



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 A Le Grange

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President Mpati: Good evening Judge Le Grange.

Judge Le Grange: Justice I am coming from Elsie's River in Cape Town in the Cape flats, so it is Le Grange.

Mpati: How are you this evening?

Le Grange: I am feeling a bit tired but I am good.

Mpati: Do you think we can carry on?

Le Grange: Yes, we can carry on.

Mpati: You won't withdraw?

Le Grange: No, unless the commissioners feel otherwise.

Mpati: How long have you now been a judge of the Western Cape High Court?

Le Grange: Overall eleven years, of which two were acting.

Mpati: After your permanent appointment?

Le Grange: Seven years. Sorry, nine years.

Mpati: You will complete nine years at the end of April this year?

Le Grange: Yes.

Mpati: Because you were appointed on 1 May 2007?

Le Grange: Yes, that is correct.

Mpati: You indicate in your form that you were a member of Judicial Officers Association of South Africa, JOASA. Does that mean you were a magistrate?

Le Grange: Yes, that is correct.

Mpati: For how long?

Le Grange: I was a magistrate for five years, and I was a regional court magistrate for approximately seven or eight years.

Mpati: And what is the highest rank at the magistracy that you reached?

Le Grange: The highest rank in magistracy itself was an ordinary magistrate, but thereafter I've completed the regional court test, and then I was promoted to a regional court magistrate, which is equivalent to a chief magistrate.

Mpati: And did you have to do any management duties, be it in the district court or the regional court?

Le Grange: In the regional court I was a co-ordinator assisting the regional court president in managing the court, and with case flow management. And that I have done at the Bellville Regional Court, and also the Blue Downs Regional Court. So approximately, there was about six regional magistrates within that cluster.

Mpati: Now you want to be appointed as Deputy Judge President of the Western Cape High Court. How far are you from the top of seniority of judges in the Western Cape?

Le Grange: We are presently 33 permanent judges, and I am roundabout 21 I think on that list.

Mpati: And were you to be appointed as Deputy Judge President you have quite a lot of judges who are senior to you, who would now be under you. Do you think you would be comfortable in that position?

Le Grange: Well Justice Mpati at the time I was coordinator at the regional court, most of my peers were in fact my seniors, and most of them were white males, so when I arrived as the coordinator and being asked to be the coordinator, I was the most junior regional magistrate within the cluster. And we did fairly well within that cluster in terms of case flow management and in terms of backlog. Although it is not comparable with regard to the High Court, I have actual experience in managing my peers, and working with my peers. I have also in 2005 registered for my BCom Honours degree, where I in fact with some IT students worked around a project regarding case flow management, and we designed a computer programme with regard to case flow management, and that was part of my technical report. So I am acutely aware in terms of what is required in terms of case flow management, and in terms of seniority I worked with my peers who are far more my senior.

Mpati: What is your relationship with your other judges, particularly the senior judges in the Western Cape?

Le Grange: My relationship is very good. The collegiality between us, very well. I interact with them on a daily basis. And we have this interaction where we take each other for lunch. We also have what we call Friday Lunch where sometimes we go, all together as judges, for lunch, and we interact with one another as judges, so my interaction with them is really good.

Mpati: Yes. With your almost nine years' experience in that court, are there any problems, shortcomings, or challenges, whatever you want to name it, that you have noticed, and if so what would you like to do about them?

Le Grange: Justice Mpati and commissioners, it is so that presently the Judge President is running the division extremely well, but there is always room for improvement. A few things I would like to see in order that we can better things with regard to how we approach the appointment of acting judges, in order to streamline that process, so people that we approach understand the purpose for the reason for calling them to act. I would also like to see that we can have regard to the IT within the court, and how we can better that process in order to save resources. Within the court structure there's always budgetary constraints. I'm part of four judges that are doing criminal pre-trials, and within that we identified certain issues the four judges that are dealing with that approached the Judge President in order how we can deal with the backlog. What we came up is perhaps we can look at circuit courts, within the budgetary constraints, how we can deal with some of the matters in terms of access to justice, and hear the matters instead of coming from the circuit, whether it's George or Knysna, and locally, how we can deal with those matters. I would also like to see that instead of prisoners coming

to court and being transported, that were a case is being remanded, that we use, and I know there is a pilot project, an audio-visual relay in order to save time and costs in that regard. So that is one of the issues that I would like to bring to the table within our division, instead of the trucks coming from Pollsmoor with prisoners, and only the matter to be postponed. In terms of creating collegiality between our peers and our colleagues, and also bring about the diversity that we have got. Instead of seeing that as a difference, to use that as a cement, in order cementing us together as a team, because we must work as a team together. We need each other in order to make the division work. We might come from different backgrounds, from different educational backgrounds, but that should not keep us apart, it should bring us together as a team.

Mpati: Have you discussed any of the problems that you see, and suggested solutions, with your Judge President, or the Deputy Judge President?

Le Grange: Yes occasionally we go for lunch and we've discussed some of the issues. We also discussed, in terms of the criminal pre-trials, with the Judge-President. In fact we had a workshop recently where we try now to use the section 104A plea bargaining more effectively where judges get involved on an earlier stage, in order to see how we can curb lengthy trials. As you will know, most of the more serious crimes come through the High Court. Recently we have seen a high upsurge of accused persons with ten and twelve, with multiple accused. We like to see how we can have an intervention beforehand, and play a far better managerial role in that regard.

Mpati: We have been told that with regard to outstanding judgments, for instance, there is a list that is kept of judgments, when they become due and so forth, or when were they reserved. What has been your experience there? Has it helped?

Le Grange: No it definitely helped. I think it is a good way of keeping the judges on its toes, and every Friday in our meetings the Judge President will mention the list, and highlight it, because every three months he has to report to the office of the Chief Justice. In terms of the approach, if the judge has got difficulties – come to our office, discuss the matter, please don't let it stay on your table too long. There is this encouragement on a weekly basis to ensure that reserved judgments are kept to a minimum.

Mpati: And if you were to be appointed, and it were to happen that the Judge President goes on leave, which would leave you as the head of the court, there's is a problematic judge who has not delivered a judgment within the time period that they are supposed to do so, what steps would you take to ensure that there is accountability?

Le Grange: Justice Mpati and commissioners I think the first step will be to have a discussion with the judge to find out and enquire what's the reason for the long delay. There might be a valid reason, for instance there is a matter pending within the Supreme Court of Appeal, or in the Constitutional Court, that might make this matter moot, or would bring clarity to a point that was raised in front of a judge, therefore judgment is reserved until the judgment is dealt with within the higher court. But if that has happened I think it is incumbent upon the judge to inform the parties.

Mpati: Assume that there is no judgment coming from one of the higher courts?

Le Grange: Well, you still have a discussion with the judge. To give him some time. To be firm. To give him a time frame. And if that is not being done, to report him to the Office of the Chief Justice. That is it. There can not be any other way of dealing with that.

Mpati: And you won't be afraid to do that? To report?

Le Grange: No, absolutely not.

Judge President Hlophe: Just two questions for Judge Le Grange. The first relates to norms and standards. There are those who believe, judges, who believe that norms and standards are tantamount to interference with the independence of the judiciary. Would you like to comment in relation to that?

Le Grange: With regard to the norms and standards, if one has regard to the directive that was issued on the 28th of February 2014, it's quite evident that it creates transparency, accountability. It creates a tool where judges can understand what's needed from them. It also brings about efficiency, and the public can see what it is that we as judges need to do. So in terms of its independence, of diminishing it, I can't see a problem with that. In fact, it enhance quality justice. So regard can be had to that what is in the directive in terms of norms and standards and with that, the public can see what it is that we need to do as judges, and what we must do so I can't see that there can be any difficulty with that.

Hlophe: My final question Justice Le Grange: the outgoing Deputy Judge President is a female, and you are competing against two candidates who are also women. Do you have views with regard to gender transformation, with specific reference to the office of the Deputy Judge President?

Mpati: Well, assuming that they're competent people.

Le Grange: There's no doubt that gender transformation and gender inequality is an issue that needs to be addressed. It's an issue that the entire society needs to address. With regard to myself, clearly I will not, or my appointment will not advance the issue of gender transformation. But it will, in terms of racial transformation. In regard to the gender transformation, I've, as a regional court magistrate, had the opportunity to work with the Law Race and Gender research unit that worked with the magistracy with regard to social context training. One of the leading facilitators was a person that had a rich history of gender activism. And I can relate to that, because coming from Elsie's River, in terms of its poverty, its domestic violence, its economic abuse against women, and my mother didn't escape that. But the one thing she taught us as boys was to be humble, to be dignified, but more importantly not to stereotype people. To respect gender, and to respect women. And from that rich background, there is no doubt in my mind that in terms of the transformation process, I may not have the anatomy of a woman, but I understand the issues. I understand the issues in terms of the transformation agenda that we need to do within this country.

Ms Fiona Stewart: Judge Le Grange, I think most of us understand the issues, and they need to be addressed. Nobody seems to be able to address them effectively. How do we address the issues, at the Western Cape Bar specifically? How do we deal with the transformation that's not happening, both on a gender and racial basis?

Le Grange: In terms of the transformation at the bar, it is an issue that has been coming up now for quite some time. If one has regard to newspapers and how it is responded to, it appears there is always a delay. I haven't been at the Cape Bar, because I am coming from magistracy, but it is quite evident, more can be done. And that more is clearly in terms of advocacy training, that more can be done in terms of senior counsel helping junior counsel. But not only helping them in terms of getting them to court, because from my own experience, what you see is that state attorneys do appoint counsel, young counsel, but then the lead counsel is a silk, and arguing the matter, and the junior counsel is just sitting next to it. That needs to change. We also need to see the junior standing up and arguing the case. That is transformation. That is transformation not in terms of form, but in substance, and we need that. And we need to do that more often. But in terms of the Bar, I think real intervention is needed in that regard.

Stewart: I'll leave it to our Minister to ask what that intervention is.

Mpati: He's not here.

Mr Notyesi: If you are appointed as the Deputy Judge President of the Western Cape, what value will you personally bring?

Le Grange: Commissioner, overall I've got 23 years' experience as a judicial officer. That includes my magisterial years, my regional court magistrate years, my acting judge years and my years as a judge. The value that I think I will bring is because I have actual experience in working with peers. Working with your peers is slightly different from working in an environment where you are employer - employee relationship. You are working with your peers that were, some of them extremely successful in private practice. Some come from the bar, some come from the attorney's profession. And these people has got a wealth of experience. In managing them, one must always realise that

you are but the first among equals. And to inculcate a sense of collegiality. To inculcate a sense of supportive structure. And also to see to what extent the likes and dislikes of the judges. Because judges are human beings. Some like to do commercial work. Some want to do criminal work. Others want to concentrate on tax law, and so forth. One needs to understand the strength of the judges in order to see to what extent you can mix that. Because ultimately transformation is also the process of growing, the process of helping and to see to what extent there can be this osmosis of experience. And this is what I will do.

Advocate I Semenya SC: Judge, the oath of office that judicial officers take includes that there would administer justice to all without fear, favour or prejudice. How can norms and standards interfere with that? Isn't that the independence of the judiciary? To administer justice to all, without fear, favour or prejudice?

Le Grange: Can the commissioner just repeat the question? I'm not too sure if I understand.

Semenya: The JP tells us that there are those who hold a view that norms and standards are seen to interfere with the independence of judges. Now I am looking at the Constitution to see what oath they take when they take office, and what the Constitution envisages to constitute judicial independence. And that says to me they must just administer justice to all without fear, favour or prejudice. So I can't see the connection between norms and standards interfering with that independence? Do you share that view with me?

Le Grange: Yes, but norms and standards cannot interfere with that. Norms and standards in my view is a form of accountability. Accountability to ourselves, accountability to the Constitution, to uphold the rule of law.

Semenya: And accepting that all judges must be exposed to the full spectrum of matters that serve in the court in which they are - allocating matters of certain complexity to judges who are junior? What would be your sense about that?

Le Grange: Well, in terms of the complexity of the matter and giving it to junior judges, we all need to grow. We all, as judges, must be able to be given a chance with regard to the complexity of matters. And in terms of the complexity of matters, I think that if a junior judge is not being given an opportunity, when will that time arise? So as part of the management, and with regard to the present manner of dealing it, the Judge President, in consultation with the Deputy Judge President, deals with the allocation, and the allocation is being done in terms of the complexity of matters and if needs be, then two judges will preside in particular matters, or even three, in terms of the complexity of matters. And that's where we can grow as a division.

Semenya: One of the responses a judge gave in relation to delayed judgments was that they were not Afrikaans competent, and therefore it took them longer, and it may in part explain why some of the judgments take long, because they are complex, and a judge might take longer than otherwise would do with a less complex matter. Is it something that must be factored into this decision to allocate matters to specific judges?

Le Grange: From my experience it's always a factor that's taken into account. It's a factor that's always been taken into account in our division.

Mr C P Fourie: I will be brief. Good evening Judge Le Grange. Do I understand your CV correctly that from the age of about sixteen years old you had to work in order to pay, not only for your tertiary education, but also for your secondary education?

Le Grange: Yes, that is correct.

Fourie: I just want to say that that is commendable and a wonderful example.

Le Grange: Thank you commissioner.

Fourie: Can I then just ask you one question, flowing from what commissioner Semenya asked you. Should you become the Deputy Judge President, will you encourage the specialisation of judges in

certain fields, or would you encourage all judges to become jacks of all trade, and you know what flows therefrom – masters of none? Or is there somewhere between, a golden line?

Le Grange: Commissioner I think there must be a golden line. There are judges on our bench that prefer certain work, and that is the truth. People prefer some commercial work, others judges prefer tax work, other judges prefer criminal work, et cetera. But to deal with that, we need to expose all the judges to all the kinds of work. And how we deal with that is to get the judge with the far more experience in tax work, and get one of the other judges to preside with in matters, in order to impart, and to grow in terms of its own experience, and to see how matters are handled. That's how I started off, sitting with Judge Dennis Davis in a particular matter, and thereafter I was given a tax matter. That's how we grow in our division. It has happened frequently and often. So there is definitely a golden line. We cannot allow judges just to do commercial work, they also need to see the cold face of what is happening in our societies, in terms of the criminal work.

Minister Masutha: Silk status is a coveted status in the profession for obvious reason. Do you believe that there is fairness currently in the manner in which candidates for silk are recommended for appointment by the President?

Le Grange: Mr Minister because I'm not coming from the bar it's extremely difficult to comment with regards to that particular question. But my view on it is this: we as judges on a daily basis see counsel appearing before us. And I don't think there can be anything wrong if a particular person wants to obtain silk, that if input is being asked of that particular person, that we give input. Clearly we cannot be prescriptive. But if we give input, I think cannot be seen as we are interfering. With regard to the process of how the bar operates and how they select silks, I'm not privy to that, so unfortunately I cannot comment whether the fairness or unfairness in terms of that.

Masutha: But isn't it so that currently, before recommendations are forwarded to my office, that actually after the bar has made its selection, it forwards their preferred candidates to the JP for comment, and I assume JPs would then invite judges in their division to express a view on the candidates that have been put forward?

Le Grange: Yes that happens. Normally we will find the list of the persons that has been indicated they want silk status, and the Judge President ask us to give input. But you must remember Mr Minister, that some of the people that ask for silk rarely appear in court, or in front of us these days. So it is difficult if you haven't seen a person before you in court, to make a recommendation on that particular person.

Masutha: Are you suggesting that there are people who get to be recommended for silk who have not done court work?

Le Grange: No, what I'm saying is because there are so many courts, as an individual judge, so when person X comes up, you might say I have not seen this person appearing before me, so it would be unfair to make a comment in that regard.

Masutha: Do you believe that predetermined criteria need to be developed to create transparency around the appointment process, and if so, do you believe that the judiciary should make any contribution in the development of those criteria?

Le Grange: I think it is important that the judiciary make the criteria, because some of the judges coming from the bar will understand it. In terms of the process being more transparent, I cannot see any problems if the judiciary makes contribution in regard to that.

Mpati: Thank you Judge Le Grange. I would like you, because I don't think I did, express our appreciation to the other two candidates, your colleagues. Could you please convey our appreciation for the fact that, though you were scheduled to come for the interviews on Friday, you were able to make yourselves available today? And we've now gone into the night. So thank you for giving us the indulgence. Thank you, you are excused.

