



JUDGES MATTER

Judicial Service Commission Interviews

7 October 2016, Afternoon Session

Limpopo Division of the High Court

Interview of Mr M F Kganyago

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Chief Justice Mogoeng: Good afternoon, Mr Kganyago.

Mr Kganyago: Good afternoon Chief Justice, and honourable members of the Commission.

Mogoeng: You hold a BProc degree?

Kganyago: Correct.

Mogoeng: From which University?

Kganyago: University of the North, but now it's the University of Limpopo.

Mogoeng: And a Bachelor of Laws degree also?

Kganyago: Correct

Mogoeng: From which university?

Kganyago: Same university.

Mogoeng: Master of laws?

Kganyago: Vista University, it is now even combined with UNISA.

Mogoeng: Did you do your Masters programme through coursework, or through dissertation, or it's a combination of both?

Kganyago: A combination of both.

Mogoeng: What was your dissertation on? What was it about?

Kganyago: I did not have time to refresh myself, I did not expect that.

Mogoeng: Mine was on labour law.

Kganyago: It was on labour law, correct.

Mogoeng: You have been an attorney for about 22 years. What were your areas of emphasis in practice?

Kganyago: When I did my articles, I was doing third party matters. As a black attorney, I wanted to get away from the notion that blacks only do third party matters, and I wanted to diversify my practice, that's why I enrolled for the insolvency practice, I then started doing the insolvency practice, then after the LLM in labour law I started doing labour law. And then later, there was an advert of the companies tribunal, and I applied and then I'm also a member of the companies tribunal. Also a member of the SARS appeal board. Basically they were saying blacks were not doing the commercial work, so I just wanted to move away from that notion.

Mogoeng: So you've been doing commercial work, labour, doing insolvencies?

Kganyago: Correct.

Mogoeng: Did your role as the senior commissioner of the CCMA prepare you for the position you are applying for?

Kganyago: Partly correct.

Mogoeng: How? Very briefly.

Kganyago: Basically, when you write awards, it's similar to writing judgments, you are dealing with evidence, you are dealing with arguments. That has helped me also to be able to write judgments, because already I was involved in the analysis of evidence and arguments in writing awards. It's just that the template or the format has changed, it was at a more complex level.

Mogoeng: Were some of your awards you made taken up to the Labour Court?

Kganyago: Correct, even up to Labour Appeal Court.

Mogoeng: On average, how did you fare?

Kganyago: One of the Labour Appeal Court awards, I've seen that it was confirmed.

Mogoeng: Only one?

Kganyago: That is the one I came across when I was doing some research at the Labour Appeal Court.

Mogoeng: OK. Others?

Kganyago: There was another one which I remember, which was set aside at the Labour Court.

Mogoeng: But by and large you were doing well? And you were enjoying yourself there?

Kganyago: Correct.

Mogoeng: The Tax Appeal Board, did you have to write anything?

Kganyago: Correct, I was also writing some decisions at the Tax Appeal Board.

Mogoeng: What kind of issues did you deal with at that level? Is it a complaint that people were not properly taxed, or what was it? Did it involve tax law as such, or not necessarily?

Kganyago: Yes, it was involving tax law as such. The last one which I remember that I did, it was whether the money which was generated from farming, whether it forms part of the income. It was partly farming on cattle, and also game farm, and also crop farming. And there was a loss on the crop farming, as he wanted to make a setoff out of the income which he made out of gaming.

Mogoeng: Did you enjoy that too?

Kganyago: Yes, because it was a new field of law, I also enjoyed it.

Mogoeng: The disciplinary hearings of attorneys, did you have to write something, or was it more like this is the outcome, without much reasoning going into the equivalent of a judgement or something?

Kganyago: Usually we were sitting as three members, I was part of the member, we'll deliberate on the issue and the chairperson will write the decision, which is either we agree with him or we don't, and then it will go to the council for adoption.

Mogoeng: Would you give brief reasons, or long?

Kganyago: It's brief reasons.

Mogoeng: You acted both in Gauteng Division of the High Court and in the Limpopo Division of the High Court. For how long in Gauteng?

Kganyago: It was a combination, because in a term you find that you'll spend two weeks in Polokwane, two weeks in Thoyandou, Gauteng it will be Pretoria and Jo'burg but, all in all they come to 77 weeks.

Mogoeng: Was it a fulfilling experience?

Kganyago: Yes, in Gauteng there was a diversity of cases where some are more complex, they build you, and they were challenging.

Mogoeng: Not so in Limpopo?

Kganyago: No no, not necessarily so in Limpopo. Limpopo they are, but the variety of cases which are in Gauteng, it is not comparable to the one in Limpopo.

Judge President Makgoba: Good morning Mr Kganyago. During your stint of acting, my calculation gives me 15 months, more or less, and you talk in terms of 77 weeks, whatever it may be. What did you mainly deal with in terms of the branches of law?

Kganyago: Mainly it was opposed motions, civil trials, urgent court, and to a limited extent, criminal work.

Makgoba: Would you then say, you talk of limited extent, would you say you've got enough working knowledge in terms of the criminal trials?

Kganyago: With criminal work, I've been a practising attorney where I've trained to be a criminal lawyer, it is myself who decided to diversify my practice. I don't have any problem with criminal work

Makgoba: Do you have any reserved judgments with you since you have been acting? I know you've been acting up to April this year.

Kganyago: Not April, it's up to the 26th of February.

Makgoba: February. Do you have any reserved judgment and/or, part heard cases?

Kganyago: The part heard cases which I'm having is in the criminal court. But for any other matters, I don't have reserved judgments.

Mr. Singh: Mr Kganyago, on page 14 of your questionnaire, at 9.4, you refer to two judgments that were set aside by the SCA. Would you be in a position to briefly let this forum know why these judgments were set aside?

Kganyago: The first one was in relation to a case which emanate from the Gauteng, it was a third court case, wherein it was a tender. And they challenged it in terms of PAJA, and the court stated it was not supposed to have been challenged in terms of PAJA. And the second one, it was in relation to malicious prosecution, it was emanating from the Thoyandou High Court, wherein I've upheld the claim of the Plaintiff, but it was set aside on appeal.

Singh: I see that you have business interests in six companies. Will you resign from these companies if you are appointed?

Kganyago: Correct

Singh: I see then earlier on in your questionnaire that you are a member of the ANC. How do you see this perception, if you're to sit as a judge, that you're a member of the ANC? Do you think that will install confidence in the public appearing before you?

Kganyago: We were born from somewhere, and in our youth we belonged to certain organisation. And there was nowhere in which we could belong to nowhere. And then if I'm appointed, I would resign as a member of the ANC, and the members of the public will have confidence on me. I don't see that as a problem.

Commissioner Singh: Just a follow up to the affiliation to a political organisation. You say that you will resign when appointed, but you've acted for 77 weeks sitting there in that capacity, and when you're an acting judge you're a judge, for all intents and purposes. So didn't you see that there might be some confliction here in your responsibility, your impartiality, while sitting as an acting judge, which has a full responsibility of being a judge?

Kganyago: Ever since I started acting, I was not actively involved in any activities of the organisation. And I've never attended a meeting. What I was disclosing is that at this stage I have not yet resigned.

Commissioner Semanya: Mr Kganyago, good day to you. You mentioned that in your acting, you acted in the urgent court. How did that happen?

Kganyago: Correct, I've acted in the urgent court. It was in Jo'burg.

Semanya: How did you find it?

Kganyago: It was very challenging, because I remember it was in two weeks in succession, where the Jo'burg roll was very hectic, but I did manage it, I even remember the senior judge I was allocated with him was very impressed, the way I've handled the urgent court.

Semanya: You say the matter about which the SCA overturned your judgment, related to a tender, and you say the SCA said you should not have approached the matter in terms of PAJA. I don't follow that.

Kganyago: Correct. Basically, the matter was challenged in terms of PAJA. And then when I read the judgment of the SCA, it stated that because this matter was challenged in terms of PAJA, the claim was supposed to have dismissed on that basis only, because PAJA in that case was not supposed to have been followed, because the action was in relation to procurement, and not an administrative action.

Semanya: The award of a tender is not administrative action, the SCA is saying?

Kganyago: It was saying it's in relation to procurement, and procurement is not an administrative action.

Commissioner Fourie: I must reveal that I know you well, amongst others we serve on the Law Society of the Northern Provinces together. You've acted extensively, but you also indicate in your questionnaire that you are a sole practitioner. And I always wonder, how one is able to deal with both those situations. On the one hand acting extensively, the other being a sole practitioner. What happens to your practice when you're out of office for such an extensive period of time?

Kganyago: Fortunately, I'm having a reliable PA, who even at this stage is running the show.

Fourie: And are you satisfied that the practice are being attended to properly?

Kganyago: Correct. There's no complaint which I have received in my absentia.

Mogoeng: By the way by PA you don't mean your secretary. It's your Professional Assistant.

Kganyago: It's an admitted attorney, not my secretary or a candidate attorney.

Mogoeng: I thought I needed to clear that one.

Commissioner Motimele: Thank you CJ. Good afternoon Mr Kganyago. The definition of a judge includes that of an acting judge, would you agree?

Kganyago: Correct.

Mogoeng: Thank you Mr Kganyago. You are excused.