



JUDGES  
MATTER

## Judicial Service Commission interviews

4 April 2016, Evening session

Supreme Court of Appeal

Interview of Judge C H G Van Der Merwe

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Chairperson (Chief Justice M Mogoeng): For how many months did you act at the Supreme Court of Appeal?

Judge Van Der Merwe: I acted all in all for 24 months. It was four stints of six months each and if my mathematics is correct at this time in the evening it should be 24 months.

Mogoeng: At eleven o'clock! You were here for a vacancy at the SCA before, is that so?

Van Der Merwe: That is correct; it was about two years ago at the session in 2014.

Mogoeng: Would you like to highlight your strengths and demonstrate how ready and suitable you are for the position?

Van Der Merwe: It is a bit difficult to promote yourself.

Mogoeng: This is the only instance where you are permitted.

Van Der Merwe: What I can say is that what I could bring to the SCA is firstly a lot of experience. Many years of experience both at the bar and on the bench, with basically two years at the SCA. Especially in commercial work, and there is not all that much experience in commercial work at the SCA, if I may say so with respect. Secondly, an independent mind, integrity and I believe a good work ethic. Lastly, but maybe most importantly, a real appreciation and commitment to the values of the Constitution and the application of the principles of the Constitution.

Justice Mpati (President of the Supreme Court of Appeal): The problem is really your surname and you are always far down the list. Last time you had to wait a long time when you appeared here and tonight it is the same.

Van Der Merwe: I must say it is quite exciting here this evening.

Mpati: I want to place on record that you are a farmer as well, and that recently I bought some cattle from you.

Van Der Merwe: Yes, the interest has been declared and I think that is one of my better achievements, the quality of cattle which you brought to the Eastern Cape.

Mpati: Your relationship with colleagues in the SCA, how have you found it?

Van Der Merwe: I would say that I have an excellent relationship with everyone there. There is nobody that I do not get along with. I think I get along with everyone very well, and have mutual respect for everyone. Quite a number of people there have become my friends, and I am very comfortable with working with absolutely everyone there.

Mpati: Judgments that have been allocated to you, have they been worked on by other judges or just suggestions given to you? What has been the position?

Van Der Merwe: There have been some suggestions in terms of grammar and language. As you know English is not my first language, neither is it yours and we spoke about it at some stage. I can say with a clear mind that nothing substantial has ever been added or found wanting in my judgements.

Mpati: You mean nothing of substance has ever been changed.

Van Der Merwe: Nothing of substance has ever been added or has been missing.

Mpati: Is it correct that it was either the last term last year or the third term last year that you sat with me in an appeal case, but you were not the scribe and when we got the draft from the other judge I asked you to re-write the judgement?

Van Der Merwe: Yes, I remember that.

Mpati: I am not going to mention the colleague, but that is what happened. It is so that the colleague then withdrew his judgment and your judgment then became the judgment of the court.

Van Der Merwe: That is correct.

Mpati: And that colleague has been at the SCA for some time.

Van Der Merwe: That is true, ja.

Mpati: You appeared before this Judicial Service Commission last year sometime or the year before?

Van Der Merwe: It was the year before, in April of 2014.

Mpati: And you were interviewed and therefore we do have a record, though short.

Judge Van Der Merwe: That is true.

Mpati: Perhaps the Commissioners were a bit tired by the time you came in, but you mentioned that English is not your first language. What is your first language?

Van Der Merwe: Afrikaans of course.

Mpati: Is it true that in the SCA we still get a number of appeals where the records are in Afrikaans, or quite a number of records have parts of them which are in Afrikaans?

Van Der Merwe: Yes, there are quite a number of Afrikaans records and often they are very voluminous. They tend to come from here in the Western Cape in criminal matters where there are huge records, everything in Afrikaans. There are quite a lot of Afrikaans records, although obviously no judgments are written in Afrikaans, those records have to be read and understood of course.

Mpati: Fortunately or unfortunately you have been involved in a number of them precisely because you are Afrikaans speaking.

Van Der Merwe: Yes and I must add that my colleague Judge Steven A Madjiet was also many times involved, for the same reason. So we worked quite together quite a lot on that basis.

Mogoeng: I am going to do to you what I forgot to do to other candidates. I forgot to apologise to them and I am apologising to you, given a chance I will also apologise to them. Because, as you know you were supposed to come in tomorrow and I am so grateful that you were all willing to accommodate us and go through this process late at night. Thank you so much for allowing us to go on with our work, and we really do appreciate the sacrifice.

Van Der Merwe: Thank you Chief Justice, there is no need to apologise I am happy to be part of the process and make a contribution.

Advocate M Hellens SC: Two questions. The question is often asked how do you know a man went to Grey Bloem and the answer is that a man tells you and that is in your CV.

Van Der Merwe: I told it in that way, but otherwise it is urban legend.

Hellens: It is a good school. One of the Candidates said that when sitting with other judges, that he or she strives for consensus. Is that what you do and is that what should be done?

Van Der Merwe: If it is at all possible. It is important for the court to have a single voice sometimes and if it is possible there should be consensus. There should not be disagreement on minor matters that are not of importance. If it is a matter of principle that you cannot agree, then you must write separately. But I must say if four colleagues think other than you do, then probably you are wrong, so I always try to keep it in mind.

Hellens: I would put it differently and you tell me if I am wrong. I would form my own view whilst being open to persuasion to any view which mine will accommodate after deeper consideration. But I would never strive for consensus, I would strive for the right answer.

Van Der Merwe: That is probably putting it better. Consensus should not be the goal, the right answer must be the goal. If a disagreement can be avoided, without jettisoning the principle, then it should be done.

Mogoeng: Is there ever a possibility of judges striving for consensus on a principle which they know to be incorrect?

Van Der Merwe: No, there is no room for that.

Judge President Kgomo: It dawns upon me that if you and Judge Mocumie are appointed and both of you are from the Free State, so Judge President Molemela will be two judges short. In this body it is not really a factor, if both of you are considered appointable then that is what this body will do. Did you discuss this with the Judge President?

Van Der Merwe: No, I did not. I think I left that for her decision if it so eventuates.

Advocate D Ntsebeza SC: Are you proficient in any of the African languages?

Van Der Merwe: No, I am not proficient in any of the languages, although I know rudimentary Sesotho, basic Sesotho. I would not say I am proficient or can speak it, but I do understand basic Sesotho.

Ms T Didiza: Following on the question raised by Advocate Ntsebeza, I wanted to ask from you given what you said in response to a question that you were able to translate court documents which were largely written in Afrikaans. Do you think diversity in language plays an important role, even in the SCA?

Van Der Merwe: Very much so, and it is one of the strengths of this country. We talk about it often at the university level, unity in diversity, and to cherish the richness of diversity. So I think it is very much an important element.

Didiza: If you were appointed to the SCA, what contribution would you bring?

Van Der Merwe: Obviously I cannot bring about transformation of the judiciary as it looks from the outside, but there is another element to transformation in the inner workings of the court. I would say I can bring a wealth of experience especially in commercial work which is much needed, and not much available in the court, with respect. And I can bring independence, integrity and a real belief in and commitment to the principles of the Constitution.

Mr N Singh: This morning we, as the Commission, responded to the Commissioner for Gender Equality on gender equality and matters related to that. I want to put it to you, suppose we have two candidates who are equal one male and one female, how do you think we should deal with that as the Judicial Service Commission?

Van Der Merwe: The truth of the matter is that there are too few women on the SCA bench and there is a need to appoint more females to the bench. The difficult balancing act is for you to carry out, but if there are two really equal candidates then you should probably appoint the female. If they are really equal, as part of your whole balancing act. Or recommend the women rather.

Mogoeng: Judge Van Der Merwe you are excused.

Van Der Merwe: Thank you commissioners, it is an honour to have been a part of this. Good night.