



# JUDGES MATTER

## Judicial Service Commission interviews

4 April 2016, Evening session

Supreme Court of Appeal

Interview of Judge P A Meyer

**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 video 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 video file.**

Chairperson (Chief Justice Mogoeng): Good evening Judge Meyer.

Judge Meyer: Good evening Chief Justice and members of the Commission.

Mogoeng: You've been a judge of the High Court since 2007?

Meyer: That's right Chief Justice.

Mogoeng: And all in all, for how long have you acted at the Supreme Court of Appeal?

Meyer: Chief Justice, it was for six terms over three years.

Mogoeng: And were here before for a vacancy in the Supreme Court of Appeal. Do you just want to tell us in your own words why it should be you?

Meyer: Chief Justice during the time I acted at the Supreme Court of Appeal, I've really felt that I fit into the system there. I enjoyed the work a lot, I enjoyed the collegiality a lot and I do think that I can contribute a lot being there so that is, in essence, why I would like to be there.

Justice Mpati (President of the SCA): The last time that you acted in the SCA, what were the circumstances under which you were invited again? You were invited quite late.

Meyer: I was invited overnight and quite late, by yourself President Mpati. But yes, I coped, and it was a great term.

Mpati: What had happened? Why were you approached late at night?

Meyer: President Mpati, my recollection is that overnight, one of the judges of the SCA was called to act in the Constitutional Court, and overnight you needed to fill that vacancy and I collected the files from my colleague who went to the Constitutional Court, yes, and I prepared them for the next term.

Mpati: Oh yes, now I remember. And your stint at the SCA on that occasion, did you enjoy it?

Meyer: Yes I enjoyed it thoroughly. It was a very busy term – I wrote three or four judgements for that term but I enjoyed it. I enjoyed every single term in the SCA a lot.

Mpati: I think the last time you were here, I asked you a lot of questions. I got all the answers I needed from you.

Mr J Malema: I'm going to ask a different question. I just want to ask about the court environment. Is the court environment aiming at intimidating people? It is so scary when you enter court, is that the whole

intention?

Meyer: Commissioner Malema, I don't believe that that is the intention. It also depends very much on different personalities being on the bench – you get people who are loud and you get people who are more soft spoken, but I don't think there is an intention to intimidate anyone.

Malema: Don't you think the intention of making people feel intimidated, it sounds more like an apartheid style more than anything?

Mr Meyer: I think it depends on personalities and I think that's across the board, but I do not think there is any intention to intimidate, or to revert back to any apartheid style way of doing things.

Malema: Do you think the SCA is more friendly and appealing to our people, or is it scary and intimidating?

Meyer: You know Mr Malema in the SCA mostly lawyers appear, advocates appear to argue matters on appeal, and lawyers are very much used to a certain level of debate with the judges, so I don't think it is scary at all for the public.

Malema: No, that's where you get it wrong because the lawyer who appears before you, it's not his case – it's my case, and the way you are treating them when they appear before you, I feel like my case is not being heard.

Meyer: That might be so in certain instances, but I can only speak for myself and I like to treat all counsel with the utmost of respect as I want to be treated myself.

Malema: What is your understanding of justice being served and being seen to be done? How do you understand it in a democratic environment?

Meyer: Well one of the aspects is the aspect, Mr Malema, that you've just raised, and that is by treating people with respect, with dignity and allowing people to raise their arguments and all the issues to be properly ventilated, and for litigants to walk out of court and feel that I've had my day in court, this judge listened to me, and I will be satisfied with this judge's decision, I know he's going to apply his mind to his judgment.

Malema: At the centre of everything else, at the end of the whole thing, we must feel that we are listened to. But that is not the case at the SCA. People appear before the SCA and they are treated like, no, no no no and before you know it, done – how are you going to contribute in changing that image? I don't like it. It sounds like an apartheid style. So how are you going to contribute in changing the bullying picture of the SCA, and give it a human face, a democratic face wherein all of us, when we get out of it, we've got a sense that we were listened to?

Meyer: Mr Malema my contribution will be, as it was on the bench in the High Court as I've just said, I will listen to litigants, I will treat litigants with the utmost of respect, I will ventilate all the issue with litigants, and I will, as I've always done, keep on ensuring that people, when they walk out of that court, are satisfied that they had their day in court. I may mention to you that over my almost nine years at the Bench all together, I've had very little, or very few, of my judgments be set aside on appeal – only two actually, one when I was an acting Judge and one where there is academic controversy with correctness of my judgement as opposed to the one of the Supreme Court of Appeal, and one of the reasons I attribute to that is the fact that I like to listen, I like to debate, I like to respect people and I like people to respect me because I am a public functionary, I serve the public and that is how I view my position in the High Court and I will keep viewing my position, if I am appointed in the Supreme Court of Appeal, the same.

Malema: But you agree with me that a bit of transformation, with regard to that type of an attitude in the SCA is needed?

Meyer: As I say Mr Malema, if there is such a perception, and you raise it and that is how you perceive it. If there is such a perception, one that I am not aware of, but if there is such a perception then it must be addressed, yes.

Malema: So you are not aware that there by the SCA, its quick quick arrangement and you must be out of that place very soon – you are not aware?

Meyer: Mr Malema I have sat there in many cases, really I have sat, and I also sat when President Mpati was

the President in a number of cases, and I don't know, we've debated the matters.

Malema: Now let me ask the last question which I said I was not going to ask. Can a court declare a person who acts inconsistent with the Constitution, who's in breach of the Constitution, not fit to hold office including, amongst others, elected politicians? This person exists, has taken an oath, like Judges, like members of the legislature, members of the executive, and then a court arrives at the conclusion that you have acted inconsistent with the Constitution, you didn't uphold, defend and protect the Constitution, and later on there is an application that says this person, by virtue of having breached the oath of office, is not fit, or this Judge, by virtue of having breached the oath of office, is not fit to hold office – can a judge arrive at that?

Meyer: Mr Malema you asked me a similar question just in a different format last year and yes, of course, the High Court review administrative action, the High Court see that all action, on review, must be in accordance with the rule of law, with legality, with the principles of our Constitution, and yes, if a matter is taken to the High Court to review, then the High Court has that review function, it must determine whether or not conduct correspond with the tenants of our Constitution, and the principles of our administrative law.

Malema: I did not hear anything, I'm not a lawyer, I'm just a civilian – I'm asking you a simple question and you must answer me like a civilian without legal background. With me you have to simplify it, that's why I ask a simple question – can a court, with the whole evidence presented before court beyond any reasonable doubt, that this person who has taken an oath, has breached an oath, has not upheld the Constitution and protected the Constitution and the prayer before the court is to declare this individual unfit to hold an office - can the court do that?

Meyer: There are always internal procedures before a court is approached and as long as those internal procedures, except in exceptional cases, are being exhausted, then, depending on the position there, a court can be approached. The court will then determine whether or not that person ought to because part of the office is of course to uphold the Constitution, certainly for us Judges.

Malema: Let me ask it differently. What happens to a Judge who fails to uphold, defend and respect the Constitution?

Meyer: Then there will be an internal procedure and the Judicial Service Commission will investigate and come to a finding, and that finding will be submitted to Parliament, and eventually a court can be approached, but the internal procedures must be exhausted.

Malema: You said the report about the Judge will be submitted to Parliament? I want to get that clear - are you saying we investigate a Judge and then submit the Judge report to Parliament?

Meyer: No, Parliament can fire a Judge, to use that word, I think it must be a two-thirds majority, I don't know what the majority is, but of course the Judicial Service Commission will make recommendations.

Malema: Now, if the whole process is satisfied then the Judicial Service Commission inquiry has to come to a determination that indeed, this Judge has failed to uphold, defend and respect the Constitution, what happens?

Meyer: The Judicial Service Commission will then make a recommendation to Parliament that this Judge should be dismissed.

Mogoeng: I just thought I need to clarify something that was put to you earlier by Commissioner Malema. The Judges of the Constitutional Court would simply descend on counsel, at times before he or she had opened his mouth. Some would get so disoriented that they no longer know what argument he or she had come to present. Then we visited to European Court of Human Rights in Strabourg and realised, or learnt rather, that people are given a chance to present their argument uninterrupted and, at a particular point, only then are questions put to them. Rather than confuse them with questions, their clients are here, they are embarrassing and look like they are not even qualified to be legal representatives. Don't you think the judiciary, the courts, must seriously think about allowing people an opportunity just to present their case first, before they are interrupted? You find three or four Judges at the same time and you no longer know which one to start with, you've even forgotten it. Shouldn't people be allowed to make their point whichever way they choose to, without interruption, and only thereafter, whatever time you give them, and thereafter you can put your questions to them? But still courteously.

Meyer: Absolutely and I agree with that, and I agree with, as I've mentioned, I like to give people the opportunity because then they are satisfied at the end of the day, that they've had their day in court, that this

Judge listened to them, and this is the approach I've always followed on the bench.

Mogoeng: Now his question was, if appointed and to the extent that it might be a practice, at times, at the SCA that people are descended upon without being given the opportunity to articulate their position or their clients position, how are you going to contribute towards changing that environment?

Meyer: Well, myself on the Bench, by affording that party the opportunity to develop its argument and by affording that party the opportunity of presenting the case fully. From my side I will do that and that is how I will contribute.

Mpati: I just have two aspects that I'd like to clear up with you, one, you are comfortable with Afrikaans?

Meyer: Afrikaans is my mother tongue.

Mpati: And your experience at the SCA, are there still records that are in Afrikaans?

Meyer: Yes, there are still records in Afrikaans, and I've been on it on a few matters where the records were Afrikaans, yes.

Mpati: In fact my experience is that it's not here and there. You'd be comfortable with that kind of record?

Mr Meyer: Yes, and I also think you've put me on a few matters where, in fact I can recall one, where the record was only in Afrikaans - a murder committed by a 17 year old – there the record was only in Afrikaans. And also I recall a judgment which one of our colleagues wrote, he was the scribe, but there was a text from an Afrikaans textbook that was very relevant to the judgment in that case, and I did the translation of that text into English – the text was quoted in Afrikaans and then I did a translation for the purposes of the judgment even though that wasn't my judgement.

Mpati: Because mainly we write your judgments in English.

Meyer: Yes.

Mpati: Okay let me go onto the other aspect. Am I correct to say that, with the heads of argument is filed something called a practice note. And counsel in the practice note is required to indicate what the issues are in the appeal?

Meyer: That is right.

Mpati: Would there be anything wrong, if counsel goes on something else that is not an issue before court, and be allowed to spend the whole day on matters that are not relevant?

Meyer: President Mpati, of course, counsel must stick to arguments and debate those arguments, otherwise it might also result in the trial or the hearing not being fair to the other side, because parties exchange practice notes and the heads of argument, so all parties must know beforehand what the other party is going to raise in court and prepare on that basis. So if parties are allowed to simply to argue anything that is not part of practice notes or heads of argument, there is the danger the other party is taken by surprise and wasn't prepared on that. That also expedites matters and allows courts to deal with the volume – the Supreme Court of Appeal deals with a tremendous volume, that also enables the Supreme Court of Appeal to deal with that volume.

Mpati: And have you been in cases where a judge would say to counsel, are you now stepping off the issue that you are busy with, because I've got a question relating to that issue?

Meyer: Certainly, in matters I sat on, counsel were taken back to an issue, because there are five judges.

Mpati: And would it be unfair for a Judge to say, in case I forget this issue, can I ask you now – is there anything wrong with that?

Meyer: No, there is nothing wrong with that.

Ms T Didiza: I was reflecting on one of your responses where you were asked about your contribution to law and the pursuit of justice in South Africa. In that response, you mention some of the role you've played on transformation initiatives with the judiciary. I just wanted to know, from your acting stint in the SCA, whether

in your own view you think there are still transformation issues to deal with?

Meyer: Well I think our country is long not finished with transformation, and it's an ongoing process, and transformation needs to be dealt with on all levels and continuously so.

Didiza: Specifically in respect of the SCA, what would you say, in your own view, are some of those issues that needs to be dealt with? One referred to by the GCB was in respect of women's representation.

Meyer: Absolutely and I think the gender correction should be made also in other courts. It is very difficult for many women, lifestyle, I know there are many various reasons – the lifestyle is often difficult for women to travel down to Bloemfontein and leave their households for six weeks at a time, so there are various reasons but yes, the gender issue is an issue that needs to be addressed.

Didiza: Well I'm not sure the lifestyle can only be confined to women specifically – I know you may not be saying so, but it is just unfortunate that that was the reference made. I would dare say that even for men, that would be an issue, if the issue of lifestyle and movement is an issue of concern. But beyond the gender, I just wanted to hear from you, your own perspective, on what would you say are the things that still require change for the better?

Meyer: I think one of the aspects was raised by the Chief Justice having looked internationally at other examples, and of course the transformation issue is an ongoing process and you are seized, this body is seized, with considering that each and every time that you interview candidates and to see whether or not there is proper representation including the gender issue. The only point that I made, referring to the lifestyle issue, is that there must be a reason why there are fewer candidates applying for the SCA than for other courts, and the suggestion really is, my wife said to me for one that she'll never be able to leave our daughter for six weeks at a time and I think that may be a reason, but I am not suggesting for one moment that that is the reason.

Mr Notyesi: On a lighter note, I observe that the length of judgments delivered by the Constitutional Court is very long, but if you look on the SCA, it's very short, full of legal issues – what can you say about that?

Meyer: Commissioner, some people are more long winded than others. I personally don't write easily more than 20 pages, I like judgements between 12 and 20 pages, that's my own style, but you've got people with different styles and each one has his or her own style. Some are more long winded than others. There are a few judgements that I wrote that were very lengthy – in the questionnaire I mentioned one, a criminal matter of 239 pages, but it was a 27 week trial where each and every issue that could possibly be raised was raised, and I had to deal with all those issues. That is extraordinary but yes, I know the Constitutional Court, with all due respect, judgments are much more lengthy than most of the judgements emanating from the Supreme Court of Appeal.

Notyesi: Secondly Judge, there has been a general sense that the judiciary is under threat from other arms of government, but where I read somewhere another document, I think it was the Deputy Chief Justice writing it, it is saying the biggest threat to the judiciary is the judiciary itself, where they don't deliver judgments on time – what is your comment on that?

Meyer: No absolutely, and that is what the judiciary must do and also to a certain extent does, is to look inside at themselves. And yes, it is simply not right for a judgment to be reserved for a year, for two years, for three years. One must dispense with justice as soon as practically possible. There are very busy divisions in this country like the Pretoria division of the High Court, the Johannesburg division of the High Court, where judges are under tremendous pressure, but even so there is no excuse for judgement to be reserved for such a long period of time. And that happens – I'm aware of that fact.

Notyesi: This brings me to the question of who guards the guards – do you really believe that the mechanism in place for judicial accountability, do we have enough mechanisms for judicial accountability?

Meyer: The Judicial Service Commission of course is the body and of course the Office of the Chief Justice, and the mechanisms are now coming into place after the recent judgements and there are still aspects of it probably that will be further debated. But yes, we need to have a firm channels and mechanism in order to call Judges to account and I think that is a process being implemented at the moment.

Mr Fourie: You've earlier referred to the removal of Judges by Parliament. I'm just curious to hear your view, the procedure is that if a tribunal submits its report to the Judicial Service Commission, and the Judicial Service Commission for example finds that particular Judge to be grossly incompetent, the matter is then

referred to the Speaker of the National Assembly, and then the National Assembly may call for that Judge to be removed by resolution adopted with a supporting vote of at least two-thirds of its Members. Fortunately in our constitutional democracy it has never happened, but I'm just thinking aloud and I want to hear your views, if the JSC has gone through the whole process and finds a Judge to be grossly incompetent, but Parliament does not, by two-thirds majority, adopt the resolution to have the Judge removed, does that mean that Judge could continue to be a Judge unhindered and if so, what would that do to the image of the judiciary, and that particular Judge in particular?

Meyer: We've never had that situation and that is the law as it is at the moment, and Parliament is also elected by the people of this country, and if a two-thirds majority of Parliament believes that Judge is fit enough to be a Judge, that really is the wish of the country. But that is more a political issue than anything else, because that is the law as we have it and the legislature deemed that to be appropriate. We never had the example, fortunately, where there was a clash between the recommendation of the Judicial Service Commission and the decision eventually, or the vote eventually, taken by Parliament. Also the appointment of Judges, the Judicial Service Commission renders its recommendation to the President of the country, and the President then appoints, and invariably, the President appoints those recommended by the Judicial Service Commission.

Fourie: The Constitution says that all Judges, except certain Judges, must be appointed by the President on recommendation of the JSC, so it's not a discretion that the President has.

Meyer: Yes.

Mogoeng: That is a very interesting legal question isn't it – what in your view ought to happen in circumstances where the Judicial Conduct Tribunal has recommend that a Judge be impeached, but there is no two-thirds majority – what should happen? Can a court of law be approached to take over from Parliament to take over a constitutional responsibility that rests with Parliament? Can they do it? Is it constitutional?

Meyer: The responsibility in that instance lies with Parliament. Parliament must fulfil its constitutional responsibility.

Mogoeng: My question is if it they were divided now and there is no two-thirds, can a court of law be approached to take over? Does it fall within the powers of a court, regard being had to separation of powers considerations?

Meyer: That's a very interesting question and one can debate the issue, but I do not believe, and there would be contravention of the separation of powers, because then the courts would fulfil the function of Parliament because Parliament was given the authority to on a two-thirds majority so if a two-thirds majority cannot be achieved in Parliament, then to run to court to say there was no two-thirds majority so please court give us an order dismissing Judge X that's...

Mogoeng: It can't happen?

Meyer: No it can't.

Mogoeng: So he can go back and be a Judge?

Meyer: Yes, and politicians must be accountable to their electorate.

Mogoeng: Thank you very much Judge Meyer. You are excused.