



# JUDGES MATTER

## Judicial Service Commission Interviews

6 October 2016 – Afternoon session

Free State Division of the High Court (Deputy Judge President)

Interview of Judge C J Musi.

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**Chief Justice Mogoeng:** Briefly, educationally you have worked all the way up to a Master's degree. Why did you think it was necessary to acquire a Master's degree?

**Judge Musi:** At the time I was still a regional magistrate and I wanted to venture out of the magistracy. I thought firstly I would become an attorney or go into academia. My decisions were overtaken by events, in that I became one of the leaders of the Judicial Officers Association of South Africa. I then became centrally involved in teaching magistrates on many issues, and also part of the Equality Courts Training.

**Mogoeng:** That you and I attended at the same time.

**Musi:** Yes, when you left something for the police; that is correct CJ. (Laughter)

**Mogoeng:** For how many years have you been a judge now?

**Musi:** Since June 2005, so it is about 11 years.

**Mogoeng:** And for how many years a judge of the Labour Appeal Court?

**Musi:** That is three years.

**Mogoeng:** And you are acting at the Constitutional Court now.

**Musi:** Currently, that is correct.

**Mogoeng:** And how did you find that experience?

**Musi:** Quite daunting CJ, I must say. Firstly, it is a total paradigm shift in that all decisions must be taken by at least eight judges. So it is a lot of work, especially because most of the work is done by email. Any time of the day, any time of night decisions must be taken and you must be ready. In terms of preparation too, writing judgements or post hearing notes. Firstly, you are not only concentrating on your own view and your own judgment, you have to listen attentively to what your colleagues on the bench ask, because that gives you an indication of the direction in which they are thinking. So when you write your post hearing note, you must make sure you accommodate most, if not all the views of your colleagues. Unlike when you are sitting in the High Court as a single judge, you just right the judgment and that is it.

**Mogoeng:** I know this is not an interview for a Constitutional Court position, but I wonder if you were like me before I got to the Constitutional Court; thinking these people are really having it easy. Few judgements in a year, what do they do all this time in these long recesses. Were you like that thinking that you are going to relax a little bit?

**Musi:** Certainly not CJ, my experience at the Labour Appeal Court level you have a lot of reading to do and a lot of petitions to do, so I expected that. Not, I must confess, the same volumes. The new applications that come in, especially with the Constitutional Court's jurisdiction is somewhat expanded not to deal only with constitutional matters. Because it is now the apex court there are so many applications for direct access or where petitions have been refused by the Supreme Court of Appeal. It is hectic, it is a lot of work.

**Mogoeng:** Finally, I only got to know for the first time, I actually did not know your other name is John. I visited the US Supreme Court this year, only got to know then of this organisation of which you are the vice president. One of the judges told me about you and the crucial role you are playing in that organisation worldwide and the difference it could make in improving the performance of the courts in South Africa. Do you want to touch very briefly on this organisation of which you are a vice president?

**Musi:** Thank you Chief Justice, it is a global organisation which consists of both magistrates and judges. Some of the countries in Europe you can in one year be a magistrate or a judge and in the next year a prosecutor.

**Mogoeng:** Like Germany for instance.

**Musi:** Like Germany, exactly, and Austria. So in some cases there are also prosecutors involved. I have been involved with this organisation since my days in JOASA. I was then elected as the president of the African regional group, then made the vice president and honorary vice president of the group.

**Judge President Molemela:** Judge Musi I see that you have been in leadership positions since 2002 when you were the chair of JUASA.

**Musi:** That is correct.

**Molemela:** And you have served in various positions: president of JOASA, board member of the Law Race and Gender research unit, board member of Canada - South Africa Justice Linkage Project. Do you think those leadership positions which you have previously occupied would stand you in good stead if were you to be appointed Deputy Judge President of the Division?

**Musi:** Definitely JP, because when I functioned in those organisations they were mostly organisations consisting mostly of peers. One gives leadership, one gives direction to colleagues, to your peers. Definitely therefore one learns not only organisational dynamics, but also how to interact with colleagues.

**Molemela:** You also had occasion to act as the Acting Judge President of the Division for a term. Did you experience any challenges at that stage? You were basically in charge of the division; were there any challenges which you experienced?

**Musi:** There were challenges, but not challenges which I could not overcome. As you know JP, with the advent of the Superior Courts Act the JP is no longer only in charge of judges and judicial functions at the court itself. The JP also coordinates all judicial functions within the province. So that inter alia means that not only as JP do you interact with regional magistrates, district magistrates, you also coordinate their work. There are PEEC - Provincial Efficiency Enhancement Committee - meetings in order to coordinate the whole province. On the other hand you have the whole case flow management project, to make sure cases are dealt with expeditiously in the courts and that backlogs are eradicated, or at least that something is done about the backlog. It is a lot of hard work, because as you know as a JP one is not only in a managerial capacity there, but you are also operational. Because you lead from the front as a JP, when there are difficult cases, intricate cases, you sit in court yourself and do those cases.

**Molemela:** So basically you have been exposed to all the functions of a Judge President?

**Musi:** Definitely.

**Molemela:** Is it correct that you are currently also serving as a member of the performance monitoring committee for the Division?

**Musi:** Yes, as well as the infrastructure committee.

**Molemela:** In the former capacity you are directly involved in the case management in the Division?

**Musi:** That is correct.

**Commissioner Singh MP:** Commissioner Malema says uh-uh, but this question is going to help all of us seated on this side of the room. Honourable Judge, I see a note that you are the chairperson of the Commission which deals with the remuneration of public office bearers.

**Musi:** That is correct Commissioner.

**Singh:** And that includes all of us here, we all wait for you pronouncement.  
(Laughter)

**Musi:** Except from those from those people representing the attorneys' profession, the advocates' profession and academia; but otherwise everyone else here.

**Mogoeng:** So they better behave themselves.

**Musi:** Well I have already made my recommendation.

**Singh:** One of our criticisms as Members of Parliament, and I think it affects you as well, is the long delays it takes to make recommendations. So much so that sometimes we get our increases 10 months retrospective. We get it but it does take time. And I understand this year is going to be the year when you are looking at Members of Parliament, last year you looked at local government. How is your position, if recommended, going to impact on your time to deal with this particular responsibility?

**Musi:** Firstly, Commissioner Singh, the review relating to the legislature and executive, this has been approved by the presidency, there is a budget for it. We have already appointed the necessary service provider to do the necessary research, because we have a new way of thinking about the salaries issue. Instead of having one review for all public office bearers, perhaps the most serene thing to do is to eat the elephant in chunks. There was a review for local government, that has now been completed and we are now moving towards the legislature and executive and hopefully during the second part of next year we will deal with the judiciary. With respect to the delays, you would be aware of the fact that this is a very sensitive issue. The strike season in South Africa normally ends around September, and it would be unwise for his excellency the President to make a pronouncement on the salaries of judges, members of Parliament, members of the Provincial Legislatures when there is still blood on the floor in respect to strikes in the public service, and other people who are not part of the public office bearers. The Presidency normally, as a general rule, waits for those processes to play them out thoroughly and completely before making a pronouncement on the salaries of judges, MPs, traditional leaders, kings, queens and members of the provincial legislatures.

**Singh:** Thank you judge, I think Honourable Didiza will be very keen to interact, because she represent our interests on this particular score as chairperson of the House. Your Masters, what topic did you write your thesis on?

**Musi:** I dealt with workplace forums, it was in labour law, it was just when workplace forums were introduced in South Africa.

**Singh:** The very last question is, I noticed a case here in Lesotho: the Attorney General vs His Majesty the King. Now anywhere else one would shiver when you say His Majesty the King, especially in Kwa-Zulu Natal, could you give us some idea of that case?

**Musi:** Yes, the matter related to the appointment of the President of the Court of Appeal of Lesotho. What happened was there were cases against the President of the Court of Appeal, who was also the Chief Justice of Swaziland then, Mr Ramodibedi. What then transpired is that His Majesty the King decided to have a tribunal to investigate President Ramodibedi's fitness to hold that office, he then resigned. The Prime Minister then advised the King to appoint somebody, Mr Mosito, who was not a permanent judge, he was an acting judge of the High Court and also an acting judge of the Labour Appeal Court with me at the time. When that happened some legal practitioners including the Attorney General, were dissatisfied with the manner in which this appointment happened. They then, because it is the King who makes the appointment on the advice of the Prime Minister, had to take the King to court. The King defended the matter and unfortunately for the Attorney General we found against him, in that we found that the King had the power to do so and the Prime Minister had the power to make that recommendation to the King. The matter was taken on appeal and it was unsuccessful on appeal too.

**Commissioner Nyambi MP:** What are your primary strengths as an administrator?

**Musi:** You will note from my CV that I have an honours degree in public administration for the civil service purposes was the degree in terms of management. You will also note from my CV that in my time as a prosecutor I was also the control prosecutor at Magistrates Court: Mitchells Plain, managed prosecutors under me. I have been in the management of organisations as mentioned by the JP earlier, and I have also managed the High Court in my capacity as the Acting JP.

**Commissioner Dididza MP:** Commissioner Singh has already made a declaration on my behalf that I do know Judge Musi and that I have to interact with him on the issues of remuneration of public office bearers which relates to all of you. Fortunately, this matter has nothing to do about remuneration of anybody else, so I do not think it will come on the way of the discussion. One of the things that I would like to ask, given where we are in the judiciary, that while we have noted improvement in terms of gender representivity in the various courts, what is it that would need to be done to attract, retain more women in the judiciary?

**Musi:** I do not think that there is a one size fits all approach, but one must have a multi-pronged approach. Firstly, one must make the judiciary more attractive for practitioners generally and specifically then for females. Secondly, training, one can have training courses like we had in the past under the auspices of the honourable Minister. Some of the ladies who went on that training actually came onto the bench and did a splendid job; I think my JP is one of the products of such a training course. We have at our division another judge, Judge Naidoo and in the North-West, as well as in Gauteng, people who benefited from the training, because they were identified as people who could be trained, because they had the potential. Another thing we could do is probably think outside of the box and not only focus on practitioners, but also go to the academia. There are many female professors and senior lecturers there which we could also target, give them the necessary training for them to be appointed to the bench.

**Didiza:** Given that gender is a social construct in one way or the other, would you not think that this kind of training should not be only for women, but also for male judges?

**Musi:** You are talking about post appointment, I am talking about training because you are targeting women to make coming to the bench more attractive. Training them post appointment is for all judges, that happens, I am part of that training. In fact in January this year I trained judges on cybercrime, it was mixed judges, male and female. But if one wants to specifically attract more female judges, one must also remember the briefing patterns are somewhat skewed; one must therefore target black people generally, target females for appointment to the bench. The manner in which you do it is really .to say there are prospects of being appointed to the bench, we do not have the necessary pool, so you create a pool by having people trained, having them act, they go into the pool and those who want to apply, apply when they are ready and so forth. But training post appointment is for all judges. In fact under the Judicial Training Institute they have training courses for all aspirant judges.

**Didiza:** Which does have a gender module, if not I hope it will be next time. So that it becomes natural for us, so that it does not continue being just an issue which we deal with when faced with the challenge. Your contribution to law, in terms of the publications I have seen, there is one that relates to maintenance and culture.

**Musi:** Yes, and ethics as well.

**Didiza:** If you could say just a little bit, what did it seek to address?

**Musi:** What it sought to address was to change the attitudes of magistrates, especially then of the Western Cape, because I was then attached to the University of the Cape Town's Law Race and Gender Unit. What we found was that a magistrate would, for example, on a particular day have 10 maintenance files. What would happen is that they would go out and call the names of the parties. If the

complainant is not there, who is under normal circumstances a woman, that matter would be struck off the roll and they would continue dealing with other matters. The tragedy was that if that woman comes to court half an hour later, she is told that your matter has been struck off the roll, what you must do now is go lay a new complaint and you will get a date six months hence. To us it was totally unacceptable, we said well let us change the way in which we work, start with those that are ready. If you call out the parties and there are two parties that are there, start with that case, because there are so many variables for women not to be at court. This woman's child got ill and she had to rush to the clinic or the doctor, therefore she comes late, but because she comes late she is now punished by not having her child maintained for another six months. Those were the issues which we basically concentrated on.

**Mogoeng:** Thank you Commissioner. Just to clear up something, you know the aspirant judges programme runs. How differently should it run, so as to address the gender factor?

**Musi:** As it is now it is open for all who want to become judges, but you will remember that there was a project, I think it was Minister Mabandla, which targeted females. They said we have a paucity of female judges and the time has come to transform the Bench in terms of gender. Therefore, this project will only be for aspirant judges who are female. It was a very intensive course and from that course I must say many judges were appointed thereafter.

**Mogoeng:** You would recall the reason why even those who were advocates and attorneys made themselves available, was that the Canadian government made it possible for them to be paid at least R 19 000 per month. How do we handle it when the Minister is just indicated that there will be more cuts, can you come up with something?

**Musi:** Well CJ, if we are serious about transformation -

**Mogoeng:** No, since we are serious about transformation. (Laughter)

**Musi:** I think the money aspect should not be the primary focus. We should make money available for it, if it would help money should be made available. There could be synergies between the Department of Justice, the Judicial Training Institute and even the Office of the CJ.

**Mogoeng:** Economy or no economy.

**Musi:** No CJ, I do not think in the greater scheme of things that that kind of money would make such a dent to our economy, because if one looks at the economies of scale we are talking about R 19 000 per month for 20 people, plus minus. So, what big a dent can that make if one looks at the greater good that money would serve?

**Mogoeng:** Because of your position as chair of that important committee, the next time I have a meeting with the Minister to have our budget increased so that these practitioners can be accommodated, you must be there.

**Musi:** CJ you will be glad to know that the Minister actually said that we in any case sometime operate on a deficit and if money must be found for a good cause, it must be found. I agree with him there.

**Mogoeng:** Thanks for saying it in his presence.

**Minister Masutha:** For the record, I am being misquoted. (Laughter)

**Commissioner Ntlama:** In one of your questions in the form, on your contributions to the law you made reference to the transformation of the magistracy. How will your experience from the magistracy going to contribute to the advancement of the change in the Division, considering the fact that where your court is situated there are so many of the racist issues emanating from that community?

**Musi:** By and large, at the court itself we do not have a large problem with racism, because we are in the majority in any event. We currently have a component of 12 judges, 4 of which are white, male and female, the eight are African. Of the four whites, three have less than 5 years' experience. The average experience is 7.2 years. So in terms of experience, leadership our leader is a black female. We do not allow, in any case, racism to raise its head. Now, during February this year I had occasion to interact with some of the colleagues, one colleague in particular, when we spoke about social cohesion at the court which means we must sometimes just go out for lunch as a group of judges. This particular judge said my interaction at tea time, he did not mention race I must say in his favour, is sufficient. I then took him head on, to explain what social cohesion means, not only on the level of the human beings, but at the level of the organisation.

**Mogoeng:** Just two quick ones. Judges are to enjoy independence, but they must also be accountable. Do you agree?

**Musi:** I agree fully.

**Mogoeng:** You would also know that when you seek accountability in the form of ensuring you are able to keep track of reserved judgments, part heard matters, some colleagues complain that you are monitoring them either on behalf of the executive or on behalf of Parliament. They are judges and are not supposed to be accounting in that fashion. What is your view on that?

**Musi:** My view is clear on this; you cannot have rights without responsibilities. You cannot have unfettered independence, because independence comes with accountability as you correctly say. Judges normally account by giving their judgments and in their judgments, but the problem is what is the system to do when a litigant comes to court hoping that their dispute would be adjudicated and

determined as soon as possible, but the judge then delays the judgment. The judgment is outstanding for 12 months, the judgment is outstanding for 6 months. One cannot then say because the judge is independent, they cannot be accountable. I think the accountability must come from the judiciary and be designed by the judiciary, and the norms and standards are such a product.

**Mogoeng:** You know attempts have been made to discipline those who have taken too long to deliver judgments, those who have one alleged misconduct or another. The perception is that these judges are simply failing to deal with shortcomings within their ranks. What is it that can be done to dismiss the possible perception out there, that judges can act with impunity, do wrongs with impunity, prejudice the public as they like, nothing will ever happen to them and why should the public not think that is in fact the position?

**Musi:** Firstly, the very purpose of a code of ethics is to make sure there is accountability. The existence of the norms and standards is to ensure that there is accountability. So when we talk about perceptions out there, endogenously as the judiciary we should probably make known that judges are indeed governed by a code of conduct, that judges do not act with impunity and should a judge fall foul of our norms and standards, our rules, our ethics; judges will be dealt with. That is why there is a Judicial Conduct Committee.

**Mogoeng:** The point is this, they have been reported, but nothing has happened. What is your answer? What could be done?

**Musi:** If they have been reported, there is a body: the Judicial Complaints Committee (JCC) that must do its job. At some stage action must be taken against the judges. Not all transgressions will necessarily lead to impeachment, but within the JCC there should be some remedial action taken against those judges and maybe then this should be publicised for the public to then see that we are dealing with certain who are deviant and transgress certain norms and standards.

**Mogoeng:** Thank you very much Judge Musi, you are excused,

**Musi:** Thank you Chief Justice.