



JUDGES MATTER

Judicial Service Commission Interviews

8 April 2016, Morning session

Western Cape Division of the High Court

Interview of Mr J F Riley

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Chief Justice Mogoeng: Good morning Mr Ripley.

Mr Riley: Good morning Chief Justice

Mogoeng: Did I pronounce the surname incorrectly? Is it Ripley or Ripely?

Riley: It's Riley.

Mogoeng: Riley. Why do I get the 'P' from now? I'm sorry, Mr Riley. You hold BJuris and LLB degrees?

Riley: That's correct, Chief Justice.

Mogoeng: From which University?

Riley: Western Cape.

Mogoeng: And you were a public prosecutor between 1983 and 1987?

Riley: Yes, in that period.

Mogoeng: And a magistrate for only one year?

Riley: Yes, I sort of advanced over to the magistrates.

Mogoeng: Yes, and you've been an attorney for about 15 years now? Is that correct or am I mistaken?

Riley: I think it's a bit longer.

Mogoeng: I beg your pardon?

Riley: I think it's a bit longer, Chief Justice.

Mogoeng: Is it a bit longer? How long have you been a magistrate for, because I know subsequently you became a regional court magistrate?

Riley: So no, I sort of was asked to do acting work as a regional magistrate.

Mogoeng: Oh yes, oh yes. So how long have you been an attorney?

Riley: Certainly I think its more than 20 years, I think.

Mogoeng: I thought it was from 1991 to ... 2016, that gives us how long? More than 20 years?

Mr Riley: Yes.

Mogoeng: Yes, you are quite right my calculation, is wrong. And you've acted for the, you've acted as a judge for how long exactly? I couldn't work it out, it seems to be for about two years, but I wasn't sure if you'd been acting continuously from 2014 until now, or whether you would pick up a term here and there.

Riley: I acted during 2007 for the first time. That I think was one term, and then in 2010 I think was another term.

Mogoeng: Well, just give me an estimate period.

Riley: I think all in all approximately a year and a half.

Mogoeng: A year and a half. Did you enjoy it?

Riley: It's extremely challenging, a huge learning experience.

Mogoeng: Reserved judgments?

Mr Riley: Yes I do have, unfortunately.

Mogoeng: Well, over the period you acted there, what is the longest you have ever taken to deliver a judgment, a reserved judgment?

Riley: I think, it could be, I must confess it could be about 6 months and I think that the reason for that is not proper planning -

Mogoeng: Okay.

Riley: - and prioritising matters, and I think with the work flow and the pressure its very easy to sort of get to get caught up in the, in keeping a matter longer than you should.

Mogoeng: And how far back was that?

Riley: The judgment -

Mogoeng: During which year?

Riley: This was in my recent, in 2015 I picked up a matter, and I handed down that judgment in the first term now.

Mogoeng: Since 2013?

Riley: No, 2015, Chief Justice.

Mogoeng: Oh, 2015. Is that the only matter where you've kept a judgment reserved for that long?

Riley: There was another matter, but that judgment has also been handed down.

Mogoeng: How long did you keep it reserved for?

Riley: Could have been four months or so. I know that the norms and standards say that you shouldn't have a judgment outstanding for longer than -

Mogoeng: Yes, well that's designed to make sure that you don't get to 8 months -

Riley: Yes, I -

Mogoeng: - because if you get to 8 months then you'll come before this body.

Riley: Yes, I think that certainly from the Judge President's point of view, he's certainly committed to seeing that judges don't have judgments outstanding for too long, but the problem is that sometimes because of circumstances things unfortunately get out of hand sometimes, and then you have to play catch up.

Mogoeng: No, there are exceptions, we do have exceptions at the Constitutional Court as well. Very well, Deputy Judge President Traverso?

Deputy Judge President Traverso: Yes, Mr Riley, when you previously acted in the High Court, were there then any judgments of yours that were outstanding for a long time?

Riley: Yes, I will say that there were judgments outstanding, and the simple reason for that is that in one instance I was allocated quite a substantial application, I think its one of the judgments I referred to here, I think it's the *Cinmark* judgment, and the difficulty of course of having the kind of practice that I have is that it results in the situation that once you back in practice and you start working and you become completely overwhelmed by what you're supposed to be doing and the effect of that is that judgment was outstanding for some time.

Traverso: How long was that?

Riley: I must confess I can't tell you offhand. You might have made a note of it.

Traverso: No, I didn't make a note of it, I'm asking you Mr Riley.

Riley: I can't say offhand, but it was very difficult because what I've realised is that you can't, you can't do acting work as a judge, and at the same time run a practice, it's impossible.

Mogoeng: No, no, please, how long did you take? Because that's crucial, and you've got to be clear in your answer here. How long did you keep it reserved for?

Riley: Well I must confess -

Mogoeng: Estimate. I'm sitting here and if you ask me of any matter, I'll tell you, I will be able to estimate, any matter that affects me.

Riley: It could have been 8 months, I don't know, I, I don't know.

Traverso: Yes Mr Riley, sorry Chief Justice can I continue? Mr Riley, I didn't make a note of it and obviously my memory is not perfect in every respect, but if I recall we, when I say we I'm talking about Judge Hlophe and myself, had to go to great lengths to get you to write that judgment. Would I be unfair to say that?

Riley: It's, it was, from my point of view basically a situation of time, making time, making time in a busy practice where you're the sole sort of, practically the main fee earner in the practice, so it was difficult.

Traverso: One last question, Mr Riley, when you are allocated matters do you try and complete them in the guesstimated time that the case will last, or do your cases generally run over?

Riley: I don't think that they generally run over I think that in exceptional situations it does happen that a matter does get postponed for whatever reasonable reason there may exist.

Mogoeng: Thank you Deputy Judge President. Ms Stewart?

Ms Stewart: Thank you Chief Justice. Mr Riley, at paragraph six point two of your questionnaire you mentioned that 60 to 70% of your work is criminal law, and when you were asked about constitutional law you said that falls under your criminal law practice, which I understand. And I note that you do say that you have run motion court in the Cape, which is obviously a long list of matters, but do you think you've had enough experience in respect of the other fields of law given that, on your own version, 70% of your practice is litigation, is criminal, and that incorporates under it constitutional law, have you been exposed to a number of other areas of law on the bench?

Riley: I have, in practice, the practice, because of my background as a prosecutor and a magistrate, almost automatically sort of developed into me doing much more criminal practice work. However, at the same time, it wasn't exclusively restricted to criminal practice work and over a period of years up until now, the practice has sort of developed into a general practice so, I have had exposure to a lot of other work, and when I came to the High Court, I must confess, that I was probably then exposed to a much wider spectrum of civil practice work and from I think what I've noted in the questionnaire on page 15, I have indeed been exposed to Company Law, I think a very diverse spectrum of work.

Mogoeng: Thank you Ms Stewart. Commissioner Fourie?

Commissioner Fourie: Thank you Chief Justice, morning Mr Riley.

Riley: Morning sir.

Fourie: Did I hear you saying, and please correct me if I'm wrong, saying that it's difficult to be an acting judge and run a practice at the same time? Did you actually say that?

Riley: What I meant to say is that, I've come to the conclusion that -

Fourie: No just, sorry - did I understand you correctly, that you said that?

Riley: Yes, it's difficult, extremely difficult.

Fourie: Okay, did you say, it's difficult to be an acting judge and run a practice at the same time? Yes or no?

Riley: Yes, if I put it in perspective -

Fourie: No, no, yes or no.

Riley: No but you -

Fourie: No, no.

Riley: I'm sorry you have to allow me an opportunity to explain -

Fourie: No, you can explain, I'm just asking -

Mogoeng: No, please, it's a simple question, if you need an opportunity to clarify after he would have exhausted these questions you 'll be afforded the opportunity. Just be direct, sir.

Riley: Thank you.

Fourie: Did you say that yes or no?

Riley: Yes I did.

Fourie: Are you supposed to run a practice while you're acting as a judge?

Riley: No I wasn't maybe I ... this is exactly what I was trying to explain to you -

Fourie: No, don't anticipate my questions, Mr Riley.

Riley: No I, you are not supposed to, and I have not been involved in my practice for all this period of time.

Fourie: Okay, and you say that, all in all, you've been acting for about a year and a half?

Riley: Yes, I have.

Fourie: You're a sole practitioner? What happened -

Riley: No, I have four or five other attorneys -

Fourie: You're the only director of the firm?

Riley: That is correct, sir.

Fourie: Okay, what happened -

Riley: I have another director -

Fourie: What happened -

Riley: Sorry, I have another director.

Fourie: Okay, can I just ask the questions and you just answer them, and if you think you need to elaborate, you can do so, and if I think you need to elaborate, I will ask you? Are you the sole proprietor of the firm or aren't you?

Riley: I am.

Fourie: Now, in that year and a half what happened to the practice?

Riley: The practice continued.

Fourie: In which way?

Riley: As I've indicated now I have a co-director and I have four other attorneys in the practice.

Fourie: Thank you Chief Justice.

Mogoeng: You say "now", what about then?

Riley: Sorry, Chief Justice?

Mogoeng: You say "Now I have a ... I've got..."

Riley: No, I have had, sorry Chief Justice, I have always had -

Mogoeng: Where did the difficulty arise from while you were acting now in relation to both running the practice and acting as a judge?

Riley: I think the difficulty is in the sense of being able to, shall I say, focus on practice and at the same time try to focus on writing outstanding judgments because -

Mogoeng: I don't understand. You are, if you have nothing to do with practice while you are acting, how does running practice make it difficult for you to fulfil your role as an acting judge?

Riley: I think there are certain decisions that has to be made, and certain decisions relating to the practice management that necessarily sometimes requires one to give input.

Mogoeng: Oh, so while acting you were giving input to practice?

Riley: When I say input to practice, I say input to decisions that have to be made in relation to particular aspects. I suppose in so far as, a particular problem that we had was in relation to the premises that our offices are housed in.

Mogoeng: Sir, acting cannot be affected by looking for office accommodation. What is it about practice that made it difficult for you to fulfil your role as acting judge, as a result of which judgments had to be delayed for this long?

Riley: Look, it's difficult for me to explain, it's difficult.

Mogoeng: Alright. Commissioner Hellens?

Advocate Hellens: Yes, thank you. Mr Riley, could you describe to us what the essential wrong or evil is in an excessively delayed judgment, what are the consequences, what does it mean?

Riley: I think that it speaks to the fact that litigants are entitled to know and hear the outcome of the matter as soon as possible.

Hellens: Is that all?

Riley: I think that the idea also is that justice, I suppose, should be dispensed as expeditiously as possible.

Hellens: Let me cut to the chase here, when you have a trial or a motion matter, the freshness of the argument, the demeanour of a witness, the reaction of a witness to a version put in cross examination, all the warp and woof and the heart of, either a motion or a trial, when you adjourn after a hearing, its all fresh in your mind. How is it possible to maintain that freshness, to understand your notes, to understand the case you heard when you write the judgment 8 months later? Its cold ash in your mouth, you can't remember the case.

Riley: Well, you did correctly point out that one does have notes and one does make annotations about the demeanour of witnesses, and then on that basis one is able to then address the issues. I agree with you, that it is a difficult thing to later on sit down and write a judgment, and for that reason the criticism is valid in the sense that one ought to, one must write a judgment as soon as is reasonably possible.

Hellens: Mr Riley, one of your continuing themes, and I don't want to badger you here, but you say it's difficult, it's difficult, it's difficult. This is not an easy job you applying for, it's a difficult job, and you found a difficult job difficult. It's supposed to be difficult.

Riley: I agree with you.

Mogoeng: You are excused sir.

Riley: Thank you, Mr Chief Justice.