

## Judicial Service Commission interviews

07 October 2015, afternoon session

Free State Division of High Court

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### Interview of Mr NW Phalatsi:

Moseneke: Good afternoon, Mr NW Phalatsi.

MPhalatsi: Good afternoon, Sir.

Moseneke: Why do you want to become a Judge?

Phalatsi: There are a number of reasons why I want to become a Judge but I think one of them is to ensure that whatever rights that are enshrined in the Constitution are translated into reality in court.

Moseneke: I'm asking you why you want to be become a Judge and not the role of a Judge.

Phalatsi: I want to dispense justice in the courts in a best possible way and I know how to do it.

Moseneke: Where did you grow up?

Phalatsi: I grew up in Free State, in Bloemfontein.

Moseneke: Do you still live in Rocklands?

Phalatsi: Yes, I still live in Rocklands, Bloemfontein in Mangaung.

Moseneke: Where did you study your tertiary?

Phalatsi: I studied in the University of Fort Hare and then went to the University of South Africa (UNISA).

Moseneke: This explains why your degree was obtained from UNISA.

Phalatsi: That is indeed incorrect.

Moseneke: Did you continue to be an attorney up until this year?

Phalatsi: Yes, I continued up until this year.

Moseneke: How long have you been an attorney?

Phalatsi: It's been more than 20 years.

Moseneke: I noticed you were a part of the UDF and ANC. Did you continue to be part of those structures?

Phalatsi: I was an organiser of the ANC and then I was part of the UDF on a part-time basis. It was not even a job but a volunteering thing.

Moseneke: This was between 1994-98, correct?

Phalatsi: That is correct.

Moseneke: Why did you join NADEL?

Phalatsi: I joined NADEL out of university and there was a need to revive NADEL in the Free State and therefore the passion to join NADEL was what they stood for, which was transformation.

Moseneke: I'm only questioning the intersection between the legal practice and social activism.

Phalatsi: NADEL had this progressive transformation agenda and I felt that it invigorated my activism, for the promotion of progressive lawyers in the country.

Moseneke: Do you like writing? As the work of the Judge is to think, listen and write.

Phalatsi: I do love writing, but it is important to remember that in my activities I rarely have time for writing as I had to do other administration.

Moseneke: I am probing your readiness to do the job, whether you're in fact ready to be a Judge. Are you now ready to do the work of a Judge?

Phalatsi: I think I've always been ready to be a Judge, considering the vast experience I have. I had to deal with the drafting of contracts and doing research and the drafting of bills. I think the drafting of the bill goes hand-in-hand with the drafting of the judgement, although the drafting of judgement is much easier.

Moseneke: Why do you then think you're ready to be a Judge?

Phalatsi: I think I am ready for the job as this is a job that I've always needed. I've done so many cases and I've been a correspondence in the ACA and read the judgement and familiarise myself with all the complexities in the legal profession. I've been much ready for this job much earlier than now.

Judge President Molemela: Do you enjoy the current stint in your profession, including the previous positions where you've acted?

Phalatsi: Yes, I did enjoy.

Molemela: I noticed that you've had a very experienced journey as you've appeared in the High Court, and how was your experience? Did you benefit from this experience?

Phalatsi: This assisted me to look at the cases from different angles as it was not only to look at the matter from the perspective of an attorney but from both sides. This experience has enhanced my perspective in certain cases that I was dealing with.

Molemela: Would you be able to deliver a judgement within the three months period?

Phalatsi: Yes, I would be able to deliver a judgement within the three months period. I don't remember sitting with a judgment for more than three weeks. I've always delivered a judgement within a week.

Molemela: Is this the second time that you're coming for the JSC interview?

Phalatsi: Yes, this is second time that I'm coming for the JSC interview.

Molemela: Do you think it's important for constitutional imperative, for gender and racial transformation to be advanced?

Phalatsi: I always believed that I will accept anything that is done in the name of gender and racial transformation-and this has always been my view and that of my organisation. But I can assure that if someone is telling me that "we will not appoint you as a Judge, and we will appoint a woman", I will accept that as this is one of the constitutional imperative of the country.

Molemela: Do you think collegiality is important? Where judges would mingle together and share their experiences.

Phalatsi: Yes, I think collegiality is one of the most important aspects between the judges as there is a lot that could be learn between the colleagues in terms of sharing experiences.

Mr Nyambi MP: What is you understanding of judicial independence?

Phalatsi: My understanding of judicial independence is that the Judge should deliver judgement without fear or prejudice and should not be influenced by any other thing, whether political or religious. The priority of the Judge is to deliver a fair and just judgement.

Mr N Singh MP: When I look at your political background, I realised that you were very active in the University of Fort Hare.

Phalatsi: I was very much involved in student protests and this was a movement that was focused on the abolition of Students Representative Council (SRC). It is funny now that the SRCs are seen as an important political tool, as the intention at that time was to see them abolished.

Singh: How is your practice? One would assume that you have a thriving practice, financially. Is that so? Do you have a lot of clients at the moment?

Phalatsi: I had a lot of clientele, but most of my clientele are from the streets, and not so much of corporate clients. It is not a very lucrative practice but this is practice that is people-orientated.

Singh: So would you say it's financially lucrative?

Phalatsi: I wouldn't say it's financially lucrative, as I'm acting on the clients that cannot even afford the services of an advocate. In essence, I would say lucrative is an overstatement but it is a

practice that one can make a living. I have to be an attorney and an advocate so as to generate money.

Singh: Why did you not pursue your studies further than B. Proc?

Phalatsi: Ja, this had to do with my social background, and there was no opportunity for me to study beyond B Proc.

Moseneke: You have not provided a precise response on why you did not study beyond B Proc.

**Phalatsi:** I have not studied beyond B. Proc because I had no means to study beyond B. Proc.

Ms T Didiza MP: I noted that between 1995-97 you were involved in rural communities and particularly focused on land issues and farm workers. I want to know from your experience whether in your view you think the current legal framework that is related to tenure of farmworkers is adequate, and if not what ought to be done to change the status quo?

Phalatsi: I think the current legal framework is adequate; the only thing that is not adequate is the application of the law. I'm currently doing a lot of cases on farm evictions and the results that are coming there are really not inspiring. I feel that the Judiciary does not want to go far enough in the application of the Act and in most cases the Magistrates are farm owners themselves.

Nyambi: Can you share with us your understanding of the doctrine of the separation of powers?

Phalatsi: My understanding of the separation of powers is that the State, Legislature and the Judiciary are able to co-exist with one another and the Legislature is able to pass the laws and the Judiciary is assigned to interpret those laws and make Judiciary pronouncement on the legal issues that may arise. In a constitutional democracy, the main priority is the supreme law and every action of the Executive and Legislative should be compliant to the Constitution.

Nyambi: Are Judges allowed or not allowed to make the laws?

Phalatsi: The interpretation of the law is the creation of the laws and the Constitution allows us to have a purposeful interpretation of the laws and the interpretation of the law is the extension of constitutional imperative.

Mr J Malema MP: What role did the Premier of Free State play in the UDF?

Phalatsi: I was living in Gauteng during that time and therefore I was not aware of what the Premier was doing at that time.

Malema: So you've never come across an information that the Premier of Free State played an important role in the formation of the UDF?

Phalatsi: I have never come across such information.

Malema: Now, in your active membership of UDF, you have not come across the Premier in the political activity, in some form of initiation?

**Phalatsi:** My active membership of the ANC dissipated with some time and I think with my involvement in the struggles of the legal community. I'm not actively involved in the ANC.

Malema: Are you a member of the ANC?

Phalatsi: Ahhhh....I would say I'm a member of the ANC but not in good standing.

Malema: I'm not going live with that answer, my question was whether or not, are you a member of the ANC?

Phalatsi: I'm a member of the ANC but not a card-carrying member.

Malema: But in your CV you said you're a member of the ANC from 1993-to date. Which one should I take? The one on the CV or the one just said?

Phalatsi: Membership in this sense is just being a supporter of the ANC. But not actively involved in the duties of the ANC.

Malema: How would I appear before you knowing that you're a member of the ANC? I come from EFF and how would I feel comfortable coming before you?

Phalatsi: I've already said I would do my job without fear or prejudice and therefore I will do my job not based on my political affiliation.

Malema: Do you think Judges should be members of the political organisations?

Phalatsi: I don't think it's lawful for the Judges to be politically affiliated.

Malema: Are you prepared to let go of the ANC?

Phalatsi: Yes, I've let go of the ANC long time ago.

Moseneke: It must be stated categorically that it is unlawful for the Judge to be politically affiliated and I would have expected you to be more emphatic.

Mabunda: How many black attorneys are there in the Free State?

Phalatsi: I think there is a far number now Mr Mabunda, but I'm not sure of the exact number at the moment.

Moseneke: This is what the Bar Councillor writes about you, they say "Mr Phalatsi is known as a very friendly person and he has the necessary legal experience to be appointed as the Judge of the High Court. Mr Phalatsi has a great knowledge of both criminal and civil suits of law and we do not have any objection against his appointment as the Judge of the Free State Branch". Is this good news or bad news?

Phalatsi: I think it depicts who are I am and which is good news.

Moseneke: Do you have anything you want to add?

Phalatsi: I have nothing much to say other than to say I've simplified the complexities.

Moseneke: Thank you for making you time out and being available for the interview. You've had long and illustrious career and you will hear of the outcome in the course of the day. Thank you.

Phalatsi: Thank you.