



JUDGES MATTER

Judicial Service Commission interviews

6 April 2016, evening session

Western Cape Division of the High Court Deputy Judge President vacancy

Interview of Judge P L Goliath

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President Mpati: Good evening Judge Goliath.

Judge Goliath: Good evening President Mpati and honourable commissioners.

Mpati: How are you?

Goliath: I'm very well thank you.

Mpati: Good. Are you comfortable?

Goliath: I am comfortable after the long wait.

Mpati: Yes, and we apologise for that.

Goliath: Apology accepted.

Mpati: It took more than we anticipated. Or longer than we anticipated. Tell us, how long have – in fact, you've been a judge in the Western Cape High Court for just over ten years now, is that correct?

Goliath: That is correct President.

Mpati: And now you are aspiring for the position of Deputy Judge President of that division, if that is correct?

Goliath: That is correct.

Mpati: Whereabout is your seniority in that court?

Goliath: Out of the approximately 28 or 30 judges, I am in the top half portion.

Mpati: Top half?

Goliath: That's right.

Mpati: But there are some judges senior to you?

Goliath: Yes there are some judges senior to me, such as Judge Fourie and Judge Veldhuizen. Very much senior to me. Judge Erasmus, yes.

Mpati: But I know that at least Judge Fourie is near retirement, isn't he?

Goliath: Many of them are close to retirement.

Mpati: But if you were to be appointed, you'd take over this month or next month, if you were to be appointed, they would still be there. Are they going to respect you if you were elevated to the position to which you aspire?

Goliath: President and honourable commissioners, one must bear in mind that this is not a position for a Judge President. This position entails supporting the Judge President. So the Judge President will remain the leader, and I will then be seen merely to provide a supportive role. And in that capacity, I cannot see how any senior judge could object to such a scenario and I should add, honourable commissioners, that the level of collegiality on the bench is exceptionally high and I have absolutely no doubt that there will be no problem in the event of this commission recommending me for this position.

Mpati: And if the Judge President were to go on leave before those senior judges leave, are you still saying that you will command the respect that is necessary?

Goliath: President and honourable commissioners, it is important to remember that I ran my own practice for fourteen years, and it was not an easy task to do that. So all I can say is, should anything happen to the Judge President, I would most definitely be up to the challenge.

Mpati: You've been there for ten years now, and I am sure you know every corner of the Western Cape area, that is the High Court here and the other places where the Court sits, correct?

Goliath: That is correct. President and honourable commissioners, as a practitioner of course I was court lawyer, I was a trial lawyer, I walked the corridors of the District Courts, Regional Courts, and High Court, and as a judge I sat locally in the Cape Division as well as the circuit courts.

Mpati: What will you bring to that position of DJP? That is, are there any challenges that you have noted that you would like to attend to?

Goliath: Honourable commissioners, the Judge President has a very firm grip on the division. And if I must think of the challenges in the division itself, it is fairly well-run. Where the main challenge would lie at the moment would be in our circuit courts, it has already been identified by the Judge President, and any Deputy who would possibly be recommended, and were it to be me, I would certainly be instrumental in the creation of a full circuit, specifically in George. And with regard to building an infrastructure, because at the moment that is the main challenge I can think of. Because in the division itself, the Judge President is very much in control.

Mpati: With regards to the infrastructural problem at George, the Minister is listening.

Goliath: Well...

Mpati: No, I am just mentioning the Minister is listening.

Goliath: I would think that it could be budgetary constraints as well, but it's an ideal and it has been identified as a problem.

Mpati: Do you view yourself as a strong person?

Goliath: President Mpati and honourable commissioners, I have come a long way. I do believe that I have the necessary strengths and abilities to provide the Judge President with the necessary support that a position of this nature entails. I have always worked hard at everything that I have tackled - be it as a student, be it as an articled clerk, be it in the running of my practice, be it in furthering my studies. I have always done my best.

Mpati: Have you been in the position where you were required to distribute files or work to other judges?

Goliath: Unfortunately, I have not been placed in that position as yet. We must remember that we had a very capable Deputy Judge President there, who has retired or is about to retire, so there was no real need for the Judge President to require the assistance of more junior judges in terms of the allocation of work. So it was solely within the function of the Judge President and the Deputy Judge President.

Mpati: Imagine for a moment that Judge President is away on leave and you come across a problem where a judge does not deliver a judgement or judgments timeously. What would you do about it?

Goliath: Communication is very important, honourable commissioners. One would not always want to be overly critical. You would engage the colleague, you would establish are there any problems? What are the hurdles you need to overcome? Do you need more time? Should we restructure your work programme? Communicate, tell me what your problems are and I will do the utmost to assist the colleague to enable that colleague to finalise the outstanding work.

Mpati: And where you have given the colleague sufficient time and he or she still fails, is there an avenue for you to go to next?

Goliath: President and honourable commissioners, it is an avenue that I would not want to explore, I would prefer that the first route of intervention would be successful, but we do have norms and standards to abide by. In those norms and standards there are certain time frames in which we need to perform, because we are accountable. And if need be, as a Deputy Judge President, or the Judge President -

Mpati: He is away.

Goliath: I would have to report it to the Chief Justice if there are no results.

Judge President Hlophe: Judge Goliath, would you regard yourself as a team player?

Goliath: Honourable Judge President, indeed, I am a team player, I get on along very well with people, and there is absolutely no reason why I cannot have a harmonious relationship with the Judge President in a supportive role.

Hlophe: A follow-up question, in a situation when the Judge President disagrees with you in any aspect related to the running of the division, how would you tackle that, Judge Goliath?

Goliath: When you are in leadership I think communication is very important. In the event of any conflict, I would approach the Judge President, I would express my views to the Judge President, and try to persuade him to see my side of the situation, and I would try to see his side of the situation. But I think overall we could try to arrive at some sort of compromise. The whole idea is to have unity, to work harmoniously and not to try and instigate conflict. And ultimately, the Judge President is in charge. The Deputy is there in a supportive role. So, I will be guided by the Judge President as well, should there be any disagreements or disputes.

Hlophe: There is a negative comment emanating from the bar to the fact that you delegated pre-trial procedures in terms of rule 37 to your secretary. I don't have the exact page in front of me, but I would like you to comment in relation thereto.

Goliath: President and honourable commissioners, I must confess that I was surprised by this comment, simply because in the Western Cape division, our pre-trial proceedings are conducted in open court. My secretary would prepare a court roll, there would be fifteen to twenty cases on this roll, and I would perform my judicial functions openly as the presiding judge during pre-trial proceedings. At no stage did I ever delegate my judicial functions to my secretary. However, one must remember that with Rule 37(8) proceedings, there are secretarial duties included. For example if there is a non-appearance in court, I would instruct my secretary, kindly phone counsel and find out why they were not present at proceedings. They would file papers with the secretary, they would file pre-trial minutes with the secretary. There is a clear demarcation of the roles of the presiding judge and the secretary. Honourable commissioners, had I done what is being alleged here, I would consider it as a gross violation of my duties, and I would have expected members who made this serious allegation to have

lodged a complaint with the Deputy Judge President or the Judge-President, and that never happened. And then lastly, the complaint appears to be very vague and unsubstantiated, which makes it very difficult, as there are no specifics.

Ms Fiona Stewart: Judge Goliath, over the least ten years, in the day to day conduct of your court, what's been your biggest frustration?

Goliath: Well I have extensive experience, I have been around for a while. I am very meticulous in terms of starting on time. Frustration would be perhaps if counsel is unprepared, unnecessary delaying procedures, asking for matters to stand down which would be an indication of them being ill-prepared. Those are just the things that I can think of off-the-cuff.

Stewart: You seem to have done quite a bit of commercial judicial hearings?

Goliath: That is correct.

Stewart: And I am interested because I don't participate in commercial litigation. Is your perception, in the Western Cape specifically, that there is a transformation of our bar taking place, specifically with gender and racial briefing patterns, or is it not noticeable from the bench?

Goliath: I have been involved in commercial litigation, I've heard quite a number of cases. I have attached the Discovery case I think as well. What I have observed is I cannot recall in one instance when female counsel appeared in court in one of those matters. So regretfully, there appears to be no transformation in terms of the transfer of skills in the area of commercial law to women in any form or shape at all.

Advocate Motimele SC: Good evening Judge.

Goliath: Good evening.

Motimele: Judge Goliath, what is your view about harmonisation of directives of various High Courts?

Goliath: I don't understand the question – are you referring to directives with regard to norms and standards?

Motimele: I repeat, the various High Courts, other than the Uniform Rules, there are directives emanating from the heads of court, is that not so?

Mpati: Normally called practice directions.

Goliath: Yes, practice directives, we do have that in the Western Cape High Court.

Motimele: Good. Now the question is, what is your view on harmonisation of those directives of various provincial High Courts?

Goliath: We are all subjected to the norms and standards, and I believe that there should be unity in all divisions in terms of those practice notes. However, there may be instances where certain issues are unique to certain divisions only, of which I might not be privy to, which might require that a certain division might make provision for certain directive to suit their unique situation. But my basic view is that there should preferably be harmonisation, perhaps with one or two exceptions to adapt to a certain division.

Motimele: Can the practice directives be in conflict with the Uniform Rules of Court?

Goliath: I think it would create problems should that be the case. We are bound by the rules of court, and the practice directives should be harmonised in accordance with the rules of court, and it should supplement it.

Minister Masutha: Judge Goliath, I just want to follow up on the earlier question relating to representivity in the profession, which obviously is a key feeder to the bench. You have stated categorically clear, that in your estimation there isn't meaningful transformation, I'm just paraphrasing

you, of the Cape Bar. Now what steps, in your opinion, could be taken to facilitate transformation on the Cape Bar?

Goliath: Well my statement referred to the area of commercial law, but in terms of general transformation of the Cape Bar - I think the problem stems -

Masutha: Let's accept that commercial law is where the critical skills, the high-end skills, are located by and large in the legal profession.

Goliath: I think the Cape Bar should attempt to provide the necessary support to young advocates entering the profession. The problem with transformation, I would imagine it is linked to empowering new pupils and those entering the profession, and briefing patterns. So senior counsel should get involved in mentoring those who enter the profession. The problem, I think, lies in briefing patterns and involving those who are less skilled, allowing them to be empowered, and the best way to do that is through the transfer of skills. In terms of the Cape Bar, the issue of transformation of the profession has been long on the agenda, and according to my knowledge initiatives have been mentioned, it appears not to have been implemented. We do have a problem with, specifically, black advocates and a paucity of black female advocates specifically. But I think the solution would lie in assisting them by empowering them through the sharing of briefs and the transfer of skills.

Masutha: I think that a lot of criticism has been levelled at the state attorney's office as a conduit for state work, and I must say in all fairness, there is another angle to it, which is that clients to the state attorney ultimately get to choose who represent them, so it's not entirely their fault. But be it as it may, how can one encourage clientele in both the public and private spheres, or instil confidence in them, in giving work to historically excluded members of our society?

Goliath: The Centre of Applied Legal Studies conducted research in 2014, and they found, they identified, four phases of professional growth for those entering the profession. The university phase, vocational training phase, the nought to five years, and then the more senior years. In that study recommendation was made that there should be gender sensitisation around the issue of how women are viewed in the profession, the type of work that are normally allocated to them – and I'm referring specifically to the fact that discriminatory perceptions, and so the study found, the first phase of professional development, the university phase, there are enough women there. The second phase, the vocational phase, that is where discrimination perceptions of women's ability starts to kick in in terms of their ability, which could result in unequal distribution of work. So the problem is what type of work are women exposed to early on in their career, to equip them. So that is why gender sensitisation is important, because even in the next phases, women start limping because they have not been exposed to a vast area of law to empower them sufficiently. Parastatals should make a conscious effort to try and brief more women, more women of colour, and I think the more awareness that can be created around that, and the more women can be empowered, the situation can improve.

Masutha: And to use up my quota of three questions, on the issue of silk. The concern has been that there are no clear criteria, and secondly, that there is an element of arbitrariness in the profession in getting to choose who gets recommended for silk. Do you believe that the judiciary could play a more objective, and a much more reliable role in making recommendations for silk, given the fact that these practitioners appear before you, and you are in a vantage position to evaluate their performance in court? And should the judiciary contribute towards the development of clear criteria, that can be used to make an objective assessment of a practitioner's suitability?

Goliath: The judiciary should be careful when a profession regulates itself, to try and prescribe to a profession what their criteria should be in terms of how they assess their candidates for silk status. But we are living in an open society, and because counsel appear in our courts, I can see no harm if the judiciary is allowed to express their views, that the information be filtered through the Judge President, and that judiciary be allowed to give input. After all, the bar can also, we are busy here with a transparent process, and the bar can also give input in this particular process, so I think transparency is always the best way to go.

Judge President Kgomo: Judge Goliath, only on two aspects briefly. I know this is a leadership position, but if you can tell the Commission why you are shy as to where you were mentored, and where you acted first time, as it does not appear in your questionnaire, it appears in the CV.

Goliath: Honourable Judge President, I don't think the questionnaire makes provision for naming people, but I am proud to say that I have been mentored by Judge Kgomo, who so capably carried me and mentored me. I started out in the Northern Cape Division, and I was a baby at the time, and he has really played a big role in my growth as a judge.

Kgomo: One short aspect really, and that is just to link up with what the Minister has said. If you are recommended for appointment, concerning silk. At the Northern Cape Bar, the leader of the Bar will bring all recommendations to the Judge President. The Judge President, myself, since 2001, consults other judges, and if the person is found to be fit and proper for silk, they say so, their report is sent to the Minister, your JP will advise you on that.

Goliath: Yes, I am aware that a list have been circulated to us to indicate those whose names have been put forward for silk status, but the judges in our division, we do not actively participate in providing comments or criticising any of the counsel involved.

Mr N Singh MP: The first is not a question, I would just like to know if Judge Kgomo is allowed to ask those kinds of leading questions in interviews? [laughter] Good evening Judge Goliath, and I hope that I am pronouncing that word right, because I heard that word used in a landmark judgment not so long ago. What I would like to know is, you've read the submission and the comments by the Bar Counsel and everybody else?

Goliath: That is correct.

Singh: Now I note that the Black Lawyers Association say, Western Cape wholeheartedly endorses her candidature for the said position.

Goliath: That is correct.

Singh: I have been reading what the National Bar Council has been saying. They have been saying some very nice things about you – female, representivity, good judgments et cetera et cetera. But their final remark in the recommendation is, the Bar Council does not support your application. Why would you think they would make this kind of categoric statement?

Goliath: I saw the contradiction, because I was also surprised at the conclusion, I did not expect that. What I can gauge is that they made an attempt to be honest about their views. They criticised where it was necessary, which I appreciate, and they formulated their response to the best of their ability, because most if not all of the issues raised are actually correct. The feeling I get is that their main concern is that I should get more exposure to court administration. And that is the reason why they do not support me, that is the feeling I get. At the end of the submissions, that is exactly what they say, that the candidate should acquire more experience in administration, yes.

Singh: And as a follow up, from what we have heard so far – I think we have heard that you have administrative ability to be able to manage this position, if you are appointed.

Goliath: That is correct, and they agree with that as well.

Singh: The second question then is about access to justice. I think those of us who come from outside the Western Cape, from the rural provinces like KwaZulu-Natal and Limpopo and others, we think that the Western Cape is Cape Town, the city of Cape Town, but it's bigger and broader than that. What would you say can be done on access to justice to the people of the Western Cape vis-à-vis availability of finance, the location of your courts, and the languages that are used in your courts?

Goliath: Well the court should go to the people, but we are a High Court and we do go to the people when we go out on circuit. We do provide access to justice, because we do go to the people. I personally have been on circuit on many occasions. Whether more courts should be made available, that is a different question. In terms of languages, it's a very sensitive topic, because we still need to

grow in terms of our language requirements, and whether we are happy with some views expressed that English should be made the language of record in court, but we live in a democracy, we have a diverse society, we need to respect all of our languages. And of course, there are other problems that evolve from the use of languages other than English in terms of having records transcribed, should matters go on appeal. So I think it is a matter that should evolve over time. We are grappling at the moment and that will need time to evolve. In Cape Town, an effort is made to use English, though we speak predominantly English and Afrikaans, we use English as the language of record.

Singh: And you've got an LLM from UCT. What was your dissertation, what was your topic, or was it through modules?

Goliath: My LLM consisted of four modules, and my dissertation was on juvenile justice and the restorative aspect of juvenile justice. Keeping the youngsters out of prison, and adopting the restorative approach. And that of course contributed to the article I wrote in De Rebus with regard to the issue of juveniles being sentenced to life imprisonment, because it was a concern that I had when I did my research and discovered that in fact it did happen at the time. So that was my thesis.

Mr Notyesi: The position that you want to be appointed for is an administrative position. Obviously, you have look onto your administrative skills. What is recorded in your CV is that your leadership was in Nadel, in a Management Committee of Nadel. What is the Management Committee in Nadel?

Goliath: In the Management Committee we would discuss various projects that Nadel was busy with at the time. I was there for one year only. They would conduct research on certain topics, and we would then discuss. That particular year I was there, it was more around of activities of Nadel in the Western Cape, and research proposals with regard to issues around social justice that we were busy with at the time.

Notyesi: So you were part of a broad committee?

Goliath: Yes that is correct.

Notyesi: Not that you were heading that committee?

Goliath: No, not at all.

Notyesi: Again you cite your position as being a member of the executive in a branch of Nadel in the Western Cape. What position did you hold there? And for how long?

Goliath: I did not indicate that I was on the executive of Nadel. I was on the executive of the International Association of the Women Judges.

Notyesi: Oh sorry.

Goliath: And I was treasurer for two terms.

Notyesi: Alright. Do you then believe that holding those positions, that is the Management Committee of Nadel and the position, would then give you a necessary experience for leadership of the division like the Western Cape High Court?

Goliath: Those positions can contribute. As a treasurer, I dealt with huge amounts of money, I dealt with budgets. This can contribute to administrative skills. But then I was a practitioner for fourteen years. There were administrative functions in my practice that I had to comply with. The attorneys, we had to comply with our annual audits, the running of the business, staff, et cetera et cetera. Besides those two positions, I was in private practice for fourteen years.

Notyesi: Let's look onto your private practice. How many attorneys –

Mpati: I'm going to start counting the questions.

Notyesi: How many attorneys that were in your office, and what position in relation to those attorneys that you took over, and what was their capacity?

Goliath: I was the sole practitioner, and I had assistants and then of course I had articled clerks.

Notyesi: Lastly, because my questions are over, you indicated to us that in the Western Cape you are in the middle of the senior judges. Have you heard about the position of the senior judges in relation to your application? Are they supportive or not?

Goliath: As I have indicated there's an extremely high level of collegiality on the Western Cape bench. I have been approached by senior colleagues who have encouraged me to make myself available, who have congratulated me when I made the shortlist, and I can say without hesitation that I do have the support of the senior judges. And if I could just clarify I am in the upper, upper half of the seniority list.

Mpati: In fact, if I am correct, the next candidate is junior to you on the bench, is that correct?

Goliath: That is correct, President.

Advocate I Semenya SC: Judge, one of the critical duties of the senior members of the bench is the allocation of cases to specific judges. My appearances in the Western Cape High Court are very sporadic, so what I am asking you is not necessarily representative of what happens in the Western Cape, but the senior bar from where I come, there is a disquiet about allocating complex matters to judges who are fairly junior. And maybe in part it contributes to them taking too long in writing the judgments. What would be your attitude, is there any effort in, as they say, in choosing horses for courses when you allocate specific matters to specific judges?

Goliath: I think the allocation of cases in the first instance, you would appoint a judge based on the seniority of the judge and the complexity of the matter, I think as a starting point you should do that. Then there is another level of allocation, that is, depending on the nature of the case, if it is in the public interest, one should have a diverse bench, so you should consider that as well. My view with regard to your question, and I read it as follows: should those with certain expertise be given certain types of work? I tend to disagree with that statement. How do you empower judges, if only certain judges are allocated certain types of work? And especially when I look at commercial law for example. I could only grow in the area of trademarks because I have been allocated cases. But had a decision been made – look, we cannot give Goliath a trademarks case because she does not have the expertise, I would never have been in the position to have empowered myself to the level at which I have grown in that area of the law. So I think there should be a fair distribution of work, which is done in our division, but judges should be given the opportunity to deal with a variety of types of cases, thereby improving on their skills.

Semenya: I think that is fair. What I was pointing to though is something slightly different. For instance, to give an acting judge the roll to preside in an urgent court may just in itself be unfair on that acting judge, given that a much more experienced judge would be able to handle that roll better. Given their experience.

Goliath: In the Western Cape Division, we have our motion court, we have our judges on duty. Normally there would be about three judges on duty, and the senior judge would take control of that process. So in most instances, the acting judge would not be in charge of the roll. The senior judge will make that determination.

Mr C P Fourie: Good evening Judge Goliath. On a lighter note, and perhaps we all need something on a lighter note, I do. If you look at paragraph 16.1 of your questionnaire, and the question is 'list the cases where you have written the judgment which you regard as being the most significant and why.' You cite one of the judgments as Smart and Others v Really Great Brand Company, and then you describe it as follows. You say: 'Jack Daniels of Tennessee celebrated his 155th birthday and generously decided to give away a limited edition Harley Davidson motorbike in a promotional competition that went wrong.' Reading this, it appears as if you seem to think Jack Daniels is a person, and because he was celebrating his 155th birthday, he gave away a Harley Davidson motorcycle. Do you think Jack Daniels is a person? And if not who is Jack Daniels? [laughter]

Goliath: Honourable commissioners I can assure you I heard the case, there was a celebration, and a Harley Davidson was part of the competition. But who Jack Daniels is I have no idea.

Fourie: Jack Daniels, Judge Goliath, is a whisky.

Goliath: That was the first line that I wrote in the judgment, and it is meant to have bit of a humorous connotation to it.

Mpati: Thank you very much Judge Goliath, you are excused.