



JUDGES MATTER

Judicial Service Commission interviews

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Western Cape Division of the High Court

Interview of Ms M Opperman

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Chief Justice Mogoeng: Good afternoon, Ms Opperman

Ms M. Opperman: Good afternoon, Chief Justice.

Mogoeng: Are you well?

Opperman: I'm well, thank you. Thank you very much.

Mogoeng: What did you do after acquiring your law degrees?

Opperman: Chief Justice, I started at the age of 17 as the clerk of the court. So I studied part time all the time and I obtained my B. Juris. I became a Prosecutor. I got my LLB also part time and then I wrote my Attorney's Admissions Exams with the intent to go into private practice. So, at that time, my personal circumstances

weren't as such, I went for infertility treatment and they invited me to apply at the State Advocate's Office as a State Advocate. So just before I left for private practice, life took me to the State, to the NPA's Office and I was a State Advocate. From there, I was a Senior State Advocate. I wrote my Attorneys Admissions Exams. I was a State Advocate, I became a Magistrate. I got my two LLM Degrees cum laude whilst I was a Magistrate and here I am.

Mogoeng: So for how many years have you been a Prosecutor?

Opperman: I joined in 1990 – just after I obtained my B. Juris and then in 1994 I got my LLB and I then transferred to the NPA Office and I was a Senior Advocate. I was appointed as Senior Advocate in 2000 – yeah in 2000.

Mogoeng: Have you been appearing a lot in court or are you more on the administrative side?

Opperman: No, I was permanently in court. Only when I was District Court Control Prosecutor, Regional Court Control Prosecutor and when I served as a Senior Prosecutor, I wasn't in court but I made a point of it – to go to court on a weekly basis. So I can say about 95/96% of the time I was in court.

Mogoeng: Even now, as you're applying?

Opperman: Yes, full time in court.

Mogoeng: And I take it that because you're a prosecutor you haven't been invited to act have you?

Opperman: I have. I did two stints in the Free State Division.

Mogoeng: Yes, for how long?

Opperman: All in all –

Mogoeng: Put together?

Opperman: Sorry?

Mogoeng: Put together?

Opperman: All in all, seven months. The full last term and part of the first term of 2016.

Mogoeng: And what is the longest period you've reserved a judgment for?

Opperman: I reserved a judgement my – for six months, but with good reason.

Mogoeng: Okay. Can you quickly state the good reasons so that we have the advantage of knowing it?

Opperman: Yes. I have it in writing. I did submit it to the Judicial Service Commission. Shortly, what happened is on the Monday when we sat in the Appeal, me and a colleague of mine. The next day I went back to the Magistrate's Court and I started in a very busy court, the Domestic Violence Court and we had a misunderstanding, the two of us. I thought that the next week we're going to give judgment and then reserve reasons and so that we have time to prepare the judgment. I also said to her because she was at that time acting as JP that I'll be the scribe, not realising that I'm going back to a very busy court. So I went to the Domestic Violence Centre. In that year we did 6200 and I think it's 43 applications in one year amongst two Magistrates. So we were very busy but not that that's an excuse. What also happened is on the 31st of March, for the first time in my career I had a very traumatic experience. A lady to whom we issued a domestic violence interdict was murdered. I issued the interdict that afternoon just after three and that evening she was murdered. So unconsciously, I was very shaken by it and I decided to prioritise a place of safety. I put in everything for that place of safety and then in May I submitted my draft and in that time, my colleague's mother died. She had an accident. She ended up in hospital. So I went and took the draft back, and I submitted it again just before the sixth time period lapsed, and she then had to

attend to it. It is a very – the record was about 1 500/1 600 pages and with the time lapsed, and that's a lesson learnt, I had to go back to the record, listen to the record, read the record again and I had to put in a week of my personal leave to finalise the judgement.

Mogoeng: How many times did this happen? Only once?

Opperman: First time in my life.

Mogoeng: Otherwise, you've never really had a problem?

Opperman: Never, never.

Mogoeng: Any reason why you didn't make yourself available for the Free State vacancies?

Opperman: Because, Chief Justice, the Free State, as a friend of mine says, is the best kept secret in the country. I think we managed transformation there and that is why I don't think it's my time and my place to apply now. We have almost perfected transformation there physically and ideologically. There is a meeting of the diverse minds there at the moment.

Mogoeng: Oh yes. Thank you. JP?

Judge President Hlophe: Thank you very much, Chief Justice. Let's start with your time as an academic. Did you have occasion to publish anything?

Opperman: I published a short article when I was in a Pioneer Programme in Cape Town at Cape Town University. I was on the verge of submitting an article in June when I got confronted with the issue whether I, as a Presiding Officer can criticise another Presiding Officer on his judgement.

Hlophe: [Inaudible].

Opperman: So – yes, I didn't, but I can add that I am working on an alternative article now and I can add that in my first tenure as an Acting Judge, one of my judgements were reported and it created new law.

Hlophe: Thank you. Let's talk about the article that you published. What was the article about and which journal was it published?

Opperman: Oh, that article was in Judges Matter. It's in my Curriculum Vitae.

Hlophe: Right. Sorry, I missed that.

Mogoeng: What is Judges Matter?

Opperman: Judges Matter is the people that brought us here and that's doing the photography at the moment.

Mogoeng: Okay.

Opperman: It's not an accredited publication.

Hlophe: Well, if it's not even accredited let's not talk about –

Opperman: I agree with you. They did mention it in the summary when they summarised my background.

Hlophe: I'm talking about referred like South African Journals?

Opperman: No, none.

Hlophe: Right. Thank you, ma'am. The – normally, one would want to be appointed to a division where one has acted before and there's a lot of reasons for that. You are familiar with your colleagues in the division. You are familiar with the work ethics of that division and colleagues because the job of a judge most of the time you are

not sitting alone. You are sitting with other judges. What is your comment in that regard?

Opperman: I hear that JP. First of all it is not my fault that I haven't acted there and it's difficult to act in other divisions, due to I know, some financial constraints, we don't get the opportunity and I know that there is a sort of a moratorium that's placed on inter-provincial acting. So I would love to go and act there, the first point of my answer. Secondly, I am a fast learner. I adapt quickly and I have no hesitation to say that I will be willing to adapt and I am good in inter-collegiality. I'm rather good with my colleagues.

Hlophe: All right. I'll ask you just one last question. Do you regard the fact that you have not acted in the Western Cape as a limitation?

Opperman: I do, but just to a limited extent. I know that it must be worrisome for you to take somebody in with no experience there and I know I can maybe be problematic. But I wouldn't have availed myself if I wasn't confident that I would be able to adapt and do my job properly there.

Hlophe: Allow me to put this to you. This is my final question and I would invite your comment. Had you been so good, the Judge President of Free State would have encouraged you to apply for the two vacant positions in that division?

Opperman: I can't answer on her behalf.

Ms F. Stewart: I have a question. Going back to your article. The article is quoted in one of the comments from the DGRU in full and this is what you said because I'm querying one of the things you said today. In the article you said, "May I suggest that you also ask what being a man in the Judiciary in the post-constitutional area is? There should not be a difference." My understanding of this article is that you're saying that you should be judged on an equal basis and that there shouldn't be a gender criteria and yet, I heard you answer an earlier question that you believe the Free State Bench has been transformed sufficiently for you to apply to the Western

Cape. And I presume that application is based on bringing a gender diversity. How does that square with what you said in your article?

Opperman: It's two completely different issues. I just – at some stage got tired to be asked what it's like to be woman on the Bench. Why is it so special and why is so unique to be a woman on the Bench? But I believe in gender equality. I believe in transformation. I think the one doesn't have anything to do with it. I didn't there say I don't believe in transformation. I say stop discriminating against women by keep on asking them what it's like to be on the Bench and I think gender diversity on the Bench is fantastic. I think it brings a lot to the Judiciary.

Commissioner Motshekga: When you did B Juris and LLB were Latin, English and Afrikaans a requirement?

Opperman: Yes, it was but I only did Latin 101. I didn't do the Advanced Latin Course and I did English and Afrikaans, yes.

Motshekga: So you must be good at languages. Which other African languages do you speak?

Opperman: I come from the Gold Fields in the Free State and I can speak a Fanagolo. I have my – I am not fluent in Sotho but I use Sotho to put people at ease when they come into my office and when I meet people, and I have my old faithful here. It's my Sotho/Afrikaans dictionary that I don't go anywhere without it. It's – there it is. I even go to court with it. So you can see it's seen better times but I am trying really hard and this week I made a mistake. I told somebody that I wanted to come into my office to [unknown] instead of [unknown] and he refused to come in and my interpreter said you said it's him and you didn't tell him to come in. And he said I'm not guilty she must listen to me before. So I am trying, I am really trying.

Mogoeng: For the future, Fanagolo is generally regarded as an insult.

Opperman: Oh, I'm sorry.

Mogoeng: To the African language, it's a corrupt –

Opperman: It is, indeed.

Mogoeng: A corrupted version –

Opperman: Yes, it is.

Mogoeng: Of African languages so you would do well going forward when asked this question not to -

Opperman: Not to say that but that's where I grew up and it was an established language in the Gold Fields in the mines.

Mogoeng: It was established insult.

Opperman: I am so sorry.

Mogoeng: Yes. So I realise that you genuinely don't know, that's why I'm warning you.

Opperman: Yes, thank you for that.

Commissioner Norman: My question relates to the answer that you gave to Ms Stewart about why is it that you didn't apply to the Free State, and your answer was that you believe that the Free State is now transformed. Now, is your purpose for applying to the Cape Bench intended to transform the Cape Bench?

Opperman: Yes. I heard that gender was – I saw the gender ratio is not very good there and that is why I took the liberty to apply there.

Mogoeng: For what it is worth a man was recommended – a white man was recommended for appointment in the Free State.

Opperman: Fantastic.

Mogoeng: This time. A white male. Okay, Commissioner Didiza?

Commissioner Didiza: In your form, the questionnaire which asks you about the most significant contribution to law, your answer was your contribution is and will be to put a human face and cause justice to those who need it most. Can you expantiate a bit what do you mean?

Opperman: Yes, ma'am. I – me, working in the corridors of the lower courts, I think it gives me an advantage to somebody coming from the Bar, with all due respect, because I've seen it, I've smelt it, I've heard it. I can see that justice at this moment is not completely accessible and with judicial leadership I, in my everyday duties, try to make it more accessible. I can give you an example of that. After I acted in the High Court, I went to the Domestic Violence Centre to drop a file there, and I was horrified to see what the access to justice was there. So immediately from the higher echelons of the High Court, I volunteered to work for 14 months in the Domestic Violence Centre where no Magistrate wants to go. So I improved not only the building, the administration, I trained the staff, and that is the practical way in which I promote accessibility to justice.

Didiza: President, the second question to you, ma'am, relates to the response you gave about how tired you have become of the question that is asked to women, how we choose to be a woman on the Bench? Do you – have you seen it as unnecessary question, or have you seen it as a way in which those who ask it are trying to reflect on what are the circumstances that confront women in the Bench, which needs to be take into consideration as we transform our Judicial System?

Opperman: Hence, my reply and hence, making that the last sentence. I explained in that article – that little document, what I think the contribution of women is in the Judiciary. I think justice has a feminine aura. I think justice is feminine and I think the women in South Africa are making a huge contribution on the Bench with our special attributes that we have. So I didn't say that saying that I don't know what the obstacles for women are I knew the obstacles. I lived the obstacles. I myself, went

through a lot just to promote my career to the detriment of my personal life and I am a mentee to many women and I promote – I have been involved with female students, scholars, everything. So I know the obstacles, and I know that one of the obstacles is that people don't think it's normal to be a female judge. They think it's something out of this world and hence, my answer and my last sentence in that article.

Commissioner Masuku: Thank you, Chief Justice. Just a short question. What is the most important legal document that you have read and that you believe every Judge must read?

Opperman: I – the book of Cora Hoexter, The Judiciary of South Africa. Here it is. I think it must be a prescribed – in the pre-graduate curriculum.

Masuku: And I thought you would say the Constitution, but I understand.

Opperman: No, the Constitution is dealt with in this document and it teaches you about what exactly the Judiciary stands for. The constitution is highlighted and is everywhere in this book.

Mogoeng: You are excused, ma'am. Thank you so much.

Opperman: Thank you.