

Judicial Service Commission interviews

07 October 2015, afternoon session

Labour Courts

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 Mr E Tlhotlhalemaje

Deputy Chief Justice Moseneke: Firstly, we will like to apologise for keeping you for this long as this was because of circumstances beyond our control. You're one of the two candidates that have applied for the placement in this post. I believe that you have been interviewed by this body before.

Mr E Tlhotlhalemaje: That is correct.

Moseneke: Why do you want to become a Judge?

Tlhotlhalemaje: I would say my route to the judiciary came by chance as I was in the industrial court, up until I became a Commissioner at the Commission for Conciliation, Mediation and Arbitration (CCMA) in 2012 and since then I never looked back. I have realised that I can do a lot in the labour courts and anyone who is practicing law is ultimately aiming to become a judiciary officer.

Moseneke: Help me understand your timeframe of the qualifications in relation to your role in National Union of Mineworkers (NUM).

Tlhotlhalemaje: I finished my LLB in 1991 and immediately after that I joined NUMW and then stayed there for four years, which was until 1996. I left CCMA as a Commissioner in 2001 and became a part-time Commissioner while still continuing to do work for the CCMA.

Moseneke: But this was the same year that you got your LLM?

Tlhotlhalemaje: Yes, that is correct. I was studying part-time in the University of Johannesburg (UJ).

Moseneke: It strikes me that your whole life has been associated with work-life justice.

Tlhotlhalemaje: I think this was influenced by my student days, for my junior degree, I did a course called *Industrial Sociology* and this assisted me to get an understanding of the plight of mineworkers in the country and this influenced me greatly. There is nothing that gives me joy than seeing justice being done within the work place and this where I want to be for the rest of my life.

Moseneke: So you promise us you wouldn't come back here trying to move to the High Court, right?

Tlhotlhalemaje: I can guarantee you that. I'm currently 55 years old and I don't see my way beyond the labour court, really.

Moseneke: Congratulations, this is a very heart-warming trajectory in your life and career from a union official to where you are at the moment. I noticed that you also write academically on issues related to labour laws.

Tlhotlhalemaje: I have presented papers on workshops, particular meetings and bargaining councils. I can't profess to have written an academic paper.

Deputy Judge President Tlaetsi: I'm glad that you've made a commitment that you will not be poached by other courts. As you know, we are very practical in labour courts, and I would like to know if there is anything that you will like to place it on record, something that has changed.

Tlhotlhalemaje: I've been acting in the labour court for almost 2 years and that is the one experience to be cherished. I would love to continue to work in the labour court as it is enjoyable and the only concern I have is that the labour court is the only court in the country without seats in every province. This to me is part of bringing justice closer to people so that people from all the provinces could be able to access the labour courts. If, for example, a farmworker in Springbok gets dismissed, then that farmworker will be attended to by CCMA in Kimberly and poor farmworkers cannot afford such travelling expenses.

Moseneke: At least the Minister is here and he is listening to the points that you had just made which is very important.

Tlaetsi: You do appreciate that despite the volumes of work, there is a need to ensure that judgements are delivered timeously.

Tlhotlhalemaje: Look, at the end of the day, the function of the judiciary officer is to expedite judgements and there is a consideration that sometimes it is unavoidable that the Judge would have to delay judgements of some cases.

Mkhaliphi: We are in support of the candidate and we believe that he is that candidate that the labour court needs.

Moseneke: Thanks for your input.

Hellens: How long ago was your previous interview, where you were unsuccessful?

Tlhotlhalemaje: It was about a year ago.

Hellens: Were you disappointed that you were not appointed?

Tlhotlhalemaje: Look, obviously when you come to an interview there is an expectation and also a realisation that you're not the only candidate.

Singh: I see that out of the 9 members of labour court, 6 are white and 3 are black. What has been your experience working with the white colleagues?

Tlhotlhalemaje: I must state it that I have never met officers that are so pleasant, welcoming or helping. But the team that I'm working with is just a bunch of nice people, they have been collegial and words cannot describe the appreciation that I have for the support that has been given to be.

Singh: Do you have any particular views on the rights of sex workers?

Tlhotlhalemajje: Look, that is the difficult one but currently we have the matter that deals with sex workers and this has been the only reliance in dealing with the matter. There are not many of the cases of sex workers that you come across. If you want to ask me personally then I would say anybody who does a decent living is entitled to constitutional rights. The sex workers are doing what they are doing for whatever reason and we cannot condemn or pass moral judgement on them. We have to appreciate and understand where they are coming from. There is a need for sensitivity on the matter and there is a need for them to be protected in one way or another.

Fourie: As indicated we interviewed you quite extensively last year and tomorrow it will be exactly a year ago since we interviewed you. What was the current status quo on the two reserved judgements from April and June 2015? When do you intend to deliver them? I'm well aware of the pressures that that you've referred to but also well aware that reserved judgement are something that require urgent attention.

Tlhotlhalemajje: I'm left with two reserved judgements but I can guarantee you that all the cases should be done by the end of the month. In the last two weeks, I have finished packet matters and I have a time to catch up on all my work.

Moseneke: The issue of delayed judgement is the major concern but I get it from your responses that it is something that you're well under control. It is clear from the judgements that you've made that the burden is considerable. Have you found the labour court to be challenging in decision making, given your background in labour movement?

Tlhotlhalemajje: There are always challenges that one encounter in place and it depends on one deals with those challenges, but obviously the important thing from the labour court is that one has the necessary support from the colleagues and this is quite helpful.

Moseneke: You may have missed my question, my question wanted to know, given your background as an activist in the labour movement, do you find that in decision making this intrudes on the decision to be taken?

Tlhotlhalemajje: A Judge is confined by the Constitution and the rule of law and therefore the fact that I was an activist has never intruded on the decision to be taken in Labour Court. In fact, I had cases where NUM would be appearing before me and it does not matter who appears before me the only thing that counts are the facts and law.

Kgomo: Have you ever ruled against the NUM?

Tlhotlhalemajje: So many times.

Moseneke: I think we have come to the end of this interview and you may want to make some closing remarks. As you're well aware that the outcome of this deliberation should be expected by this evening.

Tlhotlhalemajje: Firstly, I will like to appreciate the Commission for giving me this opportunity. It is always nice to talk about transformation, inclusivity and one thing that I've observed in the Labour Court is that it never had a disabled person and this is something that the Commission needs to be look at in the future appointment. The structures of the Labour Court are also not disabled-friendly and this is an issue to be taken into consideration.

Moseneke: The Minister is certainly listening to those important points as the Department is responsible for providing structures for disabled people. Thank you very much for you time, all the best.

Tlhotlhalemaje: Thank you.