



JUDGES MATTER

Judicial Services Commission interviews

4 October 2016, Afternoon session

Competition Appeal Court

Interview of Judge N P Boqwana

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Chief Justice Mogoeng: Good afternoon Judge Boqwana.

Judge Boqwana: Good afternoon Chief Justice and to the Commissioners. Thank you for the opportunity. (Laughter from across the room)

Chief Justice Mogoeng: I almost said Order. (Laughter) Judge Boqwana can you tell us in your own words why you believe you can make a difference if appointed to this court?

Boqwana: Thank you Chief Justice. I have acted in the Competition Appeal Court since early 2015 and my acting has been continuous, and I am still acting in that court. In that court I have written and sat in a number of cases which were quiet significant and which I believe have made a contribution to the development of our law. Some of those matters dealt with provisions that have not yet been tested, and also as a High Court Judge, moreover, I started acting as a Labour Court Judge from 2011, from there I moved directly to the High Court. I acted for four terms in the High Court before I was appointed permanently on 2 December 2013 so that is my work as a Judge. I believe that during my time as a High Court Judge I had been quite hard working, having dealt with all the issues quite carefully. I have thought through my Judgements, I research before writing any judgment, and I have given the litigants my time, I believe I am a patient person and have given them a good hearing.

I have also as a Competition Appeal Court Judge done training with Professors Harry First and Eleanor Fox from the New York University School of Law, and Eleanor Fox as we know was very instrumental in the drafting of the Competition Act. The experience and knowledge we had received there was invaluable.

Before I was appointed as a Judge I have had exposure in commercial work and labour work, which I think has already come in handy in my work as a Competition Appeal Court Judge. I worked in a large corporation where I was involved in due diligence having to deal with mergers and acquisitions. One project which I was involved in had to do with the merger of AngloGold Ashanti, my erstwhile employer from a long time ago. So it was a merger between AngloGold and Ashanti Goldfields from Ghana. So I went to Ghana and I had to look at the impact of mergers in labour relations, because one of the important aspects of competition, especially when assessment of mergers is done, is looking at the public interest, and what impact the merger would have on employment. And that is experience that I think has already come in handy. I have also been an entrepreneur, I have worked as an owner of a small business, and I have also run a branch of a law firm, and so I understand the challenges that are faced by small business and competition issues.

Also whilst I was still at AngloGold I did a course for a certificate in Management Development programme. In that course I had to do Economics as part of that course, which is quite important. I sat as a board member of trustees where it is known that members of a board of trustees have to make decisions regarding investment of funds. That required knowledge and experience in economics, therefore all that experience put together I think places me in a position where I believe I can be considered suitable to be appointed permanently to the Competition Appeal Court.

Judge President Davis: Just to confirm, in your pack - perhaps people in the JSC don't read our Competition jurisprudence quite the way the competition authorities do, I just want to confirm that the Judgement that you wrote in the Caxton and Media 24 [Caxton and CTP Publishers and Printers v Media 24 Proprietary Limited and Others (136/CAC/March 2015) [2015] ZACAC 5 (25 November 2015)] was the first time one ever had to deal with questions of control.

Boqwana: Correct, that was the first because before we had not had a case that looked at what constitutes the ability to materially influence the policy of a firm, and so that case was the first to have dealt with that matter. It also became important in the case that followed of Caxton and SABC and Multichoice [Caxton And CTP Publishers And Printers Limited and Others v Multichoice Proprietary Limited and Others (140/CAC/MAR16, 08/36380) [2016] ZACAC 2 (24 June 2016).]

Davis: And that judgment, if I can just clarify, although we wrote that together, I want to just make it perfectly clear that your contribution was the major contribution, because it flowed essentially from the hard work we had done in the previous one.

Boqwana: Yes.

Davis: Can I then ask you, you raised the question of economics and having been a High Court Judge and moving into the area of competition law, just the sense that you have of the nature of the specialist court and the need to kind of understand the economics, how have you found that?

Boqwana: I think it is important for Judges to understand the nuances of economics, because the legal concepts that we deal with may not in themselves be understandable without that understanding of the economic basis. I think that maybe one may not necessarily acquire that expertise in one or two matters that would come before you in the High Court, and in my view I think there is a place for expertise to be built and increased for judges to continue to be specialising in competition work.

Mogoeng: Thank you. We have been battling with introducing economics into the curriculum of the South African Judicial Education Institute because, learning from the Germans, it was going to be very difficult for a Judge to deal with a matter involving the economy without the benefit of some induction or orientation in economics. Would you be available to assist should we call upon -?

Boqwana: Yes definitely Chief Justice (laughing) it is obviously sometimes quite intimidating as it has been shown in the cybercrimes training that I am currently doing. In that training I have trained Judges, including Judges of the higher courts, and it was quite an intimidating experience, but I did make myself available for that and I would definitely do that.

Commissioner Motshekga: I wanted to ask a question on inter-personal relationships, now I can see you are doing very well that side, so I will close the matter. (Laughter)

Commissioner Singh: I think Commissioner Malema has no questions (laughter). I note that you have been supported by the Black Lawyers Association (BLA), Law Society of South Africa (LSSA) and another organisation but for some reason or other not the National Bar Council of South Africa (NBCSA). I hope you have read that?

Boqwana: Yes I have read that.

Singh: Good. Can you respond to that?

Boqwana: Yes, I think that my experience should be placed in context as I have already outlined that it does not start on the 2nd of December 2013 as the National Bar Council would seem to suggest. I also have not done only five cases, I think they only looked at the cases that were listed in the questionnaire, because the questionnaire only asks you for a few cases. So they say that I have done five cases, but I have done hundreds of cases in all the courts I have sat in, so it is not a fair comment. Also, what I have found is that most of the comments in fact are actually quite positive in that same letter, and only the recommendation and a few other comments are not positive. So I don't agree with them. I think the General Bar Council actually supports me, including the Cape Bar, which I interact with on a daily basis.

Singh: My last question Chief Justice is you are relatively young compared to many of us and it is great that you are there on the bench. What I would like to know is, it is good to have people like yourself as role models. Since you have been appointed as

a Judge, how have you conducted yourself in public to be able to influence other, especially black women to follow the legal pathway and to follow your example?

Boqwana: I have actually gone to give talks in women formations and legal bodies, and I have tried to encourage women because I want them to know it is possible for a young woman to practise in specialised areas of the law, and that it is possible for a woman to become a Judge. I've encouraged them, I have gone to give public talks in schools including universities as well to encourage people in that regard.

Mogoeng: Thank you. You are excused, Judge Boqwana.