



JUDGES MATTER

Judicial Service Commission interviews

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Western Cape Division of the High Court

Interview of Ms S M Marks

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Chief Justice CJ M. Mogoeng: Good afternoon Ms Marks.

Ms S M Marks: Good afternoon Chief Justice, Commissioners.

Chief Justice CJ M. Mogoeng: Are you well and relaxed?

Ms S M Marks: I don't think you can ever be relaxed when you come here, but I'm well thank you.

Chief Justice CJ M. Mogoeng: Okay, after completing your law degrees what did you, what work did you do?

Ms S M Marks: All right, I started...

Chief Justice CJ M. Mogoeng: Tell us where the first year started, we'll take it from there.

Ms S M Marks: With law, I started to prosecute.

Chief Justice CJ M. Mogoeng: For how long? Was it in the District Court?

Ms S M Marks: In the District Courts.

Chief Justice CJ M. Mogoeng: For how many years?

Ms S M Marks: For three years in the District Court in Verulam and Ntuzuma. Then I went on to the District Court Bench, both for Verulam and Ntuzuma – it was the Inanda District – then I did my Regional Court test in 1991.

Chief Justice CJ M. Mogoeng: You did what?

Ms S M Marks: My Regional Court test in 1991 and I was permanently appointed in May 92.

Chief Justice CJ M. Mogoeng: Yes.

Ms S M Marks: So I'm actually in that position now on the Regional Court Bench.

Chief Justice CJ M. Mogoeng: Since 1992?

Ms S M Marks: Yes.

Chief Justice CJ M. Mogoeng: That's more than 20 years, am I mistaken?

Ms S M Marks: I think sitting close to 30, 30 from 86 on the Bench.

Chief Justice CJ M. Mogoeng: Yes it's over 20 years, that's what I'm saying. I think 1992, when you get 2002 it was 10, 2012 it was 20 and then from 2012, you're around 25.

Ms S M Marks: Twenty-five years.

Chief Justice CJ M. Mogoeng: Not quite 30 yet, and in that capacity did you also get to do civil work?

Ms S M Marks: Yes.

Chief Justice CJ M. Mogoeng: As Regional Court Magistrate?

Ms S M Marks: Well, first in the District Court. When I was with the District Court Magistrate we did civil work. Then, since 2010, civil jurisdictions being conferred on Regional Court now, so we get to do civil work as well.

Chief Justice CJ M. Mogoeng: When did you personally begin to do civil working in the Regional Court?

Ms S M Marks: Well on and off 2010, but I've also acted in the High Court.

Chief Justice CJ M. Mogoeng: We were going to get there.

Ms S M Marks: Okay, yes.

Chief Justice CJ M. Mogoeng: Very well, tell us about that – if you, you'll add up you're acting stint in the Higher Court, how many months does it amount to?

Ms S M Marks: Well, this is what I wanted to tell you, after I've put my application in. I've been, I was invited to act again in KwaZulu-Natal, Durban, so together with the nine months I did another two months now, so it's 11 months all in all.

Chief Justice CJ M. Mogoeng: Eleven months. Have you settled down at Higher Court level, or are you experiencing some challenges still, significant challenges?

Ms S M Marks: I love it at the High Court level.

Chief Justice CJ M. Mogoeng: It's one thing to love it, but are you flowing, are there still hurdles to jump over? Just give us a sense of how it is there.

Ms S M Marks: Look, it's extremely challenging. It is heavy rolls in the High Court, especially the civil component. The secret, I think, is to be well-prepared, well organised. You have to sacrifice a lot of time. In fact, one could even say it's a calling, it's not a job. It's a 24/7 occupation as such. Even on this last occasion, there were evenings that you were up well after midnight, reading, preparing. I possibly would take the Saturday off, to do shopping, or go and see my son play a hockey match in the afternoon, but otherwise Sunday you would be working as well as going through the files, especially if you're in Motion Court, close in the week.

Chief Justice CJ M. Mogoeng: And in terms of delivering reserve judgements. How long does it take to get that done, on average?

Ms S M Marks: Well the longest I've ever taken is the two months, and that's one of the judgements I did send in, it's a Minister's Judgement, and that was, thinking, 2014, or 15, I'm not too sure, but you get better at it the more experience that you gain.

Chief Justice CJ M. Mogoeng: Sure, yes.

Ms S M Marks: This last occasion I've just acted, I didn't reserve one of my judgements, they were handed down during the term, and I was able to also give some extempore judgements. You sort of get tips from the other judges that assist you, and I've been very fortunate that there was always a fairly open door policy with the senior civil judges to assist. However, I have to advise you that in my last stint there was a civil trial that I picked up that had to be adjourned, so I've picked up a part-heard, but only for one witness in the defendant's case, and it was extremely unfortunate. The Friday he was supposed to come testify, his father died, and he had to go and organise and sort out the burial, so I had to allow that postponement.

Chief Justice CJ M. Mogoeng: And criminal matters? How long does it take you to deliver judgement?

Ms S M Marks: Criminal matters?

Chief Justice CJ M. Mogoeng: In the High Court.

Ms S M Marks: In the High Court, they extempore. I normally would hear the arguments in the afternoon and the following day I would deliver my extempore judgement in open court, so I've not had to reserve criminal judgement with trial. For criminal appeals, if you're sitting in a full court appeal, that is a different story because you have to, how can I say, make sure that everything is completely in order, especially if one of the judges do not agree and you describe, etcetera, so that's a different matter, but the trials are delivered extempore.

Chief Justice CJ M. Mogoeng: Should it make any difference that you haven't acted in the Western Cape High Court, at least according to my records, or does it not matter? High Court is High Court?

Ms S M Marks: Well, I'm hoping it doesn't matter. It's uniform Rules of Court. I do know that the divisions might have different practice directives. I'm a fast learner. I will learn their practice directives very quickly. I've had a quick glimpse through some which is similar. I also have friends there, ex-colleagues of mine in the High Court in the Western Cape. The only problem is I haven't acted for the JP from the Western Cape, so it will probably be difficult for him to know what my work ethic is probably like, etcetera, but I can guarantee I've got a very strong work ethic.

Chief Justice CJ M. Mogoeng: JP?

Judge President Hlope: Thank you very much Chief Justice. Let's just kick off from there. Working as a judge in the High Court is teamwork not so?

Ms S M Marks: Correct.

Judge President Hlope: You now want to work with people you have never seen before, because I'm not going to allocate you with your friends on the Bench.

Ms S M Marks: I don't see that as a problem at all.

Judge President Hlope: Okay fine. Were you born in KZN?

Ms S M Marks: No, I was actually born in Johannesburg.

Judge President Hlope: For how long have you lived in KwaZulu-Natal?

Ms S M Marks: We moved to KwaZulu-Natal when I was a girl of about 10.

Judge President Hlope: Thank you. I take it you're fluent in isiZulu?

Ms S M Marks: Unfortunately not fluent in isiZulu. I'm trying very hard to learn it; it's an extremely difficult language.

Judge President Hlope: Yes, we've heard that this morning before. Why is it difficult compared to English and Afrikaans?

Ms S M Marks: English and Afrikaans, we were, well English is my home language.

Judge President Hlope: Right Afrikaans?

Ms S M Marks: Afrikaans we were forced to learn when I was a little girl at school, under the apartheid era. I think everybody was forced to learn Afrikaans. In fact, most of our people were actually taught in Afrikaans.

Judge President Hlope: Fine.

Ms S M Marks: I did, I've been trying for a long time. When my children were small – I had my children later in life – and when they were small it was fortunate that they were learning Zulu, isiZulu at Primary School. But even then, I can study the vocabulary, but I have difficulty having a conversation, because I find it very difficult.

Judge President Hlope: You were a Magistrate in Inanda. One of the Commissioners comes from there, and I studied there. 90% of the people in that area speak isiZulu. How did you survive?

Ms S M Marks: Well, in the Courts we had interpreters. The interpreters assisted us.

Judge President Hlope: All right, you have acted for altogether roughly 11 months in Kwazulu-Natal?

Ms S M Marks: Yes, only in Kwazulu-Natal.

Judge President Hlope: Did you apply for a permanent position in that court, where you have already acted?

Ms S M Marks: Well, unfortunately they weren't advertising, they didn't advertise any post. I did approach our JP in KwaZulu-Natal, discussing with him the possibility of applying for the Western Cape and he said that should not be a problem at all.

Judge President Hlope: Excuse me, he encouraged you to go to the Western Cape rather than stay in KwaZulu-Natal?

Ms S M Marks: No, no he didn't encourage me. He said, if you want to go to the Western Cape I will support you. There are a number of judges that didn't act in the places that they were eventually appointed at. One of our Judges in KwaZulu-Natal, Judge Steyn, Esther Steyn, acted in the Western Cape, and she got appointed to KZN, so I don't see it as because I grew up in KZN, I must now be stuck in KZN.

Judge President Hlope: I accept that. Can I just put it to you along these lines: if you were so good, so much so that the JP of KZN wanted to retain you, he would have suggested that: act longer, he was then going to advertise a position and encourage you to apply, rather than just encourage you to go to the Western Cape.

Ms S M Marks: I don't think he encouraged me to go to the Western Cape, and one would have thought, possibly, that if you didn't know me or know of my work I do,

that you would have possibly phoned the JP in KwaZulu-Natal to find out what my work ethic is. I've been shortlisted.

Judge President Hlope: Sure.

Ms S M Marks: For KwaZulu-Natal, but obviously it also depends on demographics at the particular time a number of people applied, that you might be lucky one time being shortlisted, and you might not be fortunate the second time.

Judge President Hlope: Thank you. Is there racism on the Bench?

Ms S M Marks: I think there is still racism throughout South Africa, if one be honest with that, but there shouldn't be.

Judge President Hlope: Can we just confine ourselves to the Bench and the profession. That's what we are talking about. Is there racism on the Bench and in the legal profession?

Ms S M Marks: My experience of the KwaZulu-Natal Bench, because that's the only experience I've had, is there's no racism on that Bench. I haven't encountered. In the legal profession, I believe there possibly is, because you do not get, how can I say, African junior advocates being appointed with white senior advocates.

Judge President Hlope: Finally Chief Justice, given that you moved to KZN when you were 10, with the benefit of hindsight, don't you think learning isiZulu was going to be just one of the ways of embracing that language and the culture of the people, who constitute more than 80 percent in the province?

Ms S M Marks: I would love to be fluent in Zulu, isiZulu. As we all know, if you speak to a person in their own language you speak to their heart. We all know that. I believe that to speak fluent language, indigenous language, your formative years of when you're young, up to about seven to ten, is of major importance as far as linguistic abilities are concerned. I can greet and, but I cannot hold a proper conversation.

Chief Justice CJ M. Mogoeng: I started when I was 21, when I first went to the university there and can at least have a conversation for what it is worth. Ms Stuart?

Chief Justice CJ M. Mogoeng: Yes Commissioner Malema.

COMM. Malema: Ma'am you are planning to be a judge and that's why you are being interviewed at this level, and not in KZN. The question is very simple, and you need to answer it honestly so that we can have an ability to deal with this problem of racism. Is there a racism in the Judiciary and in the legal fraternity? That's what we are asking. We're not a JC in KZN, and you would have made certain observations in the country, and in the Division where you are applying, beyond KZN, and then give us an objective observation. Is there racism? If there is no racism fair enough, then we'll take that from you, and if there is racism, how do you suggest we deal with that racism?

Ms S M Marks: Mr. Malema, Commissioner, it's difficult for me to speak in the abstract, I'm not trying to evade the question. I personally have not come across racism blatantly. You would see it in people's judgements, possibly, so to accuse the Judiciary of being racist, it's very difficult for me to say, but I think we did and we still do have judges who were appointed in the past that obviously came with their baggage and racism.

Chief Justice CJ M. Mogoeng: Ms Stuart?

Ms Stuart: Thank you Chief Justice. I just have a short question. You chose, after your LLB, to go straight to the State and become a prosecutor, from what I can see on your CV. Can you explain why you chose to be a prosecutor?

Ms S M Marks: Yes, it wasn't really actually my choice. I did try and get articles at all the firms in Durban, at the time. I could not get articles, I didn't have connections in the law firms. I then applied at the Department of Justice in Durban, because I heard about prosecution, and they also told me they were full. As you can see from my CV, I had to waitress for six months, and I was doing promotional work to get money,

when the lady there informed me about the Department of Cooperation and Development, which was in Verulam. And hence I heard that, that place also needs law candidates, law people, who also have got a degree, and I went and applied and I got the position. It was only taken over by the Department of Justice two years later.

Ms Stuart: Thanks Chief Justice.

Chief Justice CJ M. Mogoeng: Thank you Ms Stuart. Commissioner Fourie?

COMM. Fourie: Thank you Chief Justice. I recall that you appeared here previously, is that correct?

Ms S M Marks: That's correct Commissioner.

COMM. Fourie: To the best of my recollection, it must have been about two years ago?

Ms S M Marks: 2015 Yes.

COMM. Fourie: Then you were interviewed for a vacancy in the KZN High Court is that correct?

Ms S M Marks: That's correct.

COMM. Fourie: How many vacancies were there at that stage, or how many vacancies were advertised?

Ms S M Marks: I think there were two vacancies advertised at that stage, and the deputy JP also was interviewed at that stage.

COMM. Fourie: Where those two vacancies filled during that sitting?

Ms S M Marks: No, no those vacancies were not filled the first time around and neither was the Deputy JP's post filled the first time around.

COMM. Fourie: We're both the vacancies left open that time around?

Ms S M Marks: Yes, all vacancies were left open that time.

COMM. Fourie: Thank you Chief Justice.

Chief Justice CJ M. Mogoeng: Thank you Commissioner Fourie. You are excused Ma'am, you are excused, thank you so much.

Ms S M Marks: Thank you.