



# JUDGES MATTER

## Judicial Service Commission Interviews

7 October 2016, Afternoon Session

Limpopo Division of the High Court

Interview of Advocate G C Muller SC

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Chief Justice Mogoeng: Good afternoon Mr Muller.

Advocate Muller: Good afternoon Chief Justice.

Mogoeng: I notice from your questionnaire that you've really gone all out to empower yourself, by acquiring even a Doctor of Laws degree. Have you lectured a bit here and there?

Muller: No Chief Justice, I was asked by the Bar Council to lecture pupils on two occasions.

Mogoeng: Excluding your experience as a prosecutor, magistrate, you've been a practising advocate for about 25 years now?

Muller: That's correct, from 1991.

Mogoeng: And for how many years as a junior?

Muller: Up to 2009.

Mogoeng: That's makes it, ok, I can't work it out -

Muller: About 18 or 19 years.

Mogoeng: And as senior, about 6, 7 years, thereabout?

Muller: That's correct, yes.

Mogoeng: I notice that you have acted on a number of occasions as a High Court judge, in Gauteng. All in all, how many months does this come down to?

Muller: Well I think it's about between 11 and 14 weeks, I think. They were always short spells, two weeks, I was only once asked to act for the month.

Mogoeng: Well, JP?

Judge President Makgoba: Good afternoon Advocate Muller. I note in the bundle of cases which you have furnished us, that you acted as an advocate in five cases, reported cases, before the

Constitutional Court, and also I note five reported cases in the Supreme Court of Appeal. Along this line, I gather that you seem to be having quite a lot of experience in the High Court litigation?

Muller: I do have. I was lucky, I had over the period to have appeared in both these courts for a number of occasions.

Makgoba: Now with the experience you have as counsel, senior counsel for that matter, what value would you bring to Limpopo High Court as a new Division developing?

Muller: Well JP, I think the, if one takes into account my career, there's actually two halves of it. The first 20 years in the magistrates' court, where I obtained a lot of experience in criminal work, then the latter 20 years I was more involved in civil litigation. I think over those, I think that's almost 20, 40 years, I have gained a lot of experience in court procedure, to be in court, and also to adjudicate matters in court, and I think under those circumstances I will definitely be a asset to a new Division, and I think I can bring a lot to that Division.

Makgoba: Lastly just give us a variety of cases you have handled, broadly, both criminal and civil, in particular, civil, the variety of cases.

Muller: Well in civil matters I have a general practice, there are matters where I did insolvency matters, matters where there are claims against the police, and also matters, commercial matters where I appeared in. Criminal matters in the latter part was mostly appeals, the last criminal trial that I did was the *Bogaards* matter, which I started in the Magistrate's Court, then appeared in the High Court in the appeal, then appeared in the Supreme Court of Appeals in the appeal, and then appeared in the Constitutional Court in the appeal. And then back to the Magistrate's Court again.

Mr Singh: With regard to case management, how do you see yourself managing your cases in your court if you are appointed, so that justice is speedily dispensed?

Muller: Well it depends certainly on the procedures followed, but once a trial's started, I would definitely implore people to finish it. It has happened in the past that a case is set down for three days, for instance, and then one witness is called in three days, testifies for three days and the matter has to be postponed. Under those circumstances, I arrange with the parties to hear the case in the recess, so that the matter can just be finalised. Case management, if a matter's fairly big then obviously when the file is brought to you as a judge you can manage the case by calling in counsel, and arrange with them to deal with the matter as expediency as possible.

Commissioner Hellens: You are going to a new Division, and they're going to be challenges to establishing that court. An area of concern of mine is the facilities that judges have to have their judgments typed, and secondly, the difficulty is that if you want to give an ex-tempore judgment, even though you've worked it out completely, and you can dictate it as you are used to doing in practice, the quality of the transcription services in court are such that when you get the judgment back, you can't recognize what you said. What are your comments about that and what would you do about it, although you're not going to be a JP, but I'd like your views on that. So it's the secretarial services available to judges for typing; and the transcription services available in the courts.

Muller: Well I've recently had that problem, and what I do is I asked the transcriber to send a copy of the judgment to my home, and then I do it personally there, to correct the judgment and then send it back again. That's the only way of doing it if you want to finish it as quickly as possible.

Hellens: And with regard to your secretary, your registrar? My experience is that you don't really get a secretary when you get a registrar, is that wrong, in your experience?

Muller: Yes well, if you act, then you don't choose the secretary, you get one, and I found it more convenient to rather do the judgments at home and finish them there than to ask anybody else to do it, especially if you're only there for a week or two weeks.

Hellens: But you would agree in general that this is an area where the judges struggle, in other words, one of the imperatives is not to reserve judgment, but if you can, to give a judgment immediately or

ex-tempore. If you do that, you will do it in open court, and the difficulty with that is the transcription service.

Muller: Yes well that's a practical difficulty, obviously when, I would like to have a secretary that can type, properly, and to deal with that in the office. But at times when you act, you have these difficulties, and that's why I do it that way.

Mogoeng: Well an easier way of course is this automatic transcription facility that many courts around the world have introduced. As you speak, the machine transcribes, whoever needs the record, including the judgment, it's available electronically. You don't have to go and pay anybody to go and make mistakes trying to transcribe the record afterwards. At the touch of the button anyone has the record who needs it, but of course that requires resources. Commissioner Motimele?

Commissioner Motimele: Good afternoon counsel. I would like to put it to you that we know each other, we litigate against each other, and we're in the same buildings, New Court Chambers. If you were to be appointed to Limpopo High Court, being white, male Afrikaner, and having in mind that the constitution of the court is seven judges, six male Africans, and one female African, how do you think your appointment will contribute to transformation and or diversity of that court?

Muller: Well I think as far as transformation is concerned, the appointment of one white male will probably not rock the boat to any extent. At the end of the day you have to do a specific job, and whether you're white or not does not change that. The court obviously I think has to have a diversity of people, and me being there will fulfil that. Apart from that, Limpopo has large rural areas where there's Afrikaners, farmers and so on, and obviously when you do cases there, that will also facilitate the process if you are Afrikaans and the witnesses is Afrikaans.

Commissioner Schmidt: If one looks at page 17 of your questionnaire, your acting stints seem to have been a question of days rather than a question of months. Could you just explain that to us?

Muller: Well the first time that I acted, I was asked to act for that short period. There was another occasion where Judge Fabricius injured his knee and had to go in to hospital, and I was asked to step in, and I think I was there, I think that was in April 21st to 9<sup>th</sup> of May, I think it was that period. Although I didn't mind acting for a longer period, I was only asked to act for 14 days or 10 days.

Schmidt: So we shouldn't draw an adverse deduction from the fact that you acted, were available for days rather than months, that's basically what I am asking?

Muller: No

Schmidt: Secondly, academic publications, your wide general field of knowledge seems to be indicated by your academic publications. From tax law, customs and excise Act, then banking law, labour law, international/maritime law. Is that a fair reflection of your practice?

Muller: No. The fact that I have doctored in international law doesn't mean anything as far as practice is concerned. I studied that because at the time I decided to do it in that particular direction, and not necessarily to see whether I can benefit from practice. The first publication, that was my Masters dissertation, which I've written for the Masters in import and export law. The second one, I'd written that because I was under the impression that I needed that as a publication before I can obtain the LLD degree. I was then told that it was not necessary, but I published it in any event. As far as the others are concerned, I was asked by these people to write short articles with regard to the, labour law, which I did. But labour law is a small portion of what I do.

Commissioner Ndoni: In one of your academic publications, one titled are the waters above the continental shelf part of South Africa for the purposes of customs and excise. What is the reference to continental shelf, and are they part of South Africa, those waters that you're referring to?

Muller: Yes, the argument was that the continental shelf is part of the Republic, but not necessarily the waters above the continental shelf, because it's further than the 15 nautical miles from where the territorial sea ends. And that was the argument in that article.

Commissioner Notyesi: Advocate, from your questionnaire and the CV, I don't see a demonstratable contribution in transformation on your part. Am I wrong?

Muller: Yes, you are wrong. Obviously if you read the report in the Law Reports, you will see that in some of these cases I had black juniors. I think as far as the Constitutional Court is concerned, the first two cases, the *Bogaards* case and the *Nabolisa* case I was alone, the rest of the cases I had juniors, one white, and the other black juniors.

Notyesi: You were born in 1953, which means you are now heading to your 63<sup>rd</sup> birthday this year, effectively leaving you with 7 years before you reach your 70th year. Don't you think that you've left it long before you apply?

Muller: I only joined the bar when I was 37, and obviously because you're a junior at 37, you have to wait at least 15 years to get to senior status, so obviously that has taken a toll in that sense, that I only joined the bar at a very late stage in my life.

Notyesi: You are presently residing at Centurion. At your age, with your family there, are you prepared to relocate to Polokwane, assuming that you are appointed, at this very level of your age?

Muller: Yes, I am prepared to do that. You'll note that in my history that I was transferred on many occasions. So I don't mind moving from one town to another town.

Mogoeng: Thank you commissioner. Advocate Muller, you are excused.

Muller: Thank you very much.