



JUDGES  
MATTER

**Judicial Service Commission interviews**

**6 April 2016, afternoon session**

**KwaZulu-Natal Division of the High Court**

**Interview of Ms S Maphumulo**

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Chief Justice Mogoeng: Good afternoon Ms Maphumulo.

Ms Maphumulo: Good afternoon Chief Justice.

Mogoeng: I notice that your qualifications are BProc?

Maphumulo: Yes.

Mogoeng: And did Diploma Legum come before or after BProc?

Maphumulo: It was after BProc.

Mogoeng: Yes because it is either that you have a Diploma Juris or a degree before you can do Legum. It is not a first diploma is it?

Maphumulo: Yes. In fact I did a BProc and then I did an LLB but I decided to convert the LLB to a diploma legum.

Mogoeng: Did you do it at Garras?

Maphumulo: No I didn't do it at Garras, I did it with UNISA.

Mogoeng: Oh I see. You also have an LLM degree?

Maphumulo: Yes.

Mogoeng: Did you write a dissertation or was it coursework?

Maphumulo: No I did coursework. Some of the papers were from the LLB and some were from the LLM, so it was a combination of the two.

Mogoeng: How many papers in all for the LLM programme?

Maphumulo: I think the LLM one was two and the LLB one was four and then they made an LLM.

Mogoeng: Not short dissertation?

Maphumulo: No the dissertation I only did for my LLB.

Mogoeng: Oh I see. For how many years were you a prosecutor, and at which court? District, Regional or High Court?

Maphumulo: I didn't go to High Court. I was at a District Court level, and also as a Regional Court prosecutor, it for seven months.

Mogoeng: Seven months at both district court and regional?

Maphumulo: No it was at the regional court from 1992 up to 1999. For about seven years I was a prosecutor in a court with full jurisdiction, and before that I was in the Maintenance Court as a maintenance officer for three years and also about two years.

Mogoeng: Yes. And for how many years were you a District Court magistrate?

Maphumulo: From 1999 to 1994. Sorry from -

Mogoeng: I just wanted you to give us a year.

Maphumulo: It's about four and a half years.

Mogoeng: Alright and regional court from 2005, that gives us how many years?

Maphumulo: It is about -

Mogoeng: Ten or eleven?

Maphumulo: Yes about eleven, although I was already working from 2004.

Mogoeng: You were acting?

Maphumulo: Yes.

Mogoeng: Alright. And the High Court – I don't know if my calculations are correct, did you act for a total period of two months, or am I mistaken?

Maphumulo: Yes, two months.

Mogoeng: And was the transition from working at a Magistrates' Court environment to acting at a High Court level smooth, or were there some challenges?

Maphumulo: No, I would say it was smooth because the way it was arranged, because you are tasked with doing that particular case until you finalise it, which is quite strange and unlike in the other court where you have to move between many cases. I think that is what facilitated me.

Mogoeng: Were you able to do some civil work, motion court, or were you confined to your primary areas of responsibility at regional court which is criminal work?

Maphumulo: Yes I was primarily tasked with criminal court work, but fortunately at some stage I was given some pre-trial matters which I had to do which related to the RAF in terms of Rule 37, so I had a feel of how to do it.

Mogoeng: Yes. You have never been interviewed by this forum before, have you?

Maphumulo: This is my first time.

Mogoeng: Alright so let me know when you are comfortable and settled. Are you settled, or should I help to make you comfortable?

Maphumulo: I think you can go on.

Mogoeng: We have quite a number of women at District Court, Regional Court level, serving as magistrates. What do you think is the difficulty in having just as high a number at the High Court level, specialist court level, SCA, Constitutional Court? What do you think is the problem?

Maphumulo: I think it is a question of them being given an opportunity for them to get exposure and to act in those courts. Just like myself, I have only gotten exposure to acting in criminal and not civil. And also in the past there was this problem that people would act in regional court for example, there would be people from the private sector, so people in the District Court would be overlooked. But now the situation has improved, also with the intervention of the justice system, Department of Justice. They say that people who must actually be given that opportunity are the ones at the District Court. They must go up and be given an opportunity and act in the Regional Court. And then the people from the private sector act at a District Court Level. I think it is –

Mogoeng: It was the District Court magistrates who were insisting that they be accommodated as well and I think that is rightly so.

Maphumulo: Yes and I also at some stage made some a submission, because I am a member of ARMSA.

Mogoeng: But what about attorneys and advocates? Do we have enough women at that level? Are they properly capacitated to be able to move up, or are challenges of the past still there? According to your knowledge, I know you don't operate in that space.

Maphumulo: Yes I think it is quite bad but the issue of them being capacitated ... I don't think that has been done, although I am not so sure what proper mechanism could enable them.

Mogoeng: Let's move to the High Court a bit. Did you find support from senior judges while you were acting there, or did you not need it, because you were tackling matters in your field of speciality?

Maphumulo: No, in fact I did get help from them a lot, because the other thing which I found profitable was to go to attend the tea club during tea time, and if you've got a problem, discuss it with them and they give you an idea how to deal with the issue. Or sometimes they will give you case law which can help you. So I found that very fruitful. In fact quite a number of them assisted me.

Mogoeng: So this tea does work after all?

Maphumulo: It does. In fact I remember this one social context training, which we undergo, dealing with management and they advocated that we go. It is important for us to go there. It is important to meet people, as that is where we get acquainted with them.

Mogoeng: Did you seize the opportunity to attend an Aspirant Judges programme or work or training?

Maphumulo: Yes I did, in 2012.

Mogoeng: Was it before the tests were introduced so that it is not just a question of registering, but the extent to which you have been empowered is also tested?

Maphumulo: In fact I can't remember off hand about the basic one because there are two.

Mogoeng: The advanced as well?

Maphumulo: I did attend the advanced one and it did test. In fact it was like a simulated exercise how to deal with the civil court and the motion court, how you can manage it. And I remember one day we slept about three in the morning, to give us an idea of the pressure we can encounter. In fact in both courses we were told that those who performed well, their names would be given to the JPs so that they can be invited, so I don't know what happened with that.

Mogoeng: You are settled now. You see that we are friendly people.

Maphumulo: Yes I can see.

Judge-President Jappie: I see that you have only acted in the criminal court. Where was that?

Maphumulo: The first one in 2013 was in Pietermaritzburg.

Jappie: Yes.

Maphumulo: And the second one was when I was invited by you in October and November.

Jappie: And that was in Durban?

Maphumulo: Yes. In fact just to point out, there was an arrangement that I would act in civil but there were some problems which cropped up, eventually I did not act because the ex- JP, Justice Patel, wanted me to act in 2013 in June and August, but there was some sort of rotation for other people to act, he said that I cannot indefinitely act myself. So I had to give other people a chance. There was a bit of confusion between June and July, so eventually I did not act. And then also there was an opening in 2014 that I might act also, but I don't know what, it fizzled out.

Jappie: Yes, on the two occasions that you acted in the High Court, both doing criminal sessions, did you finish your roll in the allocated time, or was there any difficulties in doing so?

Maphumulo: I did, although I indicated that in two cases I had finished were postponed for judgment and then for sentence. And then the last one I finished in the session.

Jappie: There are no more part-heards as far as the criminal court is concerned?

Maphumulo: No, I don't have any.

Jappie: You have now been invited again to do civil duty in Durban?

Maphumulo: I think it has been amended that I go to Pietermaritzburg.

Jappie: Now while you were acting, what were your challenges in the High Court?

Maphumulo: I found that the staff were helpful, but I think the work ethic in Durban was a little bit below what I found in Pietermaritzburg. It was a little bit of a problem in Durban.

Jappie: With the court staff?

Maphumulo: Yes.

Jappie: And as far as the workload was concerned?

Maphumulo: The workload was manageable. Except the other challenge I found was one case which did not proceed because the case law was not properly done, because it was found at the time when I was supposed to start the case, the person had to be interviewed. I found that the person had a problem with mental capacity so the person had to be sent to Fort Napier. So that case fell away. Perhaps if it had been done timeously I would have been able to deal with that case.

Jappie: As far as your civil experience is concerned, were you given an opportunity by the Regional President to do any civil work in the Regional Court?

Maphumulo: Yes - since 2013 I have done motion court and going to trials and also doing pre-trials. I have seen some of the similarities of what is happening in District and also some differences. So I've done those.

Jappie: Any outstanding judgments in the Regional Court civil court?

Maphumulo: In civil court there are none but there are two part heards.

Jappie: Two part heards?

Maphumulo: Yes.

Jappie: Now you also sat in the commercial crime court, is that correct?

Maphumulo: Yes.

Jappie: And you in fact asked to be released from duty?

Maphumulo: Yes.

Jappie: Why was that?

Maphumulo: When I initially went there it was supposed to be on rotation basis, all of us had undergone commercial court courses and some people were very reluctant to go there. It is a problematic court. After six months I was supposed to have been released as per agreement because it was going to be on rotation, but the judge asked me, because people were complaining about continued changing of the positions, if I could stay for two years and I agreed. I enjoyed working there, the work ethic of the staff was impressive, so I decided to stay on for a period of five years. After five years I decided it was time for other people to come in and time for me to see other horizons.

Jappie: Not having done any civil work as such in the High Court, in the event of you being appointed to the High Court, do you think, not having had the opportunity to see how civil work is done, that might be an impediment, a challenge for you?

Maphumulo: It might be a challenge but I think it can be overcome. In 2010, we were also trained by judges of the High Court, KZPD, I was an understudy of Judge Lopes, although it was for a short period of time, we could see, it was a motion court, we had to go through the files of the court with a colleague of mine, and afterwards we had to submit to him so they could see whether our decision was correct. We found that ninety per cent were correct, and where we had made mistakes they helped us. They invited us to go and watch how they manage the roll, one of which involving a Rule 43A, he told us how we should deal with it. This included a summary judgment, a divorce. I had a little bit of a feel how to deal with it.

Premier Mchunu: Judges are normally regarded as people who give considered responses all the time. How is it in your case? Are you the type of person who gives considered or well-considered responses to questions or matters?

Maphumulo: I think so, I try most of the time to do so.

Mchunu: What makes you feel that way?

Maphumulo: Because you have to try and understand what a person wants, and then apply your mind to the issue at hand and then come up with an answer.

Mchunu: I know that, but how do you know you do it? Who has said to you that you are that type of a person?

Maphumulo: I wouldn't say somebody has said so, it is what I try to do myself. I try to listen to the other side of the story and try to answer how the problem should be dealt with. So I wouldn't say someone has said that to me. I endeavour to do that.

Mchunu: This latest response that you have given was before I finished the question. Was it considered?

Maphumulo: Maybe it was not considered but I endeavour to do so.

Mchunu: Amounting to a wish?

Maphumulo: I think it is a skill one can acquire.

Mchunu: Why do you want to be a judge?

Maphumulo: I think that I have got perhaps an aptitude, because of my qualification, and the skills which I have acquired over the years, and the experience, and it is a natural inclination for one to try and reach the top. To believe that one has the capacity to do so and to make a contribution. I also believe that that the judiciary can also be enhanced and the legitimacy thereof and also filling the constitutional imperatives to it to represent in terms of race and gender. For people to continue to have confidence in the justice system. So I can contribute, together with the skills which I have, and also with the potential I have.

Mchunu: So how much inspiration do you have of becoming a judge inside yourself, apart from satisfying all the things you have said? Inside you?

Maphumulo: As I say, I do have it. It is a natural inclination for one to try and reach the top and to try and go up the ladder. I do have it.

Mchunu: The next question is what challenges are you observing in society that need to be dealt with by the judiciary? Things that you think the judiciary needs to assist or contribute in resolving this or that in society?

Maphumulo: I think it is the way we perform our duties and give reasoned judgments so that they know the reasons if you have taken a particular decision.

Mchunu: No I see that. You are part of the people who are delivering the justice system as a service to the people. I am saying, what problems, what challenges are you observing in society that you think the judiciary needs to address, or contribute in addressing?

Maphumulo: It is for society, for it to have confidence in the justice system and the way we perform our duties. That the cases are done promptly and expeditiously, in a transparent manner and then the people can have confidence in the justice system.

Mchunu: If have had the chance to listen to your colleagues in the legal circles, what do they say is your reputation?

Maphumulo: They say I have that legal knowledge, and that I'm some person of integrity, and that I try to give of my level best in a situation.

Mr Notyesi: I'll ask you on the civil procedure. Let's assume you are presiding in a motion court, where matters are dealt with on paper. What is the cardinal rule? The proper approach in adjudicating in an opposed application?

Mogoeng: That's too wide. Do you understand it? That's too wide, I think you need to be a little more pointed.

Notyesi: You know that in motion proceedings there will be affidavits. What I want to know, in accordance with the Plascon-Evans case, how the court should adjudicate on a conflicted version where affidavits are presented? How must a court that adjudicate on the matter?

Maphumulo: It depends. If the matter cannot... if the facts should be dealt on the affidavits, if they cannot, there is an option that the matter can be referred to oral evidence.

Notyesi: In a motion court, what is your checklist, for instance in a divorce matter?

Maphumulo: In an unopposed or opposed? Okay for if the parties' marriage certificate is there. If not, get an explanation if it is a copy. And you ascertain the matrimonial regime to determine whether the parties are in or out. If they are in, you must have the antenuptual contract, and look at whether the return of service is there. Then look at the particulars of claim, and what the prayer is.

Notyesi: Lastly, section 2 of the Constitution states that the Constitution is the supreme law, and any conduct inconsistent with the Constitution is invalid. What is your understanding of supremacy of the Constitution?

Maphumulo: That is just the overriding law which governs South Africa. You may come across a legislation which is then inconsistent even with the Constitution, and then it's open to judicial review if someone brings it to court, and you can strike it out and set aside because it is inconsistent. Similarly, any conduct of a state organ, if inconsistent, is open to attack. It's an overriding law which governs our country.

Advocate Semanya: Outside the criminal sphere of the law, how have you tried to acquaint yourself with the application of constitutional law?

Maphumulo: Application of?

Semenya: Constitutional law.

Maphumulo: Outside the sphere of, come again?

Semenya: Criminal law. Besides your contact with the Constitution in a criminal law environment, how else have you tried to familiarise yourself with its application in other aspects of the law?

Maphumulo: I will take it back, although it was the pre-constitutional era at that time, it has application to the constitutional era. There is a case that I attached where I was challenging the transfer where the administrative act, I felt it was unfair because the right of a hearing had not been given. So it actually pertained to administrative law, and then that case, I think it's Hlongwa v Minister of KwaZulu, you find that the principles, although there were precedents before which had been followed, in Section 34 there was just administrative action, and legislation with deals with Promotion of Administrative Justice. It was to make the law work outside the criminal setting.

Semenya: I'm trying to establish whether you do some reading in the area, or if you read other judgments?

Maphumulo: Yes, when the time permits I do the reading.

Mr Fourie: We know that you have acted for a limited period in the High Court. We know that you've only done criminal work, so as you sit here you have no civil experience whatsoever in the High Court. You've said that you do some civil work in the Magistrates' Court but I assume, correct me if I am wrong, that the bulk of the work you have been doing in the Magistrates' Court is criminal work?

Maphumulo: Yes.

Fourie: Now that concerns me obviously, from an experience point of view. Can you really with persuasion tell me today that you think you are ready to take a permanent appointment in the High Court?

Maphumulo: Yes. I am aware that my limited experience in civil has put me at a disadvantage, but from 2013 until now I have done civil court. I have made a comparison, and I was looking at the rules and the rules mirror each other although, there are slight differences which I have observed.

Fourie: You've read the comments from the KwaZulu-Natal Society of Advocates?

Maphumulo: Yes.

Fourie: Can you blame them if they say "Ms Maphumulo is barely known to those who frequent the High Court. We venture to suggest that this is simply because she has not acted sufficiently in the court. We have reservations in regard to her experience at this stage to take up a position in the Division. We are simply unable at this stage with the limited material at hand to state with any degree of confidence that we would be able to support Ms Maphumulo's nomination for a vacancy on the KZN Division of the High Court." Can you blame them for those comments?

Maphumulo: No I cannot blame them for those comments, but at the same time sometimes the opportunity to act does not lie with the individual, it is when you are given that opportunity. As I said there are some which I missed in 2013 and there are also some which I missed when I should have gone there in 2014. So I cannot blame them because they have not seen me. But some of them who have come to the Regional Court, I have seen some of the senior counsel. So I cannot blame them, but at the same time sometimes the opportunity to act is something that is given to you.

Fourie: But you are getting the opportunity again now, I understand?

Maphumulo: Yes.

Fourie: Last question, again from the KZN Society of Advocates. You say you've done civil work in the Magistrates' Court. They confirm that to say you also acted in the civil branch of the Regional Court for a brief period. But then they say "a member of our society reported that a judgment in a wrongful

arrest trial, where heads were delivered and oral arguments concluded on 31 July 2015, is still outstanding. Is that correct?

Maphumulo: No, that one has been given, but there was a delay –

Fourie: When was that given?

Maphumulo: I think it was given a week ago.

Fourie: A week ago?

Maphumulo: Yes.

Fourie: So is it correct that it has been outstanding since July of 2015?

Maphumulo: It was the end of July.

Professor Ntlama: How is race and gender going to legitimise the confidence of the public in the judiciary? How is your appointment, if you are given the opportunity, going to transform the judiciary?

Maphumulo: I think it is one of the constitutional imperatives in terms of section 174 where the factors should be considered. That would tend to enhance the legitimacy in the eyes of the public. It would have that effect and they would have confidence that there are people also presiding.

Ntlama: Does it mean that confidence is developed by blackness in the judiciary?

Maphumulo: No, it is the diligence and competence of the judicial officer.

Ntlama: How is your appointment going to affirm the transformation of the judiciary if we do give you an opportunity?

Maphumulo: I think that with my skills and my work ethic, I would not just bring race and gender. I also bring the background which I come from, from a previously disadvantaged community. It will then enhance the legitimacy of the justice system.

Ntlama: Your previously disadvantaged background should have an impact on the determination whether you have the requisite experience?

Maphumulo: There was a course we attended on social training and it said that when dealing with people who had been subjected to unfair discrimination, and how to deal with sensitivity to those with disabilities, who are blind and those type of people, and that you should be sensitive and that you should not apply stereotypes. To be aware. That would also help.

Mogoeng: Thank you, you are excused Ms Maphumulo.