



# JUDGES MATTER

## Judicial Service Commission interviews

07 April 2017.

### Electoral Court

#### Interview of Ms S N Ndlovu

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Ms S. N. Ndlovu: ... attorney.

CJ M. Mogoeng: From 2005 until 2006?

Ms S. N. Ndlovu: Correct.

CJ M. Mogoeng: Were you then admitted, before you assumed the responsibility of legal advisor?

Ms S. N. Ndlovu: I was admitted during that period when I was a legal advisor.

CJ M. Mogoeng: Yes. Well, take us through your experience and tell us how it has prepared you for the position you're applying for, just in your own words.

Ms S. N. Ndlovu: I can say that during my Articles where I was a candidate attorney I dealt with criminal matters and civil matters and also Road Accident Fund matters and as a legal advisor I was also a legal advisor at Legal Wise. I was advising people at their personal issues that they brought at the institution and then as a legal advisor I started by being a junior legal advisor and then I was progressed to a senior legal advisor. I was dealing with evictions, civil matters, collections. From there I therefore opened my own firm after resigning there and then I continued – I worked for my firm Sanken Ndlovu and Associates and then I was admitted also in the High Court. I just also started – I was an assessor and then in 2012 I was an acting magistrate, still dealing with criminal work, domestic violence matters that was family and maintenance matters and also civil matters. I've also been appointed now as a magistrate. I have received intensive training there as a judicial officer and ja...

CJ M. Mogoeng: And when you served as an acting magistrate, was that for a continuous period or would you come, act as a Magistrate and go back to your practice?

Ms S. N. Ndlovu: It was continually because it was from 2012 until the appointment in 2015.

CJ M. Mogoeng: What happened to the practice?

Ms S. N. Ndlovu: When you're still an acting magistrate you can coordinate your practice. I had some staff that I was just supervising while I was acting as a Magistrate.

CJ M. Mogoeng: Who was in charge of them?

Ms S. N. Ndlovu: It was a professional assistant, it was Ms Sekgwele.

CJ M. Mogoeng: Yes and then you got appointed permanently in November 2015 until now?

Ms S. N. Ndlovu: That's correct, Honourable Judge.

CJ M. Mogoeng: Yes, thank you very much. Judge President Shongwe?

JP J. Shongwe: Thank you, Chief Justice. Ms Ndlovu as a Magistrate, is it in the District Court or in the Regional Court?

Ms S. N. Ndlovu: In the District Court.

JP J. Shongwe: The District Court. Have you acted in the Regional Court?

Ms S. N. Ndlovu: Not yet.

JP J. Shongwe: I see. Now in your practice, as an attorney, I see also you are an admitted Conveyancer? Am I right?

Ms S. N. Ndlovu: That's correct.

JP J. Shongwe: In your practice as an attorney, did you do any High Court work?

Ms S. N. Ndlovu: Yes, I started when I was still also a legal advisor. I used to brief counsel and I used to attend to High Court with them and also when I was an attorney I used to brief also counsel and then attend with them.

JP J. Shongwe: I see. You also mentioned that you were admitted in the High Court. Did you have a right to appear in the High Court as an attorney?

Ms S. N. Ndlovu: That's correct.

JP J. Shongwe: And have you appeared in the High Court as an attorney?

Ms S. N. Ndlovu: I've only appeared with Counsel at the High Court.

JP J. Shongwe: With Counsel, but not on your own?

Ms S. N. Ndlovu: Not on my own.

JP J. Shongwe: I see. Are you familiar with Electoral Legislation? That is the Electoral Court Act, the Commissions Act. Are you familiar with that set of Legislations?

Ms S. N. Ndlovu: That I would say yes, I have just made some kind of a research and I was also following some cases when they were unfolding, even in the media.

JP J. Shongwe: I see. For instance, which case has touched you?

Ms S. N. Ndlovu: The case of the Tlokwe Municipality.

Unknown Female Speaker: Ms Ndlovu, would you mind drawing the mic closer to yourself? We can't hear you from this end of the table.

Ms S. N. Ndlovu: Sorry.

Unknown Female Speaker: And try speaking a bit louder, I'm hard of hearing. Thank you.

Ms S. N. Ndlovu: Thank you.

JP J. Shongwe: Thank you. Now, if you don't mind, just raise your voice so that they can all hear.

Ms S. N. Ndlovu: Thank you, I will.

JP J. Shongwe: You were saying that you followed some case in the Electoral Court and I asked which case drew your attention.

Ms S. N. Ndlovu: Yes, I did follow some cases. One of them is the Tlokwe Municipality matter, where it was dealing with the postponement of the elections.

JP J. Shongwe: I see. Now, as you might know, the Electoral Court is specialised in – basically it's an Urgent Court. You understand that?

Ms S. N. Ndlovu: Yes, I do understand.

JP J. Shongwe: Now, the Court sits as and when there are cases that are brought to it and you as a Magistrate, would you be available to be sitting as a member of that court whilst doing your duties as a magistrate? Don't you see any problems as far as that is concerned?

Ms S. N. Ndlovu: I will be asking for permission, if needs be, from my Superiors but I am planning to avail myself as and when it is needed.

JP J. Shongwe: I see. Do you belong to any political party?

Ms S. N. Ndlovu: No.

JP J. Shongwe: You don't?

JP J. Shongwe: No.

JP J. Shongwe: You've never?

Ms S. N. Ndlovu: Sorry?

JP J. Shongwe: You have never?

Ms S. N. Ndlovu: No.

JP J. Shongwe: I see. Now, sitting as Magistrate, have you had an opportunity to write judgments in the criminal field, as well as the civil law?

Ms S. N. Ndlovu: Yes, I had. I'm having an opportunity almost all the time when I'm dealing with a matter.

JP J. Shongwe: I see. Thank you, Chief Justice, I've got no further questions.

CJ M. Mogoeng: Thank you very much, Justice Shongwe. Tell me, you are in the District Court, aren't you?

Ms S. N. Ndlovu: That's correct, Chief Justice.

CJ M. Mogoeng: Just so that I don't operate on the basis of a perception, my perception has been that in the District Court there is so much work, you hardly ever have time to settle down to write a judgment. It's ex tempore. If it's a judgement you write that it must be very, very short. How long on average are your judgments?

Ms S. N. Ndlovu: It depends on the facts and the evidence before me, but I would say roughly I can – I had – the longest judgment, it could never take – maybe 10 pages or so. It could be less than 10 pages.

CJ M. Mogoeng: Is that the shortest or the longest?

Ms S. N. Ndlovu: That is the longest that one.

CJ M. Mogoeng: And the shortest? Well, the average. I'm sorry. The average?

Ms S. N. Ndlovu: It could be five or four pages I think.

CJ M. Mogoeng: How often do you do that? How often do you write judgments?

Ms S. N. Ndlovu: Normally when I do a matter, when I finish that matter, I give myself a month to complete a judgement.

CJ M. Mogoeng: Do you serve in a busy court or a court that is not busy?

Ms S. N. Ndlovu: It's a very busy court. You can maybe sit with maybe five, six judgments you need to draft, but it depends on how you plan your time. At times you

can even draft the judgement and also type them yourself, because we don't also have staff.

CJ M. Mogoeng: And how many matters do you do daily? How many matters do you finalise daily?

Ms S. N. Ndlovu: Depending on what's on the roll.

CJ M. Mogoeng: Yes or on a daily basis and on average, how many cases do you handle and finalise?

Ms S. N. Ndlovu: In a Criminal Court days differ from each other. It could be 10, 12 matters on the roll. Perhaps they will have maybe a few Section 112(1)(A) or (1)(B), which are the plea of guilt, then they – you can finalise those maybe. If they are many, you can finalise all of them – maybe four, five I presume.

CJ M. Mogoeng: Okay, let me put it this way, in a week, in how many matters do you write judgments?

Ms S. N. Ndlovu: In a week, maybe it could be two.

CJ M. Mogoeng: So, on average, in a month you would have about eight reserved judgments, those in which you must write the judgment.

Ms S. N. Ndlovu: That's correct, I have more or less.

CJ M. Mogoeng: More or less. Okay. All right, Commissioner Fourie?

Com Fourie: Thank you, Chief Justice. Good afternoon, Ms Ndlovu.

Ms S. N. Ndlovu: Good afternoon, Commissioner.

Com Fourie: I see you commenced your Articles of Clerkship with Attorneys Zehir Omar.

Ms S. N. Ndlovu: That's correct, Commissioner.

Com Fourie: And it appears to me as if you did not complete the period of Articles there, but that your Articles were ceded to Rossouw and Rossouw Attorneys. Is that correct?

Ms S. N. Ndlovu: That's correct.

Com Fourie: Now, Articles are not ceded unless there are specific reasons for it.

Ms S. N. Ndlovu: That's correct.

Com Fourie: Would you care to elaborate on the reasons why your Articles were ceded?

Ms S. N. Ndlovu: We were specialising much on criminal works and then we were also dealing with a little bit of maintenance work, so I needed more experience in other areas of law. So, on Mr Rossouw, they were dealing with civil matters. They were also dealing with Road Accident Funds, deceased estates. So, I was strategically acquiring experience during my ceding of those Articles.

Com Fourie: So, your Articles were ceded at your request?

Ms S. N. Ndlovu: That's correct.

Com Fourie: In order to gain more experience at another firm?

Ms S. N. Ndlovu: That's correct.

Com Fourie: Isn't that unusual? It doesn't normally happen does it, that you'll experience that Candidate Attorneys do that.



Ms S. N. Ndlovu: If – it is provided that it can be done, though it is unusual, but if you see that it can benefit you, then you would necessarily take the opportunity. That's what I did in that circumstances.

Com Fourie: I won't take that further. The Chief Justice dealt with the fact that you had your own firm and then simultaneously acted as a magistrate. Now, some five years after you completed your Articles, you established your own firm. Is that correct?

Ms S. N. Ndlovu: That's not correct.

Com Fourie: Or did you join a firm?

Ms S. N. Ndlovu: I started by being a legal advisor for a... [intervention]

Com Fourie: No, no, I know, but I'm now at the point in 2011.

Ms S. N. Ndlovu: Yes, 2011.

Com Fourie: Yes.

Ms S. N. Ndlovu: – that's correct.

Com Fourie: Was it a firm that you established yourself?

Ms S. N. Ndlovu: That's correct.

Com Fourie: From scratch?

Ms S. N. Ndlovu: That's correct.

Com Fourie: That was in 2011?

Ms S. N. Ndlovu: That's correct.

Com Fourie: And that firm existed until 2015?

Ms S. N. Ndlovu: That's correct.

Com Fourie: For a period of four years. For three of those four years you were an Acting Magistrate?

Ms S. N. Ndlovu: That's correct.

Com Fourie: And if I understood you correctly, you left the day-to-day running of the firm to a Professional Assistant?

Ms S. N. Ndlovu: Sorry?

Com Fourie: If I understood you correctly, the day-to-day running of the firm was done or left to a Professional Assistant. Is that correct?

Ms S. N. Ndlovu: That's correct.

Com Fourie: Now, would you agree with me that it's hard work and it takes a lot of time and effort to establish a law firm?

Ms S. N. Ndlovu: That's correct.

Com Fourie: How's it possible that in that period you then decided to rather act as a Magistrate?

Ms S. N. Ndlovu: I honestly, if I can say, Honourable Commissioner, I strategically groomed that person, because I was with in my firm and I was also not absent in my firm. I was absent during the day, but when I completed my duties during the day I used to go there and be there with them. I was still drafting everything and monitoring them when they draft and I was hands-on with my firm, even with the

marketing of the firm, receiving work, and clients – from the clients that I was receiving for my firm. I was hands-on. I was even working during weekends.

Com Fourie: We all do, don't we, Ms Ndlovu. So, are you suggesting that one can establish a law firm and then effectively and successfully run that law firm after hours? Is that what you're saying to me?

Ms S. N. Ndlovu: Even if I can't say exactly, what I can say is it was possible. I did it and it was also a successful firm.

Com Fourie: So successful that it closed down in 2015?

Ms S. N. Ndlovu: Its closure was not due to the fact that it was unsuccessful. It was due to the fact that I'm not allowed to continue as a Magistrate and also own a firm in my name.

Com Fourie: Have you seen the comments of the Bar that says if you were to be appointed to the Electoral Court, you will be presented with legal issues that you do not appear to have encountered before.

Ms S. N. Ndlovu: Yes, I did.

Com Fourie: Is that a fair comment?

Ms S. N. Ndlovu: I would say as a lawyer, personally who is a lifelong learner, when the law is at my disposal I can research the law. I can find my answers there. I've got colleagues also that are also there. I wouldn't see any problems.

Com Fourie: Thank you, Ms Ndlovu. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you very much, Commissioner Fourie. You're excused, Ms Ndlovu.

Ms S. N. Ndlovu: Thank you.

CJ M. Mogoeng: Thank you very much.