



# JUDGES MATTER

## **Judicial Service Commission interviews**

**10 April 2018.**

### **Supreme Court of Appeal**

#### **Interview of Judge I Schoeman**

**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.**

Judge I. Schoeman: - Put on my glasses though, it is so big.

CJ M. Mogoeng: Well I have since I put on mine, you know I thought I was strong enough to never put them on. Where did you qualify as a lawyer?

Judge I. Schoeman: I qualified in Pretoria. I obtained my BA and my LLB there.

CJ M. Mogoeng: Is that the University of Pretoria?

Judge I. Schoeman: Yes, that is right.

CJ M. Mogoeng: When was that? When did you obtain your LLB degree?

Judge I. Schoeman: 1975.

CJ M. Mogoeng: What then did you do?

Judge I. Schoeman: I was a junior lecturer and afterwards I became a prosecutor for a year. I could not find articles in Pretoria, so I became a prosecutor. And then I resigned and went for articles in Welkom.

CJ M. Mogoeng: In Welkom?

Judge I. Schoeman: Yes.

CJ M. Mogoeng: And for how many years were you practising as an attorney?

Judge I. Schoeman: I practised from 1979 till 1990.

CJ M. Mogoeng: And then what happened?

Judge I. Schoeman: Then I went to the Bar in Bloemfontein.

CJ M. Mogoeng: Now while you were at the Bar as a woman, did you enjoy as much support in terms of briefs as your male counterparts?

Judge I. Schoeman: No.

CJ M. Mogoeng: Was it a -

Judge I. Schoeman: But I must say that I had the support from the people, from Welkom supported me. Different firms of attorneys supported me from Welkom because they knew me.

CJ M. Mogoeng: Yes. And when did you act as a Judge for the first time?

Judge I. Schoeman: In 1997, in the Free State.

CJ M. Mogoeng: Was it in a welcoming environment? I would imagine there were many men there – was it a welcoming environment?

Judge I. Schoeman: Yes.

CJ M. Mogoeng: Not that men are necessarily bad, but was it a welcoming environment?

Judge I. Schoeman: Yes it was.

CJ M. Mogoeng: People were supportive?

Judge I. Schoeman: Yes, I felt supported.

CJ M. Mogoeng: So all an all for how long did you act as a Judge before your permanent appointment?

Judge I. Schoeman: Thirteen months.

CJ M. Mogoeng: I assume it was a rewarding experience?

Judge I. Schoeman: It was. I acted for a term in Bloemfontein and then I did not act for a year. And then I acted in Grahamstown and from Grahamstown I was appointed in Umtata.

CJ M. Mogoeng: In Umtata, and how has serving as a Judge in Umtata prepared you before we come to your acting stint for recognition as an Acting Judge even of the Supreme Court of Appeal?

Judge I. Schoeman: Umtata made me sensitive to cultural differences that we all have. That also happened in Welkom I must say because in Welkom I came into contact with people from a lot of different backgrounds and different areas of the country. But Umtata was an enriching experience for me.

CJ M. Mogoeng: Yes, and you never moved out of Umtata you just stayed there?

Judge I. Schoeman: No, I moved –

CJ M. Mogoeng: Never sought a transfer?

Judge I. Schoeman: -- I was transferred to Port Elizabeth in 2010.

CJ M. Mogoeng: Yes, why was that?

Judge I. Schoeman: My partner had serious health problems -

CJ M. Mogoeng: All right.

Judge I. Schoeman: And she could not get treatment in Umtata.

CJ M. Mogoeng: Yes, and for how long have you acted in the Supreme Court of Appeal?

Judge I. Schoeman: Seven terms.

CJ M. Mogoeng: Seven terms?

Judge I. Schoeman: Yes.

CJ M. Mogoeng: Tell us about the experience of acting in the Supreme Court of Appeal. In whichever way you choose to present it.

Judge I. Schoeman: Well my first acting experience in 2013 was – it was hellish.

CJ M. Mogoeng: Wow, that is a strong word. Why do you characterise it as hellish?

Judge I. Schoeman: It was the atmosphere there was not welcoming at all. Not -

CJ M. Mogoeng: Well what is it about the atmosphere that was not welcome? In simple and practical terms without naming anybody what is it that was been done that led you to that conclusion?

Judge I. Schoeman: The senior Judges made you feel particularly incompetent and unwelcome.

CJ M. Mogoeng: How? Did they say, go away? You see I believe in simplicity because maybe law teaches one to be more logical and to seek, to understand, to pursue clarity. What is it that they did, or said?

Judge I. Schoeman: Being dismissive.

CJ M. Mogoeng: How? Like how?

Judge I. Schoeman: Writing a judgement and not engaging with you about the judgement at all but writing another judgement.

CJ M. Mogoeng: Without telling you what their concerns were with your judgement -

Judge I. Schoeman: Yes.

CJ M. Mogoeng: -- So that you can consider accommodating them?

Judge I. Schoeman: Yes.

CJ M. Mogoeng: Was it raised with the leadership or some Senior Judges?

Judge I. Schoeman: It was – they knew about it. I – they knew about it.

CJ M. Mogoeng: Yes, and apart from that what else?

Judge I. Schoeman: Well to me it was an atmosphere that permeated through the Court. I had people there that I could relate to and that I did relate to. But it was an extremely solitary time at the Court.

CJ M. Mogoeng: Did you come to know what the reasons behind their treatment were?

Judge I. Schoeman: Yes.

CJ M. Mogoeng: Or were you left to guess?

Judge I. Schoeman: I think it was an old-boys club attitude. That was my feeling. I might be wrong but that is the feeling that I had and that irrespective of what I did or who I am it would not have made any difference.

CJ M. Mogoeng: And when next did you come to act there?

Judge I. Schoeman: In 2014.

CJ M. Mogoeng: Was the situation any different?

Judge I. Schoeman: Yes.

CJ M. Mogoeng: What had changed?

Judge I. Schoeman: Some of the people have left.

CJ M. Mogoeng: Where there remnants of the undesirable attitude that you still experienced?

Judge I. Schoeman: There were more people that I could relate to, so it became less important.

CJ M. Mogoeng: But did it still manifest itself?

Judge I. Schoeman: Yes.

CJ M. Mogoeng: Was it the last time you acted?

Judge I. Schoeman: No, I acted from 2014 July to 2015, I think. And I acted for six months again in 2016.

CJ M. Mogoeng: 2016, now was there radical change?

Judge I. Schoeman: Radical.

CJ M. Mogoeng: But were there still elements that would cause some or you a discomfort? Or had they completely been cleared out by the system?

Judge I. Schoeman: It was much easier to ignore.

CJ M. Mogoeng: So they were still there?

Judge I. Schoeman: Yes.

CJ M. Mogoeng: What needs to be done to make the Supreme Court of Appeal or any Court for that matter, not an institution where people pretend to be fair and capable of administering justice but an institution where justice and fairness obviously reigns based on a colleague to colleague relationship?

Judge I. Schoeman: I think we must have serious sensitivity training in all the courts. I know a few years ago there were problems in the Free State and we had, I think, training was given to all the courts. And it assisted everybody because see, I think, the atmosphere where I come from in the Eastern Cape that is really collegial, and we get along and there are no problems. To go from that atmosphere to a different atmosphere is very difficult. And it was difficult but I must say the change has been remarkable.

CJ M. Mogoeng: Is the problem personality defects or something else?

Judge I. Schoeman: Personality defects -

CJ M. Mogoeng: Or egos? What is it really?

Judge I. Schoeman: -- Well with lawyers, it is always egos -

CJ M. Mogoeng: Well I am not -

Judge I. Schoeman: -- As well.

CJ M. Mogoeng: -- Well I am not, you are a lawyer I am not aware that you have any egotistical approach to things. So it is about lawyers, really? Or certain human beings?

Judge I. Schoeman: I think egos come into it.

CJ M. Mogoeng: Yes, yes. How did you prepare yourself for this position that you are now applying for? Just boast a little bit, you do not have to be overly elaborate but just boast a bit.

Judge I. Schoeman: If I can give a bit of background. I always wanted to be a lawyer.

CJ M. Mogoeng: To be?

Judge I. Schoeman: A lawyer. I was about twelve when my father asked me, he wants to test me to see whether I really want to be a lawyer or not. And he said, do I want to work with people that are, where I am above, and the people are below me? Or do I want to be in a position where I work with everybody on the same level? And I said that I want to be above and people below me. And then my father told me that I can never be a lawyer I must be a teacher. He said because with the law we are all equal and everybody is equal with the law. With your colleagues, the Magistrate, the Judge, we are all equal. They just doing a job, we are just doing a job.



CJ M. Mogoeng: Just to interrupt was your father a lawyer?

Judge I. Schoeman: Yes.

CJ M. Mogoeng: Okay, an attorney, an advocate, a Judge, a Magistrate?

Judge I. Schoeman: He was an attorney.

CJ M. Mogoeng: Yes.

Judge I. Schoeman: That taught me we are all equal before the law and that has been with me just about my whole life. That is the way that I have been brought up and that is something that I can bring to the Court. I can bring my experience and I can bring a sense of fairness and justice.

CJ M. Mogoeng: Thank you, President Maya.

PRES M. Maya: Thank you, Chief Justice. Good morning Justice Schoeman.

Judge I. Schoeman: Good morning.

PRES M. Maya: I know that you found it particularly difficult to settle in at the SCA. I can vouch for that and that it was especially difficult having come from a very collegial Division that the Eastern Cape is because I had the same experience. And you are actually very reluctant to come back for a further Acting stint and we had to twist your arm, almost breaking it to get you back. But I am relieved to hear that you have been able to just find rhythm and do your work and disregard the colleagues whose job, who want to make it their job to make other people's lives difficult.

Judge I. Schoeman: Thank you.

PRES M. Maya: I just want to raise two concerns with you and it is concerns that I have discussed with you previously about your candidacy. The first one relates to the

volume of your reported or any written judgement over the long stand of your judicial career. The second one relates to a judgement you wrote during one of your acting stints as the SCA that you produced in Afrikaans and that was seen by others as maybe a show of conservatism because it is unusual in our time and it excludes the rest of the non-Afrikaans speaking world from ever accessing the judgement of an important Court. Now how would you respond to this concerns?

Judge I. Schoeman: President Maya the situation was that it was a case with, I think, twenty volumes. It was eight thousand pages, it was all in Afrikaans. We were three judges. It was the first case that I did in the SCA. The Presiding Judge I asked him must I write in Afrikaans or English and he told me I must write it in Afrikaans, and I did so. If I knew at all that it is not on, I would not have done it. And I can just mention that subsequently I was involved in a matter van DeVenter versus Ivory Institute, or something like that, where Judge Mpati was the presiding Judge. All the papers were in Afrikaans and he told me that I can write in Afrikaans if I want to, but I declined the invitation. So, if I was sensitive enough I would not have done it, but I was instructed - that was the instruction.

PRES M. Maya: And about the volume of your reported judgements?

Judge I. Schoeman: When I first acted in 1997 one of the judges told me that the idea of puisne Judges is to shift work it is not to write intricate academic judgements and I do all my own typing. So for me to write something that it is reportable feels a bit as if I am boasting. So that is the way that I did my work and in 2009 with our Judges conference one of the Sessions was about judgement writing and the Appeal Court Judges there told us that, or the one in the session that I was in enforced that position when they said, please do not write clever judgements and things like that. Give us the facts. That is what we want when a case comes to us. And is why I do not have that many reported judgements.

PRES M. Maya: You always give your decisions in cases promptly.

Judge I. Schoeman: I beg your pardon?

PRES M. Maya: Have you ever delayed giving your decision in a case?

Judge I. Schoeman: Well there was this one matter in the SCA where it was delayed as well.

PRES M. Maya: But that was an unusual situation because there were other, there were dissenting judgements I understand.

Judge I. Schoeman: There were dissenting judgements and there was the letter that the matter has been settled but they still want a judgement and there was uncertainty whether a judgement had to be written or not.

PRES M. Maya: How many times would you say, just on estimate, you have been overturned on Appeal when your decisions have been challenged?

Judge I. Schoeman: Well I tried thinking and I know of the three cases that I mentioned, and I know there is another criminal matter as well where I was overturned.

PRES M. Maya: So in about nineteen years those are the only cases that you -

Judge I. Schoeman: Yes, that I can think of. There was not anything major.

PRES M. Maya: Okay, all right. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, President. Commissioner Msomi?

COMM S. Msomi: Thanks CJ. Good day Judge.

Judge I. Schoeman: Good day.

COMM S. Msomi: There are obviously bodies who comment when people apply or avail themselves for such positions and there is an organisation that has commented

on your application. It is called the National Bar Council of South Africa they seemed to be based in Durban. They have made their voices know as to who they -

Judge I. Schoeman: Yes, I saw the comment.

COMM S. Msomi: Yes, in respect of you they say they basically; “our view as an opportunity to serve as a Judge in this Court should be given to young black woman. At this stage we do not support her appointment”, meaning you.

Judge I. Schoeman: Yes.

COMM S. Msomi: What is your comment and how do you respond to that comment?

Judge I. Schoeman: Well I can appreciate that young black women should be supported but it depends on the JSC who they would appoint. But I also found, if I may say so, I also found it strange that they support young black women, but they also supported Judge Govern. Who is not young, who is not black and who is not a woman. That is the only thing that I can say about that.

COMM S. Msomi: Yes. And then the second question for me it is a question that seeks to clarify what Judge Maya raised perhaps differently. In a career spanning eighteen years, I think the documents that have been put together do not really make justice to who you are. Are you able to gloat and say I have developed Common Law in this respect and that respect over my career that spans eighteen years? What have you done to develop our law over the last eighteen years? Thank you.

Judge I. Schoeman: I have applied the law as best to my ability. There is the matter that I heard in Port Elizabeth where it was not really decided before that a woman who was living with somebody else and who was being supported by somebody else would be entitled to maintenance from her husband in spite of the fact that she was being maintained by somebody else. And that was a development of the Common Law.

CJ M. Mogoeng: Thank you, Commissioner Masuku?

COMM T. Masuku: Thank you, Chief Justice. I am just concerned about because the answer you gave to President Maya regarding the judgement that was written in Afrikaans. You say that you were instructed by that Judge to write the judgement in Afrikaans.

Judge I. Schoeman: Yes.

COMM T. Masuku: What is your understanding of independence?

Judge I. Schoeman: My understanding of independence is that I need not necessarily, that I need not follow any instructions. That I should have done it on my own. And that was an error of judgement. But I would like you to appreciate that it was my first case in the SCA, in a daunting atmosphere and I was given the instruction write it in Afrikaans, and I did so. Because although it is about the language it did not, my independence was not affected by the outcome of the case.

COMM T. Masuku: Thank you.

CJ M. Mogoeng. Thank you. Commissioner Malema? Yes?

COMM J. Malema: No, I just want to make a follow-up CJ. You telling us the second attempt was Judge President Mpati?

CJ M. Mogoeng: No, President.

Judge I. Schoeman: The President.

CJ M. Mogoeng: The President without Judge.

COMM J. Malema: Oh, President Mpati, yes. President Mpati. But you not telling us the one that you have heeded the call?

Judge I. Schoeman: The one that I?

COMM J. Malema: The one that you have responded positive to the call. That write in Afrikaans and then you wrote in Afrikaans.

Judge I. Schoeman: Yes.

COMM J. Malema: Who is that?

Judge I. Schoeman: That was Judge Frans Malan.

COMM J. Malema: Thank you.

CJ M. Mogoeng: Thank you, Judge Schoeman, you are excused.

Judge I. Schoeman: Thank you.