

Kgomo, Judge President: Sorry, it did not come out correctly. Thank you.

Singh: What was the objection?

Kruger: Yes the objection has been raised by an attorney whom I made a costs order against – the attorney was personally liable to pay the state. She was offended by that and that is why she has objected. This occurred in March of this year, and I will say that she has not taken any further steps regarding this matter.

Singh: Are you involved in any mentoring programmes; mentoring young lawyers, acting judges etc, and what form has it taken?

Kruger: At the moment, no. I do assist the acting judges who are under my wing as their senior, and I am glad you raised this because in the past we were mentoring aspirant judges. I was one of the judges appointed to mentor them – there were four women and only one of them expressed the desire to be part of the division. It was a system that worked well but for some strange reason they stopped. I think it is a good system and it should be implemented again.

Mogoeng: What should be implemented again?

Kruger: The mentoring system Chief Justice; whereby the aspirant judges are assigned to a judge for two weeks and shown the practicalities of being a judge.

Commissioner Mabunda: The judge president pointed out that you have been president of the KZN Law Society, correct?

Kruger: That is correct.

Mabunda: You are appointed as such through the BLA. Correct?

Kruger: That is correct.

Mabunda: How do you relate with the members of the BLA, with both Pietermaritzburg and Durban?

Kruger: My relation with the BLA is when only I am invited to functions; that is the only time I relate with them.

Mabunda: So it starts and ends there?

Kruger: Yes.

Mogoeng: I tend to ask more questions; it's a leadership position. You'll be aware that the Efficiency Enhancement Committee (EEC) was set up to address the challenges relating to case management alluded to during the course of the case; the police, road accident fund, advocates and any key court process participant. To what extent has this structure been taken advantage of to address backlogs in the system?

Kruger: I have not attended any EEC meetings but I have attended the local case flow management meeting with judge president has called. There were representatives from the police and the road accident fund.

Mogoeng: That is the one that I am referring to; you may not be familiar with them.

Kruger: We had an average meeting, and I say average because it was disappointing in a sense that most of the issues that were to be discussed with the attorney's profession could not be discussed because they failed to pitch up. I believe we are not getting sufficient support from the attorney's profession because they do not understand the dynamics of the case flow management. We need to meet with them, one on one, to convince members to buy in.

Mogoeng: What can be done to ensure that in a meeting like that there are gender issues to be raised as such that they are relevant to every ground player, in other words they give every role player a reason to attend. What could be done to ensure that all role players are represented?

Kruger: I have only attended only one meeting and the agenda there caters for all the role players that had to be present. The greater part of the agenda was dedicated to the attorney's profession and they did not send a representative, this was after they assured us that they would be sending someone. The feedback that we got from other role players is that they were willing to work engage with us to ensure that case flow management system would work properly. The only set back I mentioned early is that the waiting time for trial is three months and we were criticised for that by the state attorney and they were saying that it was too short of a time to prepare for a trial.

Mogoeng: The main concern is the face of the judiciary, or the court system, because that's where most of the delays come from and most of the challenges as well. In view of the supervisory role which the courts have placed on the presidents, what is it that can be done to help the magistrate's court function better than they do now?

Kruger: I am not fully aware of the handicaps Chief Justice but I would suggest that a meeting be held to identify the problems they have to work in finding solutions. I am totally unaware of the problems which they encounter.

Mogoeng: Are you familiar with the profound impact that the automation of the court system has had in those jurisdiction where it has been introduced in doing away with delays in the court system and case backlogs and injecting greater efficiency?

Kruger: I did read a report from my trip to Singapore, and we are far away from that Chief Justice. If we were to implement it here it would work wonders; files are often getting misplaced and this would solve that problem.

Mogoeng: Given the financial constraints, what is it that could be done from an incremental basis to introduce a system that is going to benefit the court system?

Kruger: We need to start with specific matters and direct is straight to that to see if it works. We should start with the highest court in the land.

Mogoeng: It is already there.

Kruger: Oh, you are fortunate. If it puts work to satisfactory then it should be given to the smaller courts.