



JUDGES MATTER

Judicial Service Commission interviews

05 October 2017.

Western Cape Division of the High Court

Interview of Dr L.T. Mkansi

DISCLAIMER: These detailed unofficial transcripts were compiled to the best of the abilities of the monitor. However due to capacity constraints they have not been fully edited. We have therefore made the video recordings available that were taken during the interviews available. Those wishing to cite or quote from the transcript are encouraged to check accuracy with reference to the video file.

CJ M. Mogoeng: Good afternoon Professor Mkansi.

Dr L.T. Mkansi: Good afternoon Chief Justice.

CJ M. Mogoeng: Let me just make, you are you only doctor or professor as well?

Dr L.T. Mkansi: I'm the only doctor, unfortunately not a professor.

CJ M. Mogoeng: Okay.

Dr L.T. Mkansi: Yes.

CJ M. Mogoeng: For how many years did you serve as Magistrate, District Court Magistrate?

Dr L.T. Mkansi: District Court Magistrate for over 10 years and Regional Magistrate for 5 years.

CJ M. Mogoeng: And prosecutor?

Dr L.T. Mkansi: Prosecution it was from 1997 until I believe 2002, 2003; because it includes as a District Prosecutor, as a Regional Prosecutor and as a Senior State Advocate for Specialised Commercial Crime Unit. The first ever Specialised Commercial Crime Unit in the country, in Pretoria.

CJ M. Mogoeng: Now, have you acted as a judge?

Dr L.T. Mkansi: No, I haven't.

CJ M. Mogoeng: But you've been a Magistrate?

Dr L.T. Mkansi: I've been a Magistrate.

CJ M. Mogoeng: Did you focus only on criminal matters or did you get involved when civil jurisdiction was introduced in the Regional Court and do civil matters as well?

Dr L.T. Mkansi: I had an opportunity to do civil from the time I was a District Magistrate, the current shift Magistrate of Pretoria, Mr Desmond Nair offered me an opportunity to serve in the District Court for over 5 years. And when the civil jurisdiction was introduced in the Regional Court I attended training and I have dealt with civil matters, civil applications, opposed, unopposed, civil trials and divorces.

CJ M. Mogoeng: And do you think there is a major or a minor difference between the responsibilities of the Regional Court Magistrate and the High Court Judge? In other words, do you anticipate challenges if appointed to the High Court or not really?

Dr L.T. Mkansi: Honestly, Honourable Chief Justice there isn't much of a difference with the exception in criminal and original court when we talk of criminal cases with the exception of high treason Regional Magistrate we deal with all serious offences; your rape, your murder, your robbery. Regional Magistrate can impose life sentence. I have imposed a couple of them especially when I was doing sexual offences in Bloemfontein for the first three years.

CJ M. Mogoeng: So, you don't, you don't think it's, it will pose a significant challenge to you to be appointed High Court Judge without having first familiarised yourself with that environment?

Dr L.T. Mkansi: Not at all Honourable Chief Justice.

CJ M. Mogoeng: Yes.

Dr L.T. Mkansi: With the exception of your reviews, your appeals the fact that in the High Court Judges have inherent jurisdiction the rest is the same. In fact, in terms of the judicial service guidelines adopted on the 10th of September 2010 acting experience as a judge is not a prerequisite. The guidelines provide three primary consideration. The first one is appropriately qualified which I believe I am. Secondly fit and proper, which I believe I am. And thirdly Section 1742 of the Constitution which is a reflection of race and gender composition it further provides supplementary guidelines amongst others; it's whether a potential appointee, I mean whether an appointee has potential, energy and motivation eeh, competency eeh, symbolism as well as integrity. Five of them, extra five of them. I believe I meet all these criteria.

CJ M. Mogoeng: Yes. Have you attended any of the aspiring judge's programs offered by the South African Judicial Education Institute?

Dr L.T. Mkansi: I did. And fortunately, the aspirant judge's training which was held outside Kempton Park the key, the opening speech was given by you Honourable Chief Justice. I was part of that. I also attended the advanced one. The convener was Justice Majiet. So, I attended both of them.

CJ M. Mogoeng: Yes, yes. Judge President Hlophe.

JP J. Hlophe: Thank you very much, Chief Justice. Good afternoon Doctor.

Dr L.T. Mkansi: Good afternoon Judge President Hlophe.

JP J. Hlophe: Tell me about your PhD, what was it on?

Dr L.T. Mkansi: My PhD was on plea bargaining. Section 105A before it became law
-

JP J. Hlophe: That was on criminal law. Thank you. Was your thesis published?

Dr L.T. Mkansi: My thesis was published by UNISA by the University.

JP J. Hlophe: Okay. Internally?

Dr L.T. Mkansi: Yes.

JP J. Hlophe: Fine. Thank you. Professor, we run courts differently -

CJ M. Mogoeng: He is just doctor he is not professor.

JP J. Hlophe: Oh sorry Chief Justice. Doctor I apologise. Different courts are run differently in South Africa by different heads of court. I am talking about High Courts. Normally in the Western Cape which is the court of, which is my court I invite acting judges to come and act. I would give a lot of time to prove your worth expose you to a variety of different kinds of work including motion court, opposed, unopposed, trial and so on. After a while, it can be 3, 4 even longer in terms of acting stints, then I would encourage you to apply for a permanent appointment. You have not gone through that.

Dr L.T. Mkansi: That's correct Honourable JP.

JP J. Hlophe: Thank you. I know JP, Melambo does exactly the same thing. The question is this sir, have you ever been invited by Judge Melambo or any other judge president in this country to take up an acting position on the High Court?

Dr L.T. Mkansi: Honestly Honourable JP I haven't. And -

JP J. Hlophe: Thank you.

Dr L.T. Mkansi: But I must point, sorry -

JP J. Hlophe: Sorry, sir carry on.

Dr L.T. Mkansi: Yes, I must point out that I have applied to more than five JP's asking for acting appointment. I've done so.

JP J. Hlophe: Right. In the Cape High Court, 35 percent of the work is criminal law and as high as 65 percent is civil law. How do you think you would cope given that you have not acted in the High Court and given that a very large percentage of work is, in fact, civil work?

Dr L.T. Mkansi: Honourable JP I have an all-round experience. Let me elaborate a little bit. I was an attorney in private practice representing people in both civil as well as criminal matters.

CJ M. Mogoeng: For how many years?

Dr L.T. Mkansi: It was from 1997 up until 1998 when I was appointed as when I joined prosecution the NPA.

CJ M. Mogoeng: Okay. Continue sir.

Dr L.T. Mkansi: And over and above that I'll exclude my experience as District and Regional Prosecutor. Over and above my experience from private practice I was a

Civil Magistrate in the District Court for a period of over five years dealing with civil trials; dealing with motion roll; opposed and unopposed and in Pretoria, in fact, I'll be sitting with plus minus 100 matters as a District Magistrate in Pretoria you are obliged to deal with both opposed and unopposed matters in other words, you first have to complete your unopposed matters then sometimes I'll sit until 6 pm in order to finalise my opposed matters.

JP J. Hlophe: Right.

Dr L.T. Mkansi: Then my second, my third time of civil experience, it was in the Regional, it is in the Regional Court in Bloemfontein where I'm dealing with the same civil matters as it was in Pretoria.; dealing with civil trials, opposed and unopposed; dealing with divorces. In fact, I provide civil services to our outside courts because in Bloemfontein every Regional Magistrate has outside court. So, I'm dealing with, I'm sitting two days in Bloemfontein I have a day in Dealesville; I have a day in Boshof; I have a day in Rouxville. In Rouxville I provide civil services to the indigent people who cannot travel 350 km return from Rouxville to Bloemfontein.

CJ M. Mogoeng: I think you will do well just to give us a sense. So, you've done civil work quite frequently at the Magistrates Court level.

Dr L.T. Mkansi: Yes Honourable Chief Justice.

CJ M. Mogoeng: Okay.

JP J. Hlophe: Thank you, Chief Justice. Doctor I don't profess to know everything in this world. What I do know however the practice of the law in the High Court differs from the practice of the law in the lower courts. Now let me ask you another question doctor. Do you believe there is racism on the Bench and in the profession in general?

Dr L.T. Mkansi: Yes, I believe so.

JP J. Hlophe: Would you care to elaborate? Have you yourself personally experienced it and if you were to be appointed or if rather were this committee, were this commission to recommend you for a permanent appointment what steps will you as an individual or collectively with the judiciary take to eradicate racism in the profession?

Dr L.T. Mkansi: I believe racism is quite unfortunate that it still persists in our country and I believe where racist behaviour amounts to criminal conduct it must be dealt with and punished severely.

JP J. Hlophe: Do you believe finally, doctor you would benefit from an acting position rather than just going for a permanent position. I will tell you why. You have never acted in the High Court and if you were recommended for a permanent appointment that's a permanent position, should you fail anything can happen, should you fail the system will be stuck with you. So, the best thing is to start acting somewhere and if you're successful then you could apply for a permanent appointment. Would you care to comment?

Dr L.T. Mkansi: Honourable JP I am not opposed to your suggestion, but I believe I am adequately qualified, adequately experienced and I promise Honourable Chief Justice as well as Honourable JP and this commission as well as the people of the country that I will never fail you.

JP J. Hlophe: A promise doctor finally is one thing, but the reality is that if you have not acted at all and given that 65 percent of the work particularly in Cape Town where you have Martine Law and so in is, in fact, civil law. The chances are greater that should you be appointed to a permanent position the changes are that you would want to learn on the Bench. As a JP, I have an interest over the litigants.

Dr L.T. Mkansi: I concur with you. Honourable JP but my case is not a unique case. I am not a first candidate to have been appointed permanently without acting experience. Hence, I referred to the JSC guidelines. The JSC guideline does not provide acting experience as a prerequisite.

JP J. Hlophe: Doctor that may well be so but for years now that was the case before the JSC was structured. If you are referring to me, you are right I was appointed in 1994. It was before the JSC was structured. There is a questionnaire here and we encourage people to act before they are appointed.

Dr L.T. Mkansi: I concur with you Honourable JP.

JP J. Hlophe: Thank you. Thank you, Chief Justice.

CJ M. Mogoeng: Ms Steward?

Comm J. Malema: Just a quick follow-up Chief Justice.

CJ M. Mogoeng: Yes.

Comm J. Malema: Dr what is the relevance of acting if people can just move from anywhere they move from directly into the Bench?

Dr L.T. Mkansi: Honourable Commissioner Malema I, as I have indicated that my case is not a unique case that there were judges who were appointed before too, without acting experience. In fact, I have referred to JSC guidelines and in my, besides JSC guidelines in my case, I have an all-round experience. I represented litigants as an attorney.

CJ M. Mogoeng: I'm sorry may I interrupt here. The Commissioner simply wants to know would you say that it is of any consequence that people should act before they are appointed or is it something that really doesn't matter? Just a direct answer would help.

Dr L.T. Mkansi: All right

CJ M. Mogoeng: If he needs more detail he will put further questions to you.

Dr L.T. Mkansi: Thank you Honourable Chief Justice. I believe it should depend from, it must be on a case-to-case basis. It should depend on the merit of the candidate.

CJ M. Mogoeng: Thank you. Ms Steward?

Ms Steward: Thank you, Chief Justice. I have two short questions. The first is you said you have applied to five JP's for acting appointments.

Dr L.T. Mkansi: Yes.

Ms Steward: Did you get a response from any of those JP's?

Dr L.T. Mkansi: I got response from two. In fact, the JP of the Free State is my understanding contacted my RCP but what they do in the Free State, especially from the Regional Court it's they would look at your colleagues who arrive before me in the Free State to give them that opportunity. I was in line but because of there are other colleagues who were there before me I know one colleague he was my mentor, Mr Rashid Mathews who will be acting from October. From, it is October, yes. From October.

Ms Steward: So there is a possibility you will get to act when you get, they get to your place in the queue. Is that right?

Dr L.T. Mkansi: Yes. Yes.

Ms Steward: Thank you. And the second question I have is related to one of your judgements. It's M vs M and the appeal. I want to read a quote which has been provided by one of the commentators to the applications. It says, "the Regional Magistrate did not give reasons for his decision" and then another quote. I am not going to read the whole thing, "the Regional Court President must consider this case as one pointing to lack of training or inadequate training on divorce matters and take steps to remedy this so that is should not be repeated". Can you tell me why you

didn't give reasons for your decision and whether you agree with the suggestion that there was, there's been a lack of training on your part in respect of divorce matters?

Dr L.T. Mkansi: That is a very simple question to that Rule 51(1) was not complied with. I can briefly refer to Rule 51. Rule 51 provides, I don't know whether I need to elaborate Chief Justice?

CJ M. Mogoeng: No, she just wants to know why did you not give reasons?

Dr L.T. Mkansi: It was because Rule 51(1) was not complied with. It requires the appellant before they note an appeal to ask for reasons. That was never complied with. It was never brought to me that reasons were required in terms of Rule 51(1).

CJ M. Mogoeng: Thank you.

Ms Steward: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you. Well, you are excused, sir.

Dr L.T. Mkansi: Thank you.