



JUDGES MATTER

Judicial Service Commission Interviews

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Limpopo Division of the High Court (Deputy Judge President)

Interview of Judge F E Mokgohloa

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Chief Justice Mogoeng: Good morning, Judge Mokgohloa.

Judge Mokgohloa: Good morning.

Mogoeng: Are comfortable, settled, or should I help you to that effect?

Mokgohloa: I am comfortable. Thank you very much.

Mogoeng: As a person who has applied for a leadership position, you are probably aware of the role that the judiciary is meant to play in this country. Integrity is key, judgment, not judgment in the written kind, but reflecting properly on what one says before one says it, is important. And how you carry yourself. How you comport yourself is just as important. Now, as a person who aspires to be a head of court, are there challenges in the judiciary about how we carry ourselves that you think need to be addressed?

Mokgohloa: I don't think so CJ. I think that we are doing very well in the circumstances, on or off the bench and even in deciding cases, I think we are doing our jobs very well.

Mogoeng: So if there are judges who don't conduct themselves well, you would say that these are exceptions?

Mokgohloa: They should be exceptions.

Mogoeng: You haven't come across those?

Mokgohloa: I haven't, chief justice.

Mogoeng: And you haven't come across those who on appeal would be quick to agree with certain judges, because they think it is safer to agree with them than take a position that you really believe is the correct one?

Mokgohloa: I think a judge in doing a judgment must be independent, must apply his or her mind, and if in doing so, also agrees with other judges, its only then that they can say they agree.

Mogoeng: And you haven't come across those who for whatever reasons would be quick to agree with so and so?

Mokgohloa: No, chief justice.

Mogoeng: Okay. Very well. Give us your vision for the Limpopo Division of the High Court, which is obviously subject to the JP's vision.

Mokgohloa: My vision for the Limpopo Division of the High Court is firstly to support the vision of my JP. These include that there is efficiency in our Division, there is accountability, and also to participate actively in the case flow management with my JP.

Mogoeng: What challenges are you aware of that affects the better functioning of the court, and how do you intend to assist the JP and your colleagues to deal with them, if appointed?

Mokgohloa: There are two challenges I have identified in Limpopo. The first relates to civil matters, that relates mostly to practitioners in Limpopo. I had a problem with the way they draw their papers, the arguments in court and also the filing of their arguments. Faced with the problem I approached my JP, and suggested to draft a practice directive to attend to that and he allowed me to do that. I did draft a practice directive, in essence to deal with typing, font to be used, the size of the font, the spacing, and furthermore relating to the heads of argument. Granted they did file a practice note, but coming to the heads of argument, they would do a cover page headed 'heads of arguments', but attached to that would be a replication of the founding affidavit or the opposing affidavit. So in the practice directive I tried to explain what should be contained in the heads of argument.

Mogoeng: One of the practices that seems to delay the finalization of cases within a reasonable time is setting them down before they are trial ready, whether criminal or civil. What is it that we must do to ensure is that only matters that are trial ready are set down?

Mokgohloa: In the practice directive, I explained when a matter can be said to be ready for hearing. Once we pass that, then we can finalize the matters before us timeously. I think also the practice directive and the practice note will make the judgments a bit easier, because from them you will be able to realise the relief sought. Secondly, the matters that are common cause, whether there are material disputes of facts and what they are. The onus of proof must also be contained.

Mogoeng: What steps and mechanisms must be in place to make all that possible, all that needs to be done in order for a matter to be trial ready before it is set down?

Mokgohloa: This relates to case flow management. It is only through this, that we will be sure that a matter is ready for trial. Even criminal matters.

Mogoeng: What kind of case-flow management? What is it that judges must do to have trial ready matters for hearing?

Mokgohloa: If I may give an example on what I have been doing in Limpopo. Most of the matters that are on the roll are RAF matters. When those matters are put on the trial roll call, they are settled partly on their own. When I see a matter is a bit old, I enquire from the parties on how far they are on the issue of quantum. Whether the expert reports are already filed, and if that is the case, I enquire further, how far apart are they on the matter of quantum. Then I find sometimes that they are not that far apart. Even if they are to go on trial, they are not going to lead evidence with

witnesses. So we do a trial roll call on a Monday and the motion court on Tuesday. So what I do is that I might adjourn the matter to a Wednesday, and only deal with expert records. I can even hear three matters in one day since the issues are limited.

Mogoeng: That's commendable, but there is an old practice which seems to be new because it is used very seldom. Tell me what you think of it. Whether it is a Pistorius matter or any other matter, the old practice has been, much earlier legal representatives approach a judge and say, lets manage this matter so that all that needs to be done for it to be ready is done, so that come the day of hearing there is no question of postponement of further investigation, you did not give me this document, give it to me, I did not read it, give me a day to read it. It's all systems go. And the same applies to any other big civil matter that you might have that requires expeditious resolution. Judicial officers together with practitioners settle down, how many witnesses are you going to call, is that necessary? Those sort of things. Shouldn't this be put into operation so that we don't take up time enrolling matters that we know are not going to be heard because they won't be ready to be heard.

Mokgohloa: It is true. As I said that this is what is done in civil matters, and it can also be done in criminal matters. I even explained to my colleagues in Limpopo on criminal trials, we hold a pre-trial conference, so that if a matter is due to start on a Monday, maybe two days before then, we sit down with the defence and state counsel. They must have consulted, the defence must have consulted with the accused, the state must have consulted with their witnesses, so as to know how many witnesses will be called. Also find out from the state if there are any other issues, such as if they are going to lead a statement by the accused, which might lead to a trial within a trial. And even if they are going to lead evidence of a 204 witness, and also you may find that they lead evidence on hearsay. So in that instance, the parties are not being caught off-guard. Once matter start, it is all systems go. There's no way that the matter will be adjourned because I didn't know about this, I'm need time to prepare. Although sometimes, it happens.

Mogoeng: You have spent the better part of your judicial life in the KwaZulu - Natal Division of the High Court, is that not so? And you've been practicing this which you are telling us about for some time, if I may lead you, is that not so?

Mokgohloa: That so, Chief Justice.

Mogoeng: So you share your experience with your colleagues, that's what you're telling us?

Mokgohloa: That's true Chief Justice.

Mogoeng: Now, reserved judgment is threatening to be a problem. What are you going to do to ensure that there is no reserved judgment that you are not aware of, that you only learn about when people complain, or when there's a story about it in the media? That is you and the JP, of course.

Mokgohloa: I think Chief Justice, the best way to do this is, if after every term, there is a register where if there is any reserved judgement for the term, it must be recorded. The register must be monitored, if the judgment is reserved for a longer period, such that it is there in the next term, then there is a problem The JP or DJP have to approach the judge concerned and find out what is the problem.

Mogoeng: How often should that register be revisited by the leadership of the court?

Mokgohloa: I think after every term.

Mogoeng: Should it not be every month at least, so that you keep abreast of the challenges?

Mokgohloa: I think every month, I must concede that it is possible. If it is every month, it would help that the judgment is not reserved for more than three months.

Mogoeng: No self-respecting man or court would like to be seen as being indifferent to gender representation, or the need for gender representation. Now to help the judicial system address this, as a woman, how would your appointment to the leadership position help you achieve this which, I assume, you really want to achieve, and help other divisions to achieve?

Mokgohloa: It is true that gender, it's something that is really important in this day and age. Thinking of myself, I believe it's a material consideration, but that should be coupled with the necessary experience and necessary competence to be on the bench.

Mogoeng: But how are you going to help the courts identify people who can be appointed to the courts, and equip those at the High Court for the Supreme Court of Appeal and the Constitutional Court? If you have thoughts to share.

Mokgohloa: I think Chief Justice we might be lacking a pool of women to choose from. I will identify women whom I think have the necessary competency, encourage and if need be, train them, talk to the JP to have them come and act, then I can assist to train them.

Mogoeng: How do we prepare people appointed on the basis of potential to achieve effectiveness in the execution of their judicial responsibilities, knowing quite a good number of reserved judgments come from those who had limited experience before they were appointed, and we don't want them to be embarrassed? We don't want the institution to be embarrassed. How do we equip them properly before they come, and while they are there? Bearing in mind that many judges do not attend judicial training, even those who need it.

Mokgohloa: What I have realized that makes judges reserve judgments for a longer period, or many judgments, is that first when you go into court, be well be prepared for that matter. Then you will be able to follow that matter, you will be able to engage counsel and at the end you know what it is that you want and it is easy to write a judgment. If unprepared, this sometimes causes reserved judgements. It is not the only reason, but it can contribute.

Mogoeng: You were previously interviewed for the position of Deputy Judge President, but that was for KwaZulu - Natal?

Mokgohloa: That is correct.

Mogoeng: In addition to what you have said already, is there something you want to add in relation to the role you're going to play if appointed as Deputy Judge President for Limpopo, to improve the system, or have you just about said all you can remember so far?

Mokgohloa: I think I have said what I can remember.

Judge President Makgoba: Could you please share with use the managerial or leadership skills you possess? Maybe start from the moment when you were a practitioner, through your term as a judge in KZN, until you recently came to Limpopo, and tell us what contribution would you make to make the new Division a success.

Mokgohloa: Before I started practising on my own, I was partner in a company, where we were thirteen partners. I was tasked with heading a branch, the company was actually in Pretoria North and Pretoria, but I headed the branch in Ga-Rankuwa, and I also assisted in the branch in Hammanskraal. During the time, that's when I started learning how to manage the practice. After

that, I then opened my own practice. I ran the practice alone. During the time I trained two candidate attorneys, and I think that actually helped me, because running the office is not only about going to court, it's also about managing the staff, and also keeping your account books in order, and that's what I did as an attorney. As a judge, I appreciate that I was never in a position where I was a senior judge during the term, but I was a senior judge in most instances during the recess duty, and in KZN we used to have, even during the recess, motion court every day. And as a senior judge I had to draw the roster, I have to assign matters to the judges I will be working with, and I have also to appoint one judge who'll have to go to Pietermaritzburg to help with the appeals, and also run the court during the recess duty.

Makgoba: You talked of a Practice Directives which you drew up. Indeed so, I confirm that you approached me and made suggestion that in the motion court there are certain loopholes here and there, and I gave you a go ahead to prepare such a Directive, you did so, I vetted it and added to it, and ultimately I signed it off. Did it bear any fruit?

Mokgohloa: It did bear fruits. After it was circulated, the applications in the motion court, there was a lot of improvement, the heads of arguments were filed timeously and included what was supposed to be included. This made my life a bit easier, since I was able to deal with the motion court without any hitches.

Mokgoba: When you arrived in Limpopo in January, I put you in the motion court, the idea being that you must meet as many practitioners as possible in order to adjust to a new environment. I know that it was a lot of work on your side. Didn't you feel that I was throwing you too much in deep?

Mokgohloa: Not at all. I don't shy away from work. In the morning when I wake up, I wake up with the mind that I am going to work. I felt very honoured that I dealt with most of the civil work in Limpopo. It helped to interact with practitioners, and that led to us drafting the Practice Directive. It was not too much work for me; I feel honoured.

Mr Singh MEC: In one of the cases that you've listed as a case against which appeal was successful was that of Sher and Another v Vermaak. Could you just briefly explain to this panel on what basis was the appeal successful?

Mokgohloa: I found that there was a defamation of Mr Vermaak, they stated that the comment that was complained of were actually fair comments, and it did not amount to defamation.

Commissioner Singh MP: I am looking at employment history, pages 2 and 3, and I note that from the time you were an attorney in your own practice January 2000, you held a number of acting positions until 2008, for short stints, which would have prepared you for your permanent appointment as judge in the KwaZulu-Natal Division.

Mokgohloa: I think it did, because being an attorney are you only concerned with the defence side. But now being able to act as a magistrate, that's where now you look at this thing from both sides, on the state's side and also on the defence side. This stint of acting as a magistrate helped me to balance my judgment.

Singh: Thank you for that. I note that your residence is still shown as Mount Edgecombe in Durban, close to me, which is very good. But now since January you are in Limpopo. Your experience in KwaZulu-Natal division, what was your experience like working with other colleagues in that Division, and what prompted you to move to Limpopo. If you are appointed, obviously you will have to permanently relocate to Limpopo, so if you can just speak to that.

Mokgohloa: My relationship with my colleagues in KZN was very good, and is still very good. The reason why I moved to Limpopo is, I originally come from Pretoria, or I was born in Pretoria, but originate from Limpopo. So I told myself when I got the opportunity to be transferred to Limpopo, I said, I have gathered enough experience now, which I can go and share with my people in Limpopo, and also help me be closer to my family, who are in Pretoria. As to the relocation from Durban to Limpopo, I have done that already. I am in the process of buying a property in Limpopo, and I am selling one of the properties that I have in KZN. So I am prepared to stay in Limpopo.

Singh: So if you are appointed you actually going back home?

Mokgohloa: Yes, that is true, where I originate. And I think I would want to serve my people there.

Commissioner Magadzi: In your CV you indicated that there's a project, of the street law, can you educate us what is the function of the project? I know it, I'm from that area to, and also indicate to us the impact that it does on the ground.

Mokgohloa: I think this street law project, I did it when I was still an attorney in Ga-Rankuwa. What we used to do is at the time, you will remember very well, people were not very clued as to their rights, their constitutional rights. We had to make road shows, inform people about their rights. My passion was on the domestic violence thing. I have to explain to most women what this domestic violence is, and how they can protect themselves using that piece of legislation. That is what I was dealing with. Also to explain to the people, mostly in Ga-Rankuwa, in Winterveld, in Mabupane, about what is being done in court when they say that a person is granted bail, so that people should not fight and say, but this person is arrested today, tomorrow it's granted bail. That is what we were doing.

Magadzi: Obviously the problems are massive, particularly in the rural areas of Limpopo, in terms of the comprehension, understanding, sometimes implementation of some of the critical things, in terms of abuse. Would you say that resident in Limpopo, this will be an ideal, particularly dealing with women issues that you're able to go, reach out and touch and be able to do a similar thing, because the impact that this street law and all it did really did a very massive thing, but you would want to do something similar in this regard. Having said that, you know that Limpopo is highly patriarchal, and I am saying highly patriarchal, not undermining the other provinces which are having those kind of things. In this instance, I want to check with you, there's a customary practice that is being done in Limpopo, particularly in the royal houses, that once the chief or the traditional leader to be is no more, and was never married, then the royal house will go and look for a 'candle wife', and put the candle wife into a situation where you must give birth to a royal house who, an heir to the throne. Which actually, when you look at most of those candle wives, they are very young women, very vulnerable, gullible. And the most challenging thing is, when you give birth to a girl, not recognised, another girl, not recognised, until you give birth to a boy. But having said that, the challenge becomes when you give birth to firstly a boy at 21, you as a candle wife you have to vacate the [indistinct], and you still have other children that you must take care of, your stipend or your grant from government gets cut, it gets given to the heir to the throne, and then you are left to fend for yourself. Don't you think that these are some of the things that somewhere we have to, as women, say how do we deal with these, because it's abuse also, in essence. It's a challenge to these women who find themselves in that type of a situation. Having seen what the street law did, and I'm coupling it with this traditional, customary setup which is there in Limpopo. highly practised. I can tell you that in the Sekhukhune area, there's a lot of candle wives that are there resident, and I've worked with them, I know what they are going through. Thank you.

Mogoeng: Be as brief as you can.

Mokgohloa: I am glad that they raised this because I have two matters of a similar kind in Limpopo, which were brought during the motion court proceedings. I have found that there are material disputes of facts, and I have referred same for hearing of oral evidence. And I am not trying to bribe my JP here, I would be honoured if I can deal with those matters, because I have read them, I understand them, and in helping, definitely, I will do that through my judgments.

Commissioner Modise: What would you consider to be your weaknesses and your strengths?

Mokgohloa: One of my strengths is that I listen. I have that strength. And my weakness at times, although it's very difficult for one to accept that it's a weakness, but my weakness is, I get a bit irritated if things are not done properly. I will give an example, and this I think happened in Limpopo recently. My court starts at 10 o'clock, and I want everybody by 5 to 10, to be in court. The machine operator, the usher, my secretary, everybody must be in court. I can't start court at quarter past 10 because there's no machine operator. When that happened, I actually took them to task, I told them if you are a machine operator and you come and tell me that the machine it's not ready, you have to come into court at half past nine, test the machine, check that the microphones are working properly, and then at 5 to 10, the usher must come and call me. I cannot allow people to wait for me in court. And I get very agitated with that.

Modise: That's a good one. I am also like that. But how do you deal with difficult people, including your peers, your legal practitioners, your litigants?

Mokgohloa: With difficult people? Maybe I don't understand, difficult in which way?

Modise: One of the areas you might have to deal with, the judge says she was born in Tswane, you've been to Natal, in both provinces you do have serious question of sometimes having to deal with patriarchy, sometimes having to deal with ageism. In your profession there are a lot of issues around, I was here before you came, that type of issues where people undermine you because of your gender, or because of the period you came into the profession. How would you deal with it? It is important for us because as Deputy, you would I understand have to deal with issues of administration, and that is where the difficulties usually arise, so it is necessary for us to understand how you will navigate that space.

Mokgohloa: Thank you. I think I will answer how will I work, or maybe carry myself in a division where I'm only with male judges, and I will come to the difficult people later. When I started in my career, I was a partner in a firm, we were thirteen partners, twelve of them were white male attorneys. I was never intimidated by them. One thing I believe in is that you can only get out what you put in. I respect them as my colleagues and I expect them to respect me. Another thing with me is that I am straight talker, if am not satisfied with something, I tell you, I don't talk to somebody else. I don't want to be looked down because I'm a woman. When coming to work, if we are judges, the gender thing, we'll come back to it, but when coming to work, we work and the work that is allocated to us should be equally, I must not be given maintenance matters because I'm a woman. I can also do other things. Coming to difficult people, you just have to understand a person as he or she is. And if he want to be difficult, let him be difficult, but if I am your DJP and you are my judge, and you want to be difficult, that's fine, but let's do the work. That's all. If I allocate work to you I expect you to do the work, and then you can do your difficult thing afterwards, I don't mind.

Judge President Kgomo: I am going to be brief, but throughout there has been the question of the pool drying, of finding suitable women judges to appoint to the bench. And just as a preamble, the

gender commission also complained to the JSC about the slow pace of transformation. Can you share with the JSC how, in the Northern Cape, women have been drawn in to fill this gap and, you were a one-person practice, how, before you were appointed, you were assisted financially? Very briefly.

Mokgohloa: In Northern Cape, I always tell this to my colleagues, that I believe that in Northern Cape that's where I realized how the JP has his heart in empowering women, especially in the judicial path. It was not easy for us, because there were a lot of challenges that we faced, and more especially I think I was challenged because I didn't come from Northern Cape, I came from Gauteng. It was a challenge, why I should I come from Gauteng to act at Kimberly? I think JP, you were the one who was at one stage accused of bringing your relatives, and to be honest I didn't know JP Kgomo until I went to Northern Cape. I didn't start by acting as a judge. I asked to be mentored, and I was mentored for three years -

Kgomo: Three months.

Mokgohloa: Tree months. I didn't have a salary, I didn't have a place to stay, I remember I had just bought a new car, not brand new as such, but I had to sacrifice that, I had to sacrifice that, I have to sacrifice my luxury living because I wanted to be mentored. It was, I think JP -

Kgomo: Can we just maybe cut it a bit short? Let me pose the question this way, the Office of the Chief Justice and the USAID then came in and you closed your practice and paid for you, my question is, where SAJI cannot fill this gap, would it assist if the Office of the OCJ and perhaps treasury can assist people of potential, to pay for you as the OCJ paid for you, I think they paid you R19 000 a month for a period of close to 2 years, would that be correct?

Judge Mokgohloa: Yes, that is true. I was assisted by USAID to pay for me when I was still being mentored. And I believe that if we have potential, we have to take care of that potential, nurture it and also make sure they receive at least something when they come to act.

Commissioner Fourie: I just want to refresh my memory on two issues. I see on your corporate profile, annexed to your questionnaire, you say that you were a councillor of the Law Society of the Northern Provinces. When was that?

Mokgohloa: Councillor of the Law Society of Bophuthatswana.

Fourie: So it's not the Northern Provinces?

Mokgohloa: It's Boputhatswana.

Fourie: Okay. And then you say you were a member of the court practice committee of the Law Society of the Northern Provinces, when was that?

Mokgohloa: No.

Fourie: Just under Council of the Law Society, there's, you say member of court practice committee, LSNP.

Mokgohloa: No, it's not on my profile. On my profile on paragraph 7, it's Law Society of Bophuthatswana, and then its Nadel.

Fourie: OK sorry, I think I jumped the gun as far as that is concerned, to the next candidate. Sorry, I apologize

Mogoeng: Judge Mokgohloa thank you very much, you are excused.

Mokgohloa: Thank you very much.