



JUDGES MATTER

**Judicial Service Commission interviews
03 October 2017.**

**Eastern Cape Division of the High Court
Interview of Mr. N P Jaji**

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.

CJ M. Mogoeng: Good afternoon Mr Jaji.

Mr N P Jaji: Good afternoon CJ. Jaji, Jaji.

CJ M. Mogoeng: Are you well?

Mr N P Jaji: I'm good. I'm good CJ.

CJ M. Mogoeng: You -- oh, Jaji I'm sorry, I'm sorry, Jaji. Thank you for correcting me. What qualifications do you have, educational qualifications?

Mr N P Jaji: CJ, I've got B.Proc, I've got an LLB and I've got an MSc in Transport and Maritime Management.

CJ M. Mogoeng: Did you do MSc after your law degrees?

Mr N P Jaji: Yes, Chief Justice.

CJ M. Mogoeng: Do you still get a chance to use it?

Mr N P Jaji: Not yet, not yet.

CJ M. Mogoeng: Alright, okay. And practical experience that has prepared you for this position; what is it just in your own words?

Mr N P Jaji: Chief Justice, one is being a practitioner for years admitted in 1999 and one was called in 2010 to act in a magistracy as a judicial officer until I became permanent in 2015. I went in 2010 to the Judges Course in Maritzburg sponsored by the Law Society and I did also an Advanced Judicial Skills Course. So, that has helped me in terms of preparation for this particular occasion.

CJ M. Mogoeng: When you acted in the high court were you not overwhelmed acting for the first time?

Mr N P Jaji: Chief Justice, one has to be overwhelmed especially when I went to Free State to act I was told that the matter that I was going to preside over, they needed a judge from outside the province. That rattled me because I did not know the reason for that but obviously there's a big difference between magistracy and in the high court. You would appreciate that when you sit as a magistrate, you write judgement for yourself but when you sit at high court, you write a judgement for a band so you're binding other people so those things one must take those into consideration; safe to say that one was rattled but because one was confident, and did not want to fail, and indeed with the support of the judges, my former JP Nathan Erasmus and other senior judges.

CJ M. Mogoeng: And are there areas of the law that you are more comfortable with and those that you are less comfortable with?

Mr N P Jaji: I would not say Chief Justice less comfortable. One has been practicing civil litigation from day one. One consider themselves as an expert in civil law but is not less comfortable by doing criminal law because I did -- the first time I did criminal matters was in high court in Free State, then last year in Cape Town as a magistrate I dedicated a whole year to do the criminal law. So, one is not that less inclined to do it but one is most experienced in the civil litigation side of it.

CJ M. Mogoeng: All acting stints put together, for how long did you -- have you acted?

Mr N P Jaji: I would say roughly three stints. I had a full stints in 2014, this stint this year (unclear 00:03:31) and April, May. I will say three stints Chief Justice.

CJ M. Mogoeng: Well, how long, put -- how many months put together; whether it terms maybe? I was avoiding terms because once you say term it may just be only lawyers who understand what that means so it's easier when you say months.

Mr N P Jaji: I will say Chief Justice seven months.

CJ M. Mogoeng: Seven months?

Mr N P Jaji: Yes, I will say so Chief Justice.

CJ M. Mogoeng: And one of the problems we have is producing judgements timeously. Has it been a challenge to you or have you found it to be relatively easy to have judgement prepared and delivered before litigants have a reason to complain?

Mr N P Jaji: No, Chief Justice. From magistracy, even when I was acting, I never had problems of reserved judgements. I delivered judgements within reasonable time.

CJ M. Mogoeng: What about in the high court?

Mr N P Jaji: Same with high court Chief Justice. There was no time where litigants would ask me where is that judgement because the three months, even though in terms of the norms it's three months but sometimes I do it long before that; one month, two months but it was never exceeding three months.

CJ M. Mogoeng: So, to cut a long story short you are ready that is why you are here?

Mr N P Jaji: I am ready Chief Justice that's why I'm here.

CJ M. Mogoeng: Thank you. Acting Judge President?

AJP Nhlangulela: Good afternoon.

Mr N P Jaji: Good afternoon.

CJ M. Mogoeng: The mic.

AJP Nhlangulela: Good afternoon Mr Jaji. There was a problem during the third term that has just come to an end when you were asked to do more duties than is normal am I right?

Mr N P Jaji: You're right, you're right.

AJP Nhlangulela: It would have been something like five weeks of duty but that was then rearranged to come down to three weeks?

Mr N P Jaji: Yes. Yes, Chief.

AJP Nhlangulela: Can you tell us how you managed that, how did it start, how did it end because I was worried about you concerning it?

Mr N P Jaji: Thank you. I'm indeed indebted to JP but JP, one has taken an informed decision that one wants to act and if you take that decision you must accept

that decision with all the pros and cons of it. You can't complain that you got five terms and it's abnormal. If you're given a job, you want to be judicial officer you just do the job as best as you can. To me it would have been a problem maybe, I do not know, but because as you said it was only three times doing duty. In any event, I did not think that duty in Port Elizabeth Court was out of this world; it was just normal duty because you would see in a way there'll be 20, 28 matters; there will be two opposed matters to me. I mean that's normal because in Free State I would have 80 matters or 120 out of six of four opposed matters. To me it was never an issue of doing duty three, four terms JP.

AJP Nhlangulela: Yes. And you were also asked to go to Mthatha to spend a week I think.

Mr N P Jaji: Yes. I was asked to go to Mthatha and the JP, I got a letter from the JP to say at Mthatha I would do civil duty; I would do civil trials because Judge (inaudible 00:07:03) was going to be in East London only to be told Friday afternoon by the acting JP to say where are you because we need you here; you're supposed to do duty because when you start your duty you must be there Friday before. I said but JP I was never told; the letter that I've got -- it says I'm starting Monday to do civil trial but be that is may I drove over a Sunday and I did duty in Mthatha which duty you would know the role of Mthatha is not a small role.

AJP Nhlangulela: You managed it well.

Mr N P Jaji: I've managed it JP.

AJP Nhlangulela: So, you did not pick up outstanding judgements there --

Mr N P Jaji: No. No, I have not picked any judgements from Mthatha JP.

AJP Nhlangulela: -- that you've managed? Yes. So, that would just be all about you and your acting stints in the Eastern Cape division; you touch base in PE as well as Mthatha? In other words --

Mr N P Jaji: In Grahamstown.

AJP Nhlangulela: -- you did not have chance to -- in Grahamstown?

Mr N P Jaji: In Grahamstown, yes.

AJP Nhlangulela: So, you did not have chance to go to Bhisho?

Mr N P Jaji: No, I didn't go to Bhisho.

AJP Nhlangulela: Did not have chance to go to East London Circuit Court?

Mr N P Jaji: No, no.

AJP Nhlangulela: Okay. Those are my questions.

CJ M. Mogoeng: Thank you AJP. Premier?

Premier: CJ, I will pass. I'm happy with the questions the Acting Judge President addressed.

CJ M. Mogoeng: Thank you very much Premier. Any other colleagues, any question intended to test (inaudible 00:08:21) yes, Commissioner Norman?

Commissioner Norman: (Inaudible 00:08:23).

Mr N P Jaji: Good afternoon.

CJ M. Mogoeng: Your mic is off. Maybe the AJP must switch off his.

Commissioner Norman: I beg your pardon. Thank you. Good afternoon to you. Sorry, there's just one judgement that you listed as being reserved; have you since delivered that one?

Mr N P Jaji: Which one?

Commissioner Norman: A judgement that is listed as -- I think you did it now in 2017. Sorry, I'll give you the date now. Do I have the right one? Oh, yes. Oh yes, the one that appears 9.6 Lutzia [?] versus Minister of Safety.

Mr N P Jaji: Yes. No, that judgement Commissioner was delivered in the beginning of this term. It was a (inaudible 00:09:07) judgement of Grahamstown I delivered when I started this term.

Commissioner Norman: So, it's now -- it has been delivered now?

Mr N P Jaji: It's -- yes, yes chief.

Commissioner Norman: Oh alright. Okay, thank you. And then how did you find having been a magistrate, how have you found that experience to be as compared to you now being -- applying to -- or having acted as a judge; how has it assisted you that experience of having been a magistrate? Thank you.

Mr N P Jaji: That experience Commissioner assisted because you would remember magistrate is a stone face of justice that's why you deal with litigants, the poor litigants for the first time and it humbles you because you deal with poor people, you deal with all sorts of people unlike in high court because in high court most of the work is refined if I may say so. But therefore the experience that you get in magistrates, it comes in handy especially if you're one of the person like me because I'm one person that I set very high standards for myself in terms of acting's, in terms of dealing with litigants because I hold the view that litigants must respect court, you must not be scared of court so that is my view of a duty of a judicial officer in your constitutional state. So, all in all that it has helped and prepared me in terms of the smooth sailing to do work at high court even though at high court obviously work is more serious and smooth in terms of volumes.

Commissioner Norman: Yes, thank you. And lastly Chief Justice, sorry, you have read the criticism in the judgement by Judge (inaudible 00:10:41).

Mr N P Jaji: Yes.

Commissioner Norman: Have you since now -- you've looked, you've reflected on the judgement --

Mr N P Jaji: Yes.

Commissioner Norman: -- and on the way you address the accused persons. What is your take on that; you had referred to them their -- using their surnames but without the Mr or the Sir; what -- how do you propose to deal with that going forward?

Mr N P Jaji: Commissioner that was a judgement whilst I was sitting as a magistrate and it was not commissioners, it was litigants, it was an attorney from the state attorney and a private attorney. And when I responded actually I read the judgement long time ago. I was not shocked when I got it as a comment because I always wanted to respond to it but you remember as a magistrate you have no opportunity to take on the judge and take him on. I would say this process evolves one, from practitioner to the magistrate and to acting judge. It's evolved. You learn from the process some of the things. In that particular case it was an oversight glaring, be an oversight but it's not excusable. That's why I said in the response I'm actually honoured that the senior judge has picked it up because subsequent to that there's never been that situation of calling a litigant instead of saying Ms Thembofo you say Mbofo. But there were reasons because one has been a practitioner in PE for 16 years and if you sit in PE magistrate court if there's ten matters on the roll on a Monday to Friday; eight of those matters is Minister of Safety and there's only two people Mamase and Madogwe and there's two firm of attorneys McKenzie and Swartz. So, it happens that you slip of tongue; you say Mamase instead of Mr Mamase. It was really a learning experience and I mean I must take stock from that and I said it has never actually happened since then.

Commissioner Norman: Thank you very much. Thank you Chief Justice. Thank you.

CJ M. Mogoeng: Thank you Commissioner Norman, Commissioner Singh?

Commissioner Singh: Thank you very much Chief Justice. Mr Jaji I see you wrote a very interesting rejoinder to the criticism on the JSC's interpretation of section 174(2).

Mr N P Jaji: Yes, that was 2012.

Commissioner Singh: I think that should hold you in good stead since you are here at the JSC but having said that you -- one of your qualifications is MSc Transport and Maritime Management (inaudible 00:13:05).

Mr N P Jaji: Yes.

Commissioner Singh: How do you think that qualification will assist you if you are appointed?

Mr N P Jaji: That qualification Commissioner will assist me because if you look at the courses in that particular masters you deal with advanced maritime economics and maritime management; you deal with shipping law; you deal with the techniques of international trade; you deal with (inaudible 00:13:26) change in the world economy. Having it based in Eastern Cape where you've got the port; the Ngqura Port and PE Port obviously there will be matters of oil pollution, there will be matter of attachment of ships. So, all what you've learned in that course will come in handy in those kind of matters. I don't think it was a waste of time to do that particular master's program.

Commissioner Singh: Okay. Nor was I suggesting it was a waste of time. Just the last question. Do you play any sport?

Mr N P Jaji: I used to play soccer but I got injured. I don't play soccer --

Commissioner Singh: Because I see you've got two good references from the Eastern Province Rugby Union and from SAFA and this is the first time I've seen those kinds of references --

Mr N P Jaji: No.

Commissioner Singh: -- come through. Thank you.

Mr N P Jaji: Because Commissioner I sat in the disciplinary cases of all SAFA matters; soccer, also in the appeal cases, same with rugby. I sat in district cases as a presiding officer and also sat as an appeals presiding officer so I know (unclear 00:14:22).

CJ M. Mogoeng: Thank you Commissioner Singh. Deputy Minister?

Deputy Minister: Thanks Chief Justice. Good afternoon Mr Jaji.

Mr N P Jaji: Good afternoon.

Deputy Minister: Just one quick question. The post is in Grahamstown, you live in Port Elizabeth and you've got -- at least one of your children is young I said (unclear 00:14:44) is just over a year. Are you going to find a place to -- I don't know if your family will move to Grahamstown but will you at least have accommodation in Grahamstown or are you intending to commute?

Mr N P Jaji: Thank you Deputy Minister. Minister one, originally he's from Grahamstown; I've got relatives in Grahamstown. There's no problem to get accommodation. When I acted in Grahamstown I was commuting; it was one hour drive. It was never a problem. So, the issue of Grahamstown to me is never a problem when I stayed there full time or I drive in the morning because it's 45 minutes. And I'm based now in Cape Town; my child is at home with my wife so it's not an issue that I'm away with my child.

CJ M. Mogoeng: Commissioner Msomi.

Commissioner Msomi: Thanks CJ. Good afternoon.

Mr N P Jaji: Good afternoon Commissioner.

Commissioner Msomi: Just three questions from me. The constitutional court has handed down in recent times very interesting judgements. I would like your view as to which judgement stands out for you and why and how does that judgement contribute to the jurisprudential advancement of that of the South African legal system?

Mr N P Jaji: Commissioner, there's been a number of judgements that came from the constitutional court but one or two that stands out to me. Obviously one is that one of the Nkandla matters and the second one is that of the SASSA matters. The SASSA matters' judgement to me I think it would indeed enhance our jurisprudence because it dealt with what is very close to me; what is called judicial activism. Because indeed in that judgement you would see that from the constitutional court there was indeed judicial activism because if there was no judicial activism you would be sitting here with a situation where about 17 million people are going to be losing their grants. And hence I like the proactive manner of the constitutional court in terms of telling the administration if you don't do A, B and C we will tell you how A, B and C is done and I think that to me in terms of developing our jurisprudence even though one takes the point that in terms of jury activism there must be moderation because indeed judges are not politicians; they're not trained in part in policy. They will -- they must give at least politicians to deal with policies but when politicians are not doing what is supposed to be done by them, then the judges in terms of the constitution are duty bound because the constitution says judges make law as long as it's just, and fair, and in open -- and democratic society so I don't see any (inaudible 00:17:27). So, some say the SASSA matter meant to me not because it deals with poor people but it stands out in terms of jurisprudence.

Commissioner Msomi: Thank you so much. In that answer you have answered one more question that I wanted to pose. So, is it safe to say that at a philosophical level as a judge you are a judicial activist?

Mr N P Jaji: Actually Commissioner, our constitution demands of that because remember our constitution makes a clean break with the bust and if the commissioner is -- if the constitution says judges must make law because the whole (unclear 00:18:07) has been rendered absolute. So, now the judges must be judicial activists but in as much they are judicial activists there must be some moderation as I've said to you, judges I'm not training policy. They must not be seen to overreaching, they must not be seen to be rolling instead of those who have been nominated by the popular (unclear 00:18:27) to rule.

Commissioner Msomi: Finally, what is the role of the judiciary in a developmental state like our state?

Mr N P Jaji: To me Commissioner the role of a judicial, especially judicial officers in a constitutional state; firstly judicial officers, they're accountable to the community, to their judgements, nothing else, to their judgements and if they're accountable to that judgements to the society therefore it speaks to the quality of those judgements. That's why I'm saying in terms of their names and standards judicial officers should understand that they are giving a product and that product should be the best product and on those basis to me they've got a very important role because lately the judges, the judicial activists become the bastion of hope and that's why you'll see lots of -- many matters, especially political matters coming to court. So, you need to have a very, very, very, very, very straight judiciary to be able to deal with those matters.

CJ M. Mogoeng: Commissioner Fourie?

Commissioner Fourie: Thank you Chief Justice. Good day sir.

Mr N P Jaji: Good day Commissioner.

Commissioner Fourie: Everybody knows that we -- or at least people in the legal fraternity knows that we're sitting here interviewing candidates and somehow they follow it and sometimes they react. I've been sent a judgement on a summary

judgement application that was apparently delivered this morning. I suppose it was delivered on your behalf because you weren't there; and that is the matter of Oryx Properties Limited.

Mr N P Jaji: (Inaudible 00:20:26).

Commissioner Fourie: And Ukuvula Investment Holdings. Does it ring a bell?

Mr N P Jaji: It rings a bell, it rings a bell.

Commissioner Fourie: I'm not going to deal with the merits of it because the respondent who lost in this matter can appeal if they want to.

Mr N P Jaji: Yes, yes, yes Commissioner.

Commissioner Fourie: But I've read the judgement and I must say with all due respect I found it a bit difficult to follow your reason and whilst I appreciate that English may not be your mother tongue some of the sentences are not entirely complete and some of the sentences don't have verbs in them so that's why I found it a bit difficult to follow. Can you just explain to me what happened in this matter? It's a summary judgment that was granted for over R4 million rand and lots of interest. Can you just explain the background because I can't quite follow it from the judgement itself?

Mr N P Jaji: Thank you Commissioner. Actually I'm shocked if you say there's spaces and verbs and all that because I ruled that judgement. Remember the term it's the second week we're out of term recess so I delivered -- I had left a message that it was delivered today. It was a summary judgement for a lease agreement where a company had some problems and it went on business (inaudible 00:21:53) and subsequent to that it was put under but there was authority signed. The company who will have signed as authority. The person who's a director of Ukuvula was also the director of the principal company and it was for arrears, rentals and rates for almost 4 million and there's no issue about that; it's common cause. But their only issue that they had was that the applicant did not disclose the cause of

action and number two, some of those matters might have been prescribed. And when you read the judgement, clearly a cause of action was set very clear by the applicant in that matter and there was indeed no bona fide defence arranged there because the test is the bona fide -- there was never a bona fide defence, there was never actually any response on merits; only on technicalities. Where I stand as the court does not deal with dilatory defences and technicalities. The court looks at the crux of the matter; substance is to me -- is better than form and that is on those basis that that summary judgement was granted because there was never a defence let alone a bona fide defence. But my only problem is that I'm worried when you say I have not looked at the copy that you've got. It's possible they might have given you the draft copy; I do not know.

Commissioner Fourie: Was this a simple summons that was issued?

Mr N P Jaji: Yes.

Commissioner Fourie: Was all the required documents attached to it?

Mr N P Jaji: No, annexed -- all required documents were annexed and it's not necessarily on a summary judgement to annex them when they were annexed on the summons, your lease agreement, your acknowledge of debt authority; they were all annexed in the summons.

Commissioner Fourie: Okay. You say in actions the principal is the same and applies. In a combined summons the cause of action must appear from the particulars of claim in a simple summons from the body of the summons. What do you mean by that?

Mr N P Jaji: Can you run that again by me.

Commissioner Fourie: You say in a combined summons the cause of action must appear from the particulars of claim --

Mr N P Jaji: Yes.

Commissioner Fourie: -- in a simple summons from the body of the summons.

Mr N P Jaji: I would have thought maybe it's the annexures because there's no (unclear 00:24:10) simple summons out. I thought it's a -- it's annexures to that simple summons.

Commissioner Fourie: Okay. No, I'm just quoting it.

Mr N P Jaji: That's why I'm saying that in August it's oversight there Commissioner.

Commissioner Fourie: When was this application for summary judgement heard?

Mr N P Jaji: It was somewhere in August.

Commissioner Fourie: Okay. And judgement was delivered to this?

Mr N P Jaji: Yes.

Commissioner Fourie: Thank you Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Fourie. You're so well spoken I wonder why you would miss out on verbs and so on if that be the case.

Mr N P Jaji: That's why Chief Justice I say it's -- maybe it's a typing error. I did not see that.

CJ M. Mogoeng: And the judgements you have written do not -- those are attached do not seem to suggest that you've got a challenge with a command of the language.

Mr N P Jaji: Yes, Chief Justice.

CJ M. Mogoeng: Yes, very well. You are excused sir.

Mr N P Jaji: Thank you Chief Justice. Thank you Commissioners.