



JUDGES MATTER

**Judicial Service Commission interviews
07 April 2017.**

**Labour Court
Interview of Ms MPN Nkutha-Nkontwana**

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2017 JSC Interviews/Ms MPN Nkutha-Nkontwana

CJ M. Mogoeng: - Nkutha-Nkontwana.

Adv P. Nkutha-Nkontwana: Good afternoon, Chief Justice.

CJ M. Mogoeng: Are you well, Ma'am?

Adv P. Nkutha-Nkontwana: I'm well. Thank you for asking.

CJ M. Mogoeng: Are you relaxed?

Adv P. Nkutha-Nkontwana: Yes.

CJ M. Mogoeng: Or should I help you to be relaxed a bit? Okay, all right. Where is home? Where were you born and bred?

Adv P. Nkutha-Nkontwana: I was born and bred in Springs, KwaTema and I studied there.

CJ M. Mogoeng: No attachment to any village?

Adv P. Nkutha-Nkontwana: Well, it is through marriage, but I'm a township girl.

CJ M. Mogoeng: Okay.

Adv P. Nkutha-Nkontwana: I studied there in the local schools and I matriculated there and ja I went to the University of Zululand.

CJ M. Mogoeng: Zululand. When was that?

Adv P. Nkutha-Nkontwana: 1990.

CJ M. Mogoeng: 1990.

Adv P. Nkutha-Nkontwana: And I finished in 1994.

CJ M. Mogoeng: And what degree did you do there?

Adv P. Nkutha-Nkontwana: I studied BJuris and LLB in Zululand.

CJ M. Mogoeng: Ja and thereafter?

Adv P. Nkutha-Nkontwana: And thereafter I went on an international visitor programme to Australia and then...

CJ M. Mogoeng: Where in Australia?

Adv P. Nkutha-Nkontwana: In Melbourne and – for a year, but fortunately...

CJ M. Mogoeng: If you could speak up a bit or maybe – yes.

Adv P. Nkutha-Nkontwana: Yes, I studied in Melbourne.

CJ M. Mogoeng: Yes.

Adv P. Nkutha-Nkontwana: I mean that was the programme and then after I came back and my first job was a job at the CCMA and fresh from Varsity. I had no experience at all, but through training – I think I've made an account, an application that through training that's where I was assisted to be where I am today, because I was one of the first commissioners that were appointed at the wake of the new Labour Relations Act.

CJ M. Mogoeng: Yes.

Adv P. Nkutha-Nkontwana: And so I was with the CCMA until 2000 and then I left the CCMA to consult. I was specialising in training – Labour Law training and in 2003 I decided I cannot study law and not practise law, so I did my pupillage.

CJ M. Mogoeng: Where?

Adv P. Nkutha-Nkontwana: My pupillage I did at Johannesburg Bar and my Pupil Master was Albert Moy and part of Group 21 and I'm still part of that group to date.

CJ M. Mogoeng: Yes and so you have been an Advocate for many – for how many years now?

Adv P. Nkutha-Nkontwana: Almost 14.

CJ M. Mogoeng: Do you get support from firms of attorneys – enough support or are you barely surviving?

Adv P. Nkutha-Nkontwana: Ja, I think for an African woman, we barely survive, but you do get one or two attorneys that will sustain you and the State Attorney would give you work.

CJ M. Mogoeng: Is the State Attorney forthcoming now?

Adv P. Nkutha-Nkontwana: The State Attorney's forthcoming now, so I do get good work and good briefs from the State Attorney.

CJ M. Mogoeng: I'm pleased to hear that. Yes, at long last.

Adv P. Nkutha-Nkontwana: And other than that it's just, you know, the story of survival.

CJ M. Mogoeng: Yes.

Adv P. Nkutha-Nkontwana: And we normally say that when you compare the practice of your fellow colleagues who are white and yours, yours becomes like you started yesterday, because you know, you have to go an extra mile to make it.

CJ M. Mogoeng: What kind of work does the State Attorney give you?

CJ M. Mogoeng: They give me Labour, but recently I'm getting I think a lot of Constitutional matters, as well and so (indistinct) [0:03:41].

CJ M. Mogoeng: Have you been to appeared before us with some of them?

Adv P. Nkutha-Nkontwana: I did, I did, but not recently. I think I did an account. Yes, I did appear even on my own. I was doing an NPA matter. It was an interpretation of Sexual Offences Act and whether it was – it abolished rape at the time and so I appeared before the Constitutional Court to move that matter.

CJ M. Mogoeng: And for how long have you acted in the Labour Court? Did you put all the short-terms over which you acted? All in all for how long have you acted there?

Adv P. Nkutha-Nkontwana: I think I gave an account on my application, but it's almost...

CJ M. Mogoeng: Yes. No, no, just estimate.

Adv P. Nkutha-Nkontwana: Yes because I started with the pro bono project which we did, so it could be five years – five years or so and then...

CJ M. Mogoeng: If you put together those periods of acting?

Adv P. Nkutha-Nkontwana: - and then, if I put together yes, because I also acted for a term – full terms twice.

CJ M. Mogoeng: Yes.

Adv P. Nkutha-Nkontwana: Yes, so that's the (indistinct) [0:04:59].

CJ M. Mogoeng: Are you now settled whenever you go there to act as a Judge or there's still challenges?

Adv P. Nkutha-Nkontwana: Well, I think I'm settled, but I think the greatest challenge, because it's not something you do often, is to you know, issue those judgments. I think sometimes you experience delay simply because if you've reserved them and you go back to the challenges of practise, then it gets very tricky and...

CJ M. Mogoeng: You don't find time to attend to the judgments.

Adv P. Nkutha-Nkontwana: - and you do try, because I think if you've acted for a term, obviously you have a practice to resuscitate and that you know, puts pressure

in terms of prioritisation of your work, but I do try as much as I can to issue those reserves and obviously with an understanding that we have to do it expeditiously. That is the call in terms of the Labour Relations Act. So, it's not that you're sitting and not caring. You do try to find time to do that.

CJ M. Mogoeng: What is the longest you have kept a judgment reserved for, which sort of embarrassed you?

Adv P. Nkutha-Nkontwana: It embarrassed me to – more than seven months. That was a big embarrassment. However, I'm happy because it was a critical issue as well that one, dealing with issues of discrimination and you'd want to apply your mind and within the constraints of the time that you have. However I acknowledge that that is an issue, but I think if you get appointed and you're fulltime and you give your attention to the writing of judgements and I suppose with support from Senior Judges, you learn to curtail your judgments, because I know my judgments are sometimes very long, because you research. I think you bring your practice experience, because you're trying to convince the Judges and I think that would permeate in terms of how you write, you know. So, but I'm thinking with practice you can write simple judgments and it will take less time to do that.

CJ M. Mogoeng: But on average, how long does it take you to produce a judgment?

Adv P. Nkutha-Nkontwana: Well, depending. If it's motion it's easy to push them. The Trials, because you have to go through evidence and it can take a day or I mean, two days or three just to go through the evidence and then you know crystallise the law and then produce a judgment. However, I'm saying if you focus I think it should – it could be curtailed and you find some ways of dealing with your challenges once you're permanent.

CJ M. Mogoeng: But generally, how long does it take you to produce a judgment? Generally, on average.

Adv P. Nkutha-Nkontwana: There are simple ones that you can produce them over a day, others three days, but there are others that you know, you have volumes and

volumes of evidence that you have to go through it. So, as I'm saying it depends on the matter and the facts that you have to traverse to...

CJ M. Mogoeng: Yes.

Adv P. Nkutha-Nkontwana: - to come up with a judgment.

CJ M. Mogoeng: Acting Judge President Tlaletsi, over to you, sir.

JP P. Tlaletsi: Thank you Chief Justice and good day Ms Nkutha.

Adv P. Nkutha-Nkontwana: Good day.

JP P. Tlaletsi: Yes, most of the issues have been covered by the Chief Justice, but just on the issue of your acting stint, in 2014, according to my record, for the period 6 October to the 14th December you did four weeks of Motion Court.

Adv P. Nkutha-Nkontwana: Yes.

JP P. Tlaletsi: And four weeks of Trial.

Adv P. Nkutha-Nkontwana: Yes.

JP P. Tlaletsi: And we abused you a bit. You did two weeks of Urgent Court.

Adv P. Nkutha-Nkontwana: Yes.

JP P. Tlaletsi: And then in 2015 from the 5th of October to the 11th of December one week of Motion Court, six weeks of Trial and then two weeks of Urgent Court.

Adv P. Nkutha-Nkontwana: Yes.

JP P. Tlaletsi: Yes, now out of being selfish, I see that you're making yourself available for two Courts.

Adv P. Nkutha-Nkontwana: Yes.

JP P. Tlaletsis: - the Labour Court and the Electoral Court. What is the situation?

Adv P. Nkutha-Nkontwana: Well as I was coming here, I think I had to resolve that one and I think I looked at my application and my experience points to the Labour Court and most probably for me that would be the best Court to be considered for and that is my take on...

JP P. Tlaletsis: Yes, I don't want to belabour the point, lest I spoil it. The environment at the Labour Court, how did you find it? Collegiality – how do you relate with colleagues and how do they relate to you?

Adv P. Nkutha-Nkontwana: It's very collegial and there is, you know, good support there in terms of assistance and senior colleagues and so you don't feel isolated in the Court.

CJ M. Mogoeng: Can you think of anything that perhaps you would want us to address that can come to mind?

Adv P. Nkutha-Nkontwana: I don't know. Most probably not. For acting Judges, maybe it's just an induction of some sort where you get told what to expect, because I think my first time when I acted, it was really scary and I would wish that somebody could have inducted me, most of all because I'm a processed person, I would want to be introduced to process you know, because if I'm not, I get lost. So, it reminded me of my first experience when I was doing pupillage. The first lecture I attended, it was on Criminal Law and the Lecturer came and – who is a senior colleague and taught us about cross-examination, first lecture and that made me really suspect of my decision to even go to the Bar, because it didn't link to the whole litigation, I mean even if it's an action. However, we liked that year, because then that problem was suspended, there was a proper induction and the Bar Council invited Chris Marnewick who was in New Zealand to come and train us and I know there were a

lot of senior colleagues who were part of that induction and for me, it consolidated you know, my decisions to join the Bar, so I'm referring to that, because it could help.

JP P. Tlaletsi: Point taken. Thank you, Chief Justice.

CJ M. Mogoeng: Mr Njalinjali?

Mr Njalinjali: No questioning.

CJ M. Mogoeng: Thank you. Before you go or is your hand up, Commissioner Nyambi?

Mr J. Nyambi: Thank you, CJ. Morning Advocate Nkutha-Nkontwana.

Adv P. Nkutha-Nkontwana: Good morning, Commissioner.

Mr J. Nyambi: It's one question from my side. It's linked with the last question from the JP. It's in relation to anything specific that you have identified at the Labour Court as a challenge, should you be appointed that you can first deal with.

Adv P. Nkutha-Nkontwana: Other than what I've just said...

Mr J. Nyambi: The process issue, yes.

Adv P. Nkutha-Nkontwana: Yes. I think for me, it's the issue of individual unrepresented parties that appear there, you know, most of them, the issues of language will crop up and just the issues of dealing with them, assisting them. I think that Court does try, but I think we can do more and in terms of just trying to be inquisitorial, because you have a party that is not represented and maybe also to seek assistance from counsel if there's counsel. In actual fact, in most cases why I'm in Court and even if it's not my matter, there is a person who is appearing and is lost, I volunteer to assist and most of all we can inculcate that culture, because it does help. The matter would stand down, you go outside, you consult with that party, you'll come back and assist the Court. I think it's all about assisting the Court

and making sure that justice is accessible to everyone. Once they're in Court, I think it's incumbent on even counsel to assist the Court. In any event, it's their duty to assist the Court. So, I think most probably that's what I can add.

Mr J. Nyambi: Thank you, CJ.

CJ M. Mogoeng: Thank you very much, Commissioner Nyambi. Acting Judge President?

JP P. Tlaletsi: Just a one aspect emanating from the question from the fellow Commissioner. You are aware. Ms Nkutha that we do have a pro bono office based in Johannesburg to assist all those unrepresented and indignant parties?

Adv P. Nkutha-Nkontwana: Yes.

JP P. Tlaletsi: Thank you.

Adv P. Nkutha-Nkontwana: I do understand that, DJP, but the problem is, once they appear before you, if you refer them to Pro Bono Office, sometimes it's closed, it's got time issues, so and when you can just simply assist if you are counsel before Court or if the Court can. What I'm saying is over and above that you still find people who said, we went to the Pro Bono. We were told this or we were not told that. So, you want to at least make sure that if possible, you know, without any delays it can be resolved there. I think in most matters where I intervened matters were settled, you know. If they were not settled, at least Applicant or that unrepresented party would know exactly what they need to do, you know subsequently. So, what I'm saying is I think it's a service that over and above the Pro Bono Office that you know, would be of help to Court.

CJ M. Mogoeng: Commissioner Malema?

Mr J. Malema: (Indistinct) [0:15:00] very briefly, Chief Justice. Since you are well experienced with the Labour Court issues, do you think it is still necessary for you to proceed to interview on Electoral Court?

Adv P. Nkutha-Nkontwana: I seriously had to think about it and I'm sitting there and I'm thinking, I don't know what I'm going to say. I'm sitting, looking at my CV – I'll just be coming here to say well, clean page, write whatever you want to write. So, I don't think it would be fair to the Commission, so I don't think I should.

CJ M. Mogoeng: Minister?

Unknown Female Speaker: Good morning, Commissioner. How are you?

Adv P. Nkutha-Nkontwana: I'm good, thank you.

Unknown Female Speaker: I'm reading the report from the Bar and then maybe I think it's an omission. I don't see any portion what says you've got delayed judgment or reserved judgment. Is it omission or it's just that you don't have?

Adv P. Nkutha-Nkontwana: No, well I think I've decided to volunteer that most probably because they never picked that one up, but I think, I mean I have to be truthful when I appear before you and I think that's part of my training that you also address the Judge on your limitations, you know. I think that's basically what I did here, even if it's not there, but it's the reality of things, because I mean these proceedings are public. People may know, they may have been parties and they would have wanted to hear me on this particular aspect.

Unknown Female Speaker: So, you have outstanding reserved judgments?

Adv P. Nkutha-Nkontwana: Not currently. No, I've issued all of my judgments.

Unknown Female Speaker: Okay, thank you.

CJ M. Mogoeng: Yes, well Ms Nkutha-Nkontwana, on the assumption that you're still a candidate for the Electoral Court, from a pragmatic perspective I was going to propose this, if you don't mind that colleagues from the Labour Court, Acting Judge President Tlaetsi and Mr Njalinjali and subject to the views of my colleagues here, I

was going to suggest that they just step aside. Judge President Shongwe sits. Because you are a candidate on both, we interview you, rather than go and come back, but that will depend entirely on my fellow Commissioners and the other two could also come, we finish them and then we will deliberate. .

Unknown Male Speaker: (Indistinct) [0:17:39].

CJ M. Mogoeng: Oh, I don't know if she she has withdrawn. She was expressing her wonder. Have you withdrawn, Ma'am? No, no, let's clear it up. Have you withdrawn, because I didn't – I heard you say well, I don't know, I was asking myself. I didn't hear you say, I am withdrawing.

Adv P. Nkutha-Nkontwana: Chief Justice, I think what I was saying is that having sat here and looking at my experience, I don't think it would be prudent to proceed to that one. So, I don't...

CJ M. Mogoeng: Oh, so you are withdrawing?

Adv P. Nkutha-Nkontwana: I'm withdrawing from that one.

CJ M. Mogoeng: Okay, okay. No, that's fine then. Judge President Kgomo? You are – are you putting questions to her?

Mr F. Kgomo: No, I just – just for myself, Chief Justice...

CJ M. Mogoeng: Can you – I just wanted to find out, if you're putting questions to her, in which event I'll just excuse her.

Mr F. Kgomo: No, not to be excused, Chief Justice. I'm just concerned that there may be possibly three good candidates. One does not know what's going to happen. If she falls out here, maybe she may be good here and what if she falls away again.

CJ M. Mogoeng: No.

Mr F. Kgomo: I don't...

CJ M. Mogoeng: Yes, it's her choice. She has made her choice. If it is a risky choice, it's her choice. If anything, she can just blame Commissioner Malema for it.

Mr J. Malema: No.

CJ M. Mogoeng: Ms Kutha-Nkontwana, you're excused. Thank you very much, ma'am for making yourself available. Thank you.

Adv P. Nkutha-Nkontwana: Thank you. Thank you to everyone for the opportunity.