



# JUDGES MATTER

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

**Labour Court  
Interview of Ms D Mahosi**

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[length of audio] (36:46)  
2017 JSC Interviews/Ms D Mahosi

CJ M. Mogoeng: EMalahleni. Is that it?

Adv D. Mahosi: EMalahleni.

CJ M. Mogoeng: Yes. And which degrees do you have?

Adv D. Mahosi: I hold a BProc from the University of Limpopo now and an LLB. I also have an...

CJ M. Mogoeng: Is the LLB also from the University of Limpopo?

Adv D. Mahosi: It's also from the University of Limpopo.

CJ M. Mogoeng: Was it still Limpopo or was it Turfloop then?

Adv D. Mahosi: It was Turfloop University of the North.

CJ M. Mogoeng: Yes. Also...?

Adv D. Mahosi: And then I also have a Certificate of an International Corporate – International Commercial Law and I have a Diploma of Administration of Insolvent Estates from Pretoria University. The Certificate in Corporate Law is – or Corporate International Law is from Vrije University in Amsterdam.

CJ M. Mogoeng: Yes, take us through your employment history that is relevant to the practise of the law.

Adv D. Mahosi: I started working at Consilium Legis in Pretoria. It was a consulting firm and I was a Legal Researcher there and I then – that was in 2000.

CJ M. Mogoeng: Did they focus on certain areas of the law or were they general practitioners so to speak?

Adv D. Mahosi: It was general practitioners, but they focused also more on legislation and policies of the Roads – Department of Roads.

CJ M. Mogoeng: Yes.

Adv D. Mahosi: - and Transport.

CJ M. Mogoeng: Okay, yes.

Adv D. Mahosi: Then I served my Articles in Polokwane at Monkoe and Magabane Attorneys in 2001 and then in 2002 I was admitted as an attorney and I served as a

PA at Monkoe and Magabane Attorneys and then I proceeded to – in 2003 I then established a law firm under the name D. Mahosi Incorporated and I was also then appointed to be a Lecturer at the University of Limpopo at that time. I have been at...

CJ M. Mogoeng: What were you offering?

Adv D. Mahosi: I offered Labour Law, Mercantile Law and also Law of Succession (indistinct) [0:03:02].

CJ M. Mogoeng: Yes, and so you have been an attorney for how long?

Adv D. Mahosi: I have been an attorney for 15 years now.

CJ M. Mogoeng: One five?

Adv D. Mahosi: Yes.

CJ M. Mogoeng: And have you acted at the Labour Court?

Adv D. Mahosi: I have acted at the Labour Court. I started acting at the Labour Court 2016 in January. I acted for a full term and I acted also in the third term and also in the first term of 2017 – this year.

CJ M. Mogoeng: Was it an intimidating atmosphere or a welcoming environment?

Adv D. Mahosi: The environment was welcoming, but when I started it was – I must say that it was intimidating at the beginning, but after two weeks, three weeks or so, I became a bit comfortable and I was able to...

CJ M. Mogoeng: Didn't you find judgment writing to be a serious challenge?

Adv D. Mahosi: Judgement writing was not necessarily a challenge that much. I think what was challenging or what I found to have done, which actually perhaps

worked against me was to try and be too thorough and perfect and I ended up over-analysing, which resulted in me giving longer judgments and that also affected my turnaround time of handing down judgment.

CJ M. Mogoeng: On average, what is your turnaround time?

Adv D. Mahosi: At the beginning a number of them were within three months, but I have judgements which were delivered six months later and as I said earlier it was due to me trying to be perfect and in trying to find a style of writing, I would overanalyse and write longer judgments and that of course resulted in me delivering those judgments a bit late and I must say that it was not good for the parties and I must apologise for that from (indistinct) [0:06:03].

CJ M. Mogoeng: Yes, it's something you regret?

Adv D. Mahosi: Ja.

CJ M. Mogoeng: Ideally, within which period would you want to be able to hand down a judgment from the time it is reserved?

Adv D. Mahosi: Ideally it should be before three months, in fact maybe the second month. That is if you've reserved it – that is if I've reserved it for longer.

CJ M. Mogoeng: Yes.

Adv D. Mahosi: – but being at the Labour Court, Labour matters in themselves are urgent matters and judgment should actually be delivered within a very short space of time.

CJ M. Mogoeng: Yes. Did you find some support from permanent members of the Court or were they just too busy to find enough time for you, to avail enough time to you?

Adv D. Mahosi: Permanent Members at the Labour Court, I find them to be always available to assist, especially to listen and just to give their support, but as a Judge you still have to sit and it's actually a decision that you have to make on your own independently.

CJ M. Mogoeng: Yes, thank you. Acting Judge President Tlaletsi?

JP P. Tlaletsi: Thank you, Chief Justice. Good morning, Acting Judge at the moment.

Adv D. Mahosi: Good morning.

JP P. Tlaletsi: Good morning. You are Acting Judge at the moment?

Adv D. Mahosi: I am not acting at the moment. I am going to be acting at the beginning of the term.

JP P. Tlaletsi: Ja, which means your acting stint for this year has been extended for another term?

Adv D. Mahosi: For another term, yes.

JP P. Tlaletsi: Yes. Right, at the Labour Court, we've got three divisions, the Motion Court, the Trial Court and Urgent Court.

Adv D. Mahosi: Yes.

JP P. Tlaletsi: Yes. I just want to take you through during your acting stints. Right, in 2016 you acted from the 24th of January and then it ended on the 1st of April 2016. You remember?

Adv D. Mahosi: Yes.

JP P. Tlaletsi: And then you did, according to the statistics that we have, you did three weeks of Motion Court during that stint?

Adv D. Mahosi: Yes.

JP P. Tlaletsi: And then the Trial Court you did six weeks?

Adv D. Mahosi: Yes.

JP P. Tlaletsi: And then the Urgent Court, you did one week of that?

Adv D. Mahosi: I did one week of it.

JP P. Tlaletsi: And then the stint that you were in the 25th of July to the 26th of August, which was a very short stint, you did two weeks of Motion Court.

Adv D. Mahosi: Yes.

JP P. Tlaletsi: – and two weeks of Trial Court.

Adv D. Mahosi: Yes.

JP P. Tlaletsi: And then you did not do the Urgent Court at the time.

Adv D. Mahosi: I did not do the Urgent Court at the time.

JP P. Tlaletsi: Yes, and this year 2017 from the 30th of January up to the 24th of February you did two Motion Courts, one in Johannesburg and the other one in Port Elizabeth?

Adv D. Mahosi: Yes.

JP P. Tlaletsi: And then you also did a Trial Court. You had two weeks?

Adv D. Mahosi: That's correct.

JP P. Tlaletsi: And you haven't done Urgent Court yet?

Adv D. Mahosi: I haven't done an Urgent Court at the time.

JP P. Tlaletsi: Yes. Of the three divisions, which one do you find more challenging, time consuming?

Adv D. Mahosi: The Motion is more challenging, because that's where you actually pick up a lot of reserved judgments, but what I've realised is that when I'm – when I'm able to give an ex tempore judgment, then in that way I do not reserve a lot of judgments and I've realised that it actually is possible to do that.

JP P. Tlaletsi: I see. Okay and then you know that the Labour Court, it's a National Court. It's got national jurisdiction. There's a lot of traveling.

Adv D. Mahosi: Yes.

JP P. Tlaletsi: Would you have any problem in travelling? It sits – at the moment you've got Satellite Courts in Durban, Port Elizabeth, Cape Town and then it then it also sits at other cities, depending on the number of cases we've got in those cities like Polokwane, Bloemfontein and Kimberley. Would that be any problem to you, travelling?

Adv D. Mahosi: It is not a problem. It has not been a problem. In fact, I have a – as you indicated earlier, I have been to PE and I also have been to Cape Town, so I'm always happy to assist in all other offices of the Labour Court.

JP P. Tlaletsi: I see and then in your questionnaire under Section 2, where it relates to the legal background, I would want you to have it in front of you now.

Adv D. Mahosi: Oh.

JP P. Tlaletsi: It will be under paragraph C. Right at the end you say that “I am currently still resident in Johannesburg and run a small practice, more on consultancy basis. Would you just maybe explain that? What does that imply?”

Adv D. Mahosi: Yes, what that means is that my practice focusses more – in fact what I’m doing mostly – I must indicate that I’m a part-time Commissioner at the CCMA and Bargaining Council, so what I do mostly is Labour matters where I would – if I’m not at the CCMA or Bargaining Council, then I would be assisting with the disciplinary hearings and in matters relating to Labour and as such my practice is not more on litigation per se – at the moment, now I mean at the moment.

JP P. Tlaletsi: I see. Well, that takes me to paragraph 6.3 where you refer to cases where you’ve appeared. Are these the cases that you have appeared in Court or what is the situation? You don’t indicate in the form.

Adv D. Mahosi: Those are the cases where I’ve appeared in Court and also at the CCMA. That was before I was a Commissioner at the CCMA.

JP P. Tlaletsi: I see. Just one aspect that I want to clear up with you, on the comments from the Law Bodies there’s one from SASLAW of which you’re a member? Is it?

Adv D. Mahosi: Yes.

JP P. Tlaletsi: They make a comment, unfortunately we do not know who’s making this comment, but apparently, they circulated names among their members and then they make comments. There is a mention that you postponed cases or a case only because the parties failed to file a practise directive. Would you want perhaps to share some light on that?

Adv D. Mahosi: I can. I remember that matter very well, because it was not long ago. What had happened there is that parties appeared and I – when they appeared I then realised that there was no practise note in their file and when I asked them to address me on that, they could not give a proper explanation. In fact, what the



counsel said was that I should – he requested I should stand the matter down for the purpose of him – he actually wanted to take instructions from his attorney and then he indicated that his attorney was actually on his way to Court and when the attorney came, they could not explain why the – their papers or practise note was not in the file. They actually even did not request the Court to indulge them in that matter and what then happened was the respondent then in his address indicated that in that case it would then mean that I had not – I did not appreciate the matter, because you see also the thing about the – the purpose of the practise note is for the Judge to be able to know what the matter is all about, so when you don't have papers that are all in order, you are not put in a position for you to be able to appreciate exactly what the matter is all about, so in terms of the practice manual when the practise note is not in the file, the only way to deal with the matter is to remove the matter from the roll, unless the parties are able to give you proper explanation.

JP P. Tlaletsi: Now, my last question, I know the Chief Justice has already asked you about this, regarding collegiality at the Labour Court, how did you find it? Did you find them accommodating to colleagues who are coming to act, particularly women colleagues who are acting? And I'm not buying your face, if there are problems it would be important for us to know those problems, so that we can attend to them. The aim is to make that place as friendly as possible.

Adv D. Mahosi: I find the members to very or permanent Judges to be very accommodating and very supportive and they – the treatment that I got there as an acting Judge was fitting. It was very welcome in fact.

JP P. Tlaletsi: I see. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Acting Judge President. Mr Njalinjali?

Mr Njalinjali: Thank you, JC. I have some three questions to raise with you first if you don't mind. The first one is that in your history of employment you have been a Commissioner (indistinct) [0:17:21] I'll assume by the CCMA.

CJ M. Mogoeng: I'm sorry, Mr Njalinjali, if you could have the mic closer to you, so we can hear you well.

Mr Njalinjali: Thank you very much. You indicate that you have been a Commissioner for various Bargaining Council, including CCMA House. I assume that you have been accredited by the CCMA. Is that correct?

Adv D. Mahosi: That is correct.

Mr Njalinjali: What level were you in, in terms of levels – normally Level B, Level A, Senior Commissioner? What level?

Adv D. Mahosi: I'm a Level B Commissioner.

Mr Njalinjali: Level B Commissioner. One of the strict requirements in the CCMA to continue with the Commissioner is based on the judgment – I mean the submission of judgments – delivering of judgments you were – awards, let me put this – awards.

Adv D. Mahosi: Awards, yes.

Mr Njalinjali: What has been your average? Are there any late judgments that you have been doing? If any...?

Adv D. Mahosi: I have not had – I have not delivered awards late at the CCMA and the Bargaining Council. My awards were always...

Mr Njalinjali: On time.

Adv D. Mahosi: - on time.

Mr Njalinjali: Thank you very much. On the question then on the – the one in the acting you indicated that the challenge in relation to judgments, you said the impact of being perfect have led to late judgment. Did I hear you correct?

Adv D. Mahosi: Yes, trying to be...

Mr Njalinjali: – that you were trying to be perfect? As a result, you spent more time in terms of writing this judgment. I didn't hear you as to how do you intend to address that one?

Adv D. Mahosi: I have actually learned from my experience and as a result I have adopted or I'm trying to adopt a style of writing shorter judgements without compromising the quality and I can say that from the period that I've acted in the first term, to date I do not have any reserved judgments at all.

Mr Njalinjali: That's good, but taking into account – that's my last question JC – considering the time that you have been acting and the fact that in terms of the three divisions that the Acting JP was talking about, you have only spent (indistinct) [0:20:07] cases [0:20:08] by way of, if I'm not mistaken on the Urgent ones and I heard you comparing the two, you seem to say Motion one is the more that you must apply your mind quickly. Is it not the opposite to that one, on the urgent one, that's when you have to act decisively and be able to indicate your judgment?

Adv D. Mahosi: It is correct. What I was saying was that as much as there are urgent matters that come before the Labour Court all matters that actually come before the Labour Court are urgent in their nature. I do agree that on urgent rolls judgments would have to be delivered urgently and I have – when I acted or when I was on that roll, I was able to deliver my judgments within an acceptable time.

Mr Njalinjali: Thank you, JC.

CJ M. Mogoeng: Thank you very much, Mr Njalinjali. Acting President Maya?

Ms M. Maya: Thank you, Chief Justice. Good morning, Ms Mahosi.

Adv D. Mahosi: Good morning, ma'am.

Ms M. Maya: I must say, you have quite an impressive CV and I thoroughly enjoyed reading the judgments that are attached to your questionnaire. You write well, so I don't think you have anything to worry about on that score.

Adv D. Mahosi: Thank you, Commissioner.

Ms M. Maya: I just wanted to ask you one thing. It has been found that a number of women that went from our law schools, then they go to serve their Articles of judgeship and the pupillages and they succeed and then they go into the professions, but don't stay. Now, I asked you this, because I noticed that you – after you've completed your Articles you went into practise, but you stayed only for one year and I just wanted to find out why you left. You went to teach I think?

Adv D. Mahosi: I did not leave. What happened, after serving my Articles I stayed as a PA at the same law firm, then I established my own law firm from 2003, but at that time also I was appointed also as a lecturer at the University of Limpopo, so I have been practising from 2003 to date.

Ms M. Maya: Oh, I'm sorry. I misread your form. I thought you went to teach, then came back to start your own practice.

Adv D. Mahosi: No.

Ms M. Maya: So, you were both...?

Adv D. Mahosi: Yes, I was...

Ms M. Maya: - teaching and practising at the same time.

Adv D. Mahosi: - I was both practising and teaching at the same time and I was also an instructor at the Practical Legal Training.

Ms M. Maya: And a mother as well.

Adv D. Mahosi: And a mother and ja and I was at the time of course – I was starting a family, so you will realise that it was not an easy route, but...

Ms M. Maya: And how far were you able to juggle all those roles?

Adv D. Mahosi: Its's not an easy balance, but you try and do what you're supposed to do.

Ms M. Maya: I know I said I was going to ask you one thing. I just noticed something else. In your questionnaire you record that you have outstanding judgments reserved in August last year.

Adv D. Mahosi: Yes.

Ms M. Maya: Have you been able to finalise them?

Adv D. Mahosi: Yes, they were all finalised. As I indicated earlier to the Commissioner, I have no reserved judgments at the moment.

Ms M. Maya: Thank you very much.

Adv D. Mahosi: Thank you.

CJ M. Mogoeng: You have come up to this level. What advice would you give a young woman who wants to work her way up to the High Court, Labour Court and so on? How were you able to find your way through the many barriers that women have to contend with during practice until they are able to – until they reach High Court or specialist Court level? How did you survive, because many don't?

Adv D. Mahosi: What is important is to keep your eye on the ball and to persevere and also to get support from colleagues, not only from colleagues and also from the family and from your friends. It's hard working. It's hard working all the time.

CJ M. Mogoeng: Thank you. Commissioner Msomi?

Mr S. Msomi: Thank you, Chief Justice. Good morning, should I say Ms Mahosi?

Adv D. Mahosi: Good morning, Commissioner.

Mr S. Msomi: I just want to refer you to this book, which is titled, "Labour Court 2 Vacancies. Feedback from Law Bodies".

Adv D. Mahosi: Yes.

Mr S. Msomi: In particular I would like to refer you to the results of what appears to have been a survey done by the South African Society for Labour Law. Have you been able to pick that up?

Adv D. Mahosi: Yes.

Mr S. Msomi: Are you a member of SASLAW?

Adv D. Mahosi: I am a member of SASLAW. What had happened is that I only joined SASLAW late last year. It was at the time when I was actually acting at the Labour Court.

Mr S. Msomi: Okay and I just wanted to get your response to the results of that survey. You appear to have scored the lowest in terms of the responses from the members of that Body regarding your suitability for appointment. Do you see that? You scored 14 percent (indistinct) [0:26:55] 14 or 20.3 percent.

Adv D. Mahosi: For 2010?

Mr S. Msomi: 20.3.

Adv D. Mahosi: Yes, I see that.

Mr S. Msomi: What is your response to that? Were these people fair to you? Unfair to you? And why.

Adv D. Mahosi: Most of the comments that came up from this Body indicates that I am not known, and it is understandable, because most of my years or the years that I've spent in practice I was in Limpopo and not in Gauteng. So, I am fairly new in Gauteng.

Mr S. Msomi: Okay. If I were to ask, if you were to quantify your time as an acting Judge in the Labour Court, in totality how much time have you spent? Two weeks there, a month there, but in totality as an acting Judge, how much time have you spent as an acting Judge?

Adv D. Mahosi: If I'm not mistaken, it should be five months.

Mr S. Msomi: It is five months. Having spent...

Adv D. Mahosi: - or just over five months.

Mr S. Msomi: Just over five months. In all fairness, do you think that period has prepared you well enough to get a permanent appointment? If so, why?

Adv D. Mahosi: It has prepared me well enough. What has also not – or not only that period that has prepared me for the appointment, but also my experience as an attorney. The time that I spent at the CCMA as a part-time Commissioner also has prepared me.

Mr S. Msomi: Are you familiar with the norms and standards that govern Judges in this country and what do they say about the (indistinct) [0:29:18] of time that it must be taken to deliver judgment?

Adv D. Mahosi: Judgments must be delivered as soon as possible, but it should not also be beyond three months.

Mr S. Msomi: Is there a not a recommendation there of a three-month period from the date the matter is finally heard?

Adv D. Mahosi: Yes, it is exactly that.

Mr S. Msomi: It will appear from the responses that have been raised by the various bodies that one of the issues that they take with you is that you take longer to deliver your judgments. Now, in Labour Law, as you may be aware lives of people are dependent on it. Someone has been fired, their unemployed or there's an employer who could be wanting to replace a dismissed employee. They can't finalise the matter, because judgment is still outstanding. Do you appreciate the seriousness of not handing down judgment in time on the broader economy...?

CJ M. Mogoeng: Commissioner, she explained it earlier, unless there is an aspect of an answer that you want to clarify. She did explain – respond to that earlier, but it may well be that you want to clarify that – her answer.

Mr S. Msomi: Okay, for my benefit, Ms Mahosa, could you please clarify that?

Mr J. Malema: Mahosi.

Mr S. Msomi: I'm sorry, Commissioner Malema. Mahosi. Are you able to clarify that for me? I did not get the clarity?

Adv D. Mahosi: I do appreciate the importance. As I indicated earlier, I did say that as much as there's an Urgent Court at the Labour Court, my view is that all matters that go to the Labour Court are urgent in their very nature and that judgement thereof should be delivered as soon as possible.

Mr S. Msomi: Thank you so much, Chief Justice.

CJ M. Mogoeng: Thank you very much, Commissioner Msomi. And you actually volunteered that information.



CJ M. Mogoeng: I have.

CJ M. Mogoeng: In the course of dealing with the judgments that were reserved for a long time, which you expressed regret for.

Adv D. Mahosi: Yes, I did.

CJ M. Mogoeng: Yes. Professor Ntlama?

Prof N. Ntlama: Thank you, CJ. Morning, Ms Mahosa.

Adv D. Mahosi: Good morning, Commissioner.

Prof N. Ntlama: Just two questions. (Indistinct) [0:32:03] someone from the academia. Can you please share with us your experience as an academic as to how it has prepared you or contributed to your ability to become a Judge?

Adv D. Mahosi: Yes, being an academic involved researching the law and that is actually a skill that is very important to all judges, being able to find the law and to be able to apply it.

Prof N. Ntlama: How does that assist you in the advancement of your judicial career?

Adv D. Mahosi: As I indicated earlier, being an Academia, it doesn't only involve teaching or lecturing, but also you have to be a reader, you have to read a lot. You have to be able to analyse the law and apply it and that knowledge is very helpful in preparing one to be a Judge.

Prof N. Ntlama: As a woman, other than your technical expertise, what do you bring to the Judiciary?

Adv D. Mahosi: I bring compassion and I bring the love of the law. I bring understanding, patience and being able to listen, which I believe is a very important skill to have if you are to be a Judge. Thank you.

Ms M. Maya: Thank you, Commissioner Ntlama. Commissioner Norman?

Ms T. Norman: Thank you, President Maya. Good morning, Ms Mahosi.

Adv D. Mahosi: Good morning.

Ms T. Norman: Well for me, I think my questions have been taken care of, but what I wanted to draw to your attention is that it seems that the person – the SASLAW, the whole issue about the practise note is that you did not deal with it in chambers. You could have dealt with it in chambers before going into Court. What is your response to dealing with matters in chambers instead of you dealing with them in Court?

Adv D. Mahosi: My experience is that it's always – as much as there are issues that you would raise with the parties in chambers, it's always better to deal with matters on record in Court and that way you have record of exactly what you have said, and you don't run a risk of parties complaining about your conduct in chambers where there's actually no record.

Ms T. Norman: Thank you and then the second thing is the same Body that you are a member of says for example, where they in their comment, "Mahosi is a relatively unknown quantity." I mean, you know, what is that?

Adv D. Mahosi: I have explained that earlier that I can understand it, because I practised mostly in Limpopo, in Polokwane and I am fairly new in Jo'burg, so I would not – for that member to have expressed that view, it would be understanding.

Ms T. Norman: Yes, but for me, I mean isn't that derogatory, because they are not simply saying that we do not know this member, but they refer to you as a quantity. I don't know what that means, you know.

Adv D. Mahosi: It is. It is derogatory.

Ms T. Norman: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Norman. Commissioner Nkosi Thomas?

Ms N. Thomas: Thank you, I will pass. My issues have been taken care of.

CJ M. Mogoeng: Thank you very much. Thank you very much, ma'am. You are now excused.

Adv D. Mahosi: Thank you so much and I would like to thank you for giving me the opportunity to appear before you. Thank you.