



JUDGES MATTER

Judicial Service Commission Interviews

7 October 2016, Afternoon Session

Limpopo Division of the High Court

Interview of Mr M G Phatudi

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Chief Justice Mogoeng: You hold a B Juris degree from which University?

Mr Phatudi: Back then it was called the University of the North.

Mogoeng: Turfloop?

Phatudi: Yes, Turfloop. Presently it is called the University of Limpopo.

Mogoeng: And LLB from?

Phatudi: Same university.

Mogoeng: Master of Laws?

Phatudi: It was obtained from the University of Pretoria.

Mogoeng: You were a legal advisor, is that of a company? What is that entity reflected there?

Phatudi: I had a short stint with Mamelodi Town Council, but that was just on a temporary basis, I wouldn't have regarded that as a permanent form of employment. I then proceeded to serve as a legal advisor – cum - company secretary for Anglo American Property Services, based in Johannesburg.

Mogoeng: And then a law lecturer?

Phatudi: I had a stint with the University of the North, my alma mater, where I lectured for a period of approximately seven years.

Mogoeng: What were your areas of focus?

Phatudi: I was attached to the department of jurisprudence, history of law, comparative law and I had occasion to lecture in a part of administrative law. But in years to come I was requested to lecture in company law, which was then called mercantile law.

Mogoeng: You practiced as an advocate for about three years?

Phatudi: No Chief Justice, upon my appointment as a lecturer, I sought to be admitted as an advocate, where I tied lecturing and practice as an advocate.

Mogoeng: How did it happen? Where were you practising from?

Phatudi: I practiced in the local courts in Polokwane, all over Limpopo. I also appeared in the High Court in Pretoria, where I pursued either civil matters or motion proceedings. And that cumulatively speaking, Chief Justice, was a period of 10 years of practical experience, not just as an academic.

Mogoeng: Your main thrust was lectureship, is that so?

Phatudi: That is so.

Mogoeng: And you've been an attorney for what, is it 16 years or so?

Phatudi: It was a period of 16 years, having been admitted to the sidebar in 1999, October, and I remain at the sidebar as we speak.

Mogoeng: It must be a thriving practice, and just looking at you -

Phatudi: It's like seven years of wetness and seven years of drought. It depends on the circumstances.

Mogoeng: You were the deputy chair of the BLA in Limpopo for how long?

Phatudi: I think it was a period of two to three years.

Mogoeng: And also the deputy chair of the Limpopo law council.

Phatudi: Indeed, Chief Justice. That was also for a period of two to three years.

Mogoeng: And you've served as an arbitrator, or you still do?

Phatudi: I have been trained as a commissioner for the CCMA. I also served as an arbitrator for the DRC.

Mogoeng: What is that, it is not Congo is it?

Phatudi: No, it is the Dispute Resolution Council.

Mogoeng: You also in the Compensation Fund, as a presiding officer.

Phatudi: That is so, Chief Justice.

Mogoeng: All in all, for how long have you acted as a judge?

Phatudi: I acted as a judge from 2013, 2014, '15, and up to the first of April this year.

Mogoeng: Did you enjoy it?

Phatudi: I wish I could have acted many years ago. Indeed, I have enjoyed it, I have found a new area other than academic and practice. Today I am before this Commission to seek to be elevated to position of a judge, on a permanent basis, if it pleases the honourable commission.

Mogoeng: As an insignificant footnote, are you related to Judge Phatudi by any chance?

Phatudi: Yes. He's my uncle's son, to put it in a nutshell.

Judge President Makgoba: Just to clarify your acting stints. When you indicated the period of acting, you referred us to page eight of your CV. On your CV it says acted between 2013 up to 2016, for a period of between 20 and 25 weeks. That can't be, my calculations give me between 20 and 25 months, not weeks.

Phatudi: The computation is correct, it is between that period of 20 and 24, not weeks, but months. Cumulatively it could be a period of two and a half years, speaking roundly.

Makgoba: You have acted in both Gauteng, North and South, Limpopo Polokwane and also Limpopo Thohoyandou, is that correct?

Phatudi: That is so, I also had occasion to act in Palm Ridge, where we dealt with criminal cases.

Makgoba: I have been involved during your acting stint. Immediately after my appointment as JP in the latter part of last year, I was based in Polokwane and you happened to be acting there, while I was there. There were occasions when I would be absent from my office, attending meetings, and we'd be the only two at the court, and you would remain, running the roll, going on with the cases unsupervised, and so on. Didn't you feel at that stage that you had been neglected and/or, you had been thrown into the deep, and how did you find your way to run cases in that manner? Because according to me, I didn't find any fault with what you have done.

Phatudi: My view would be that by that time I had already amassed a fair amount of experience in terms of court management, because we have been trained for that during the SAJEI training sessions. But apart from that, I think experience in terms of management of entities such as my practice, have paved the way for one to remain responsible in the absence of the JP. Apart from that, obtaining advice from colleagues, also added impetus, to keep the fires burning.

Mogoeng: The SAJEI programme you attended, is it the aspirant judges programme?

Phatudi: That is so Chief Justice.

Mogoeng: Did you do the advanced, or only the first part, the basic one?

Phatudi: That one was an inceptive one, it was merely elementary. It did not extend more than a week, but I found it very, very informative, and it served as an eye opener.

Mogoeng: You didn't come again for the advanced?

Phatudi: No, we were subsequently called by the Law Society -

Mogoeng: I am confining myself to SAJEI.

Phatudi: No, it was only one stint, Chief Justice.

Mogoeng: Did you write an exam?

Phatudi: No, it was only in the form of lectures, notes.

Mogoeng: By judges?

Phatudi: By judges, eminent judges let me say –

Mogoeng: We are all eminent.

Phatudi: No no, I mean at that time, with greatest respect to judges, I mean, the former Chief Justice Ngcobo I remember was there, and taught judgement writing. Even your good self, you happened to

come in to introduce yourself, but we did not have the benefit to be trained by your good self. The President of the SCA as well.

Mr Singh, Representative of the Premier of Limpopo: We know each other. You have acted for two and a half years, and I'm sure that during that time, to ensure that justice is speedily dispensed, you must have had some sort of case flow management in order to deal with the cases before you. Can you explain to this forum if you have such a model, and how intend to dispense with cases speedily, or without unnecessary delays?

Phatudi: Case flow management is something that we have been trained also to deal with, and case flow management you look at the roll, and I would think, as the JP Makgoba has asked how did you manage to do this, in Thohoyandou for example we do case allocations, you look at the intensity of the matter, and the complexity of the case, and the urgency of course, and try to allocate cases in accordance with that priority. I am not sure whether I have addressed myself adequately to your question?

Singh: That will be sufficient for now.

Commissioner Nyambi: If you can share with us your role when you reflected in the issue of social responsibility, that you were part of 16 days of activism, what were you doing?

Phatudi: I was invited by the magistrate of Seshebo, some few years ago, to come and share with the community of Seshebo about this 16 days of activism. That is violence against women and children. I gave a lecture on that day, and engaged with the people on the ground as to how to respect the rights of women and children, and to protect them against violence and abuse.

Nyambi: Explain how you gave a lecture and engaged on the ground?

Phatudi: Firstly, I've made preparations, I've studied relevant literature, in particular the Domestic Violence Act, and related enactments. I prepared a paper, and attended to Seshebo where the gathering was called by the office of the magistrate and I was given an opportunity to address the people who were gathered at the time, and explained to them step by step, in greater detail, as to how not to violate the Domestic Violence Act, and also make sure that there is a greater understanding of these measures for which the gathering was called. I'm not sure whether, did I address myself well on the question?

Mogoeng: Don't worry, if you haven't they will let you know.

Nyambi: Can you take us through your understanding of judicial accountability?

Phatudi: As the name suggests, it is expected that judges are required to uphold the law, the Constitution and the rule of law, and to be accountable. In other words the broad concept itself, as it suggests, expects that there should be accountability at all times, exercised by the judiciary, in relation to the people they serve, and the courts they serve.

Nyambi: You have indicated that you are related to Judge Phatudi. If a perception can be created that the division will be run by a family, your comment on that?

Phatudi: Well I do not think that would be a fair assertion to make, because I believe like me, he has gone through this process of being screened, and being evaluated by the JSC whether he is fit and proper to be a judge, and if he qualifies to have been a judge, the fact that the division would be run by a family, I think that would be a misconception. We have got a lot of Botha's, there are a lot of Van der Merwe's in the system. You go to the High Court in Pretoria, there are two Louw's there. It cannot be said that there is an Afrikaaner family running the High Court in Pretoria. And I believe those are not the only courts, there should be other courts where, we just share surnames, but that does not

mean that there will be an assertion that the court is run by the family. Be that as it may, people will always have perceptions, you will never run away from perceptions, unfortunately.

Commissioner Malema: Mr Phatudi, can you just give us both your business and political interests?

Phatudi: As we speak, and you'll see from my questionnaire that I was asked of my association with any political party past and present. I've been open and mentioned the ANC, but the last time I had associated myself actively was in 1995, when I served as the branch secretary of the ANC in Polokwane, which was one unit. I have lost a great deal of interest with the ANC. That is political affiliation. Secondly, business wise, as an attorney the attorney's profession is run along business lines. But I have also declared in the questionnaire that I am a non-executive director of a company called Abrina. Now I am mindful of the fact that, should I succeed, I would have to relinquish interests in any business whatsoever.

Malema: What does Abrina do?

Phatudi: Abrina is not an active company, it was established purely to explore or seek prospecting of certain mineral resources. It has not been able to translate itself into serious active business, because of lack of funds by the investors. It is still running like a dormant company, so to speak. If you want to look into its assets, it has no assets, but it has liabilities because it must pay CIPRO fees annually. It is a BEE company established to look into the exploitation of mineral resources in Limpopo.

Malema: So you've got interests in mines?

Phatudi: Yes I do, as I speak I do. I wouldn't say in mines in general, but I've got an interest in this company Abrina which deals with mining exploration. Now the reason is, as a man –

Mogoeng: He will ask for a reason if he needs it.

Malema: Post 1994, have you given any presentations to the ANC workshops, on its constitution? Purely ANC meetings, not government, not department. ANC. Have you been to ANC events to workshop them about their own constitution or anything related to that? Because I have seen you in ANC meetings, post 1995.

Phatudi: I have attended meetings, but not necessarily to give any lectures, or to give any form of advice. I just attended like an ordinary citizen, but that does not mean that I was active in its structures of governance.

Malema: You terminated your membership with the ANC in 1995?

Phatudi: No, I said I ceased to be active in 1995.

Malema: But I've seen you in ANC meetings beyond 1995, and that is activism.

Phatudi: That's a matter of interpretation, whether one is a member, or is merely a person who attended a meeting at a particular time. But I want to be clear and say that I have ceased to be active in the activities of the ANC since 1995. If you have seen me there after, that is fine and does not derogate from the fact that I have ceased to be active.

Malema: Will it be correct for a judge to associate and socialise with politicians?

Phatudi: It wouldn't be correct, because the moment one is appointed a judge -

Mogoeng: You don't know what he wants to know, Commissioner Malema is very precise in asking questions. So if he puts a question to you, give an answer, he knows how to follow up.

Phatudi: It is not correct.

Malema: Do you socialise or have friends in high places who are politicians?

Phatudi: Who are politicians? No.

Malema: Thank you.

Mogoeng: I was expecting a bombshell.

Malema: I know Mr Phatudi, so there is nothing untoward here. We come from the same province, and were together in the ANC, so I know him very well. Yes.

Minister Masutha: I must confirm I'm not quite sure what that question really meant, and what the answer therefore meant, but I will not seek to clarify, as long as Commissioner Malema and the candidate understand each other, I will leave it at that. The Limpopo Division started in earnest at the commencement of the first term in January this year. Did you act in that division from the time of its commencement currently, or did you act previously?

Phatudi: As and with effect from this term, I was not acting until the past four weeks or so, when I was asked by the JP to serve in the Thohoyandou local division for three weeks, and then for the other three weeks until the 1st of April I was in the new court in Polokwane.

Masutha: Even when the Thohoyandou Division was part of the Gauteng Division, since the Limpopo Division didn't exist yet, did you act in that court specifically?

Phatudi: Yes I did Minister, for quite some time. The old court, I used to act there. Shuttling between Thoynadou, that court, Pretoria, Johannesburg and so on. I have acted, yes.

Masutha: So you are quite familiar with the dynamics and challenges of Limpopo 'as it previously existed', and Limpopo as fully constituted post January 25th.

Phatudi: That is so.

Masutha: What have you found to be particularly challenging for the new court, as it's currently constituted?

Phatudi: At the moment there is a great deal of shortage of judges. That court's roll is very busy, it's become increasingly busy, especially with motion proceedings. As we speak there is a lot of backlog of matters which have been transferred for example, from the Gauteng Pretoria Division, the appeal matters in particular, which would require urgent attention to finalise. Therefore there's a great deal of shortage for that division, and it is quite interesting that there is an ever increasing number of motion proceedings that also require the attention of judges. I think one judge at a time, it's becoming very difficult for one judge at a time to deal and dispose of motion court cases.

Masutha: With your stint so far, do you believe that you would be able to support that collective effort in bring down the roll, given the limited capacity, viz-a-vis the workload as you have described it?

Phatudi: Yes, I reasonably believe that with my involvement, I will be able to assist in collapsing the roll as fast as possible, as expeditiously as possible, and I say so because I have already done so in the past.

Mogoeng: Mr Phatudi, a yes would have sufficed. Leave a commissioner to follow up, because time is also a factor.

Commissioner Schmidt: I am partially covered, except to the extent that I did not hear your answer as to whether during the 6 years you were a law lecturer, you practiced as an advocate as well?

Phatudi: Indeed, I have done so, I've tied the two together. It was not just a matter of academic lecturing, but also participated in court matters.

Schmidt: Did you hold chambers during that period?

Phatudi: Yes, I had my own private chambers in Polokwane.

Schmidt: During the time you were a lecturer?

Phatudi: Correct, yes.

Schmidt: And you law practice, what did it consist of? What kind of work?

Phatudi: I received briefs from attorneys on a number of civil cases, as well as criminal cases.

Advocate Semenya SC: Just for the record, one of your "demerits" is that you had me as a classmate at Turfloop.

Phatudi: Oh yes, that is so.

Mogoeng: Is that all? Thank you very much for your time Mr Phatudi, you are excused.