



JUDGES MATTER

Judicial Service Commission interviews

03 October 2017.

Eastern Cape Division of the High Court (Grahamstown)

Interview of Adv. M S Rugunanan

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 day Advocate Rugunanan.

Adv. Rugunanan: Good afternoon Chief Justice and members of this Commission.

CJ M. Mogoeng: Upon completion what did you do; how did you begin to practice the law; where did you go to in other words?

Adv. Rugunanan: Chief Justice, I studied in Grahamstown at the local university as it were and upon completion of my degree --

CJ M. Mogoeng: If you could put the mic closer to you so that everybody can hear you and drop it a bit. Yes, thank you.

Adv. Rugunanan: Okay. I hope that's sufficiently audible. Yes, I -- upon completion of my university degree I found what was then term articles of clerkship back in 1993

and my legal career started with a firm called B. Sandi & Co as reflected in my curriculum vitae. I've been in the legal profession ever since then Chief Justice. And you would have noted from my papers that there's nothing else that I can do or have done.

CJ M. Mogoeng: Yes.

Adv. Rugunanan: And since 1993 my career has progressed through various stages upon completion then of what was known as articles of clerkship. I practiced as a professional legal assistant who have also a local firm in Grahamstown NN Dullabh & Co where after at some point during the course of my career I was absorbed in the Department of Justice where I was employed as -- in a state's examiner. Having served that particular stint in the Department of Justice I then advanced my career to practice at the bar in Grahamstown as an advocate. And since 2001 Chief Justice I've been practicing -- I've been involved in the practice of an advocate since then to date.

CJ M. Mogoeng: Yes. And tell us why you believe you're ready for a judicial appointment.

Adv. Rugunanan: Chief Justice, I think it's a reflection of the natural progression of my legal career and it's -- the decision I have made to apply for the particular post being advertised culminated as a result of various life experiences and circumstances by which I was confronted. That said I've held three acting stints, two of which I reflected in my papers; the latest one unfortunately isn't because at the time I completed or submitted my application to this Commission I was not yet appointed to. The latest stint that I have finished was this stint for the 28th of August until the 22nd of September this year. So, the number of it all Chief Justice is that I believe I have acquired experience in the judiciary as it were. I also brought into my acting stints the accumulated experience of my lifetime as it were in the practice of law, and to that extent Chief Justice I believe that I do have the capability, the competence and the disposition, and above all the independence of mind and the temperament to assume judicial office.

CJ M. Mogoeng: What is the longest you have kept a judgement reserved for?

Adv. Rugunanan: Yes, Chief Justice. The longest period was unfortunately nine months. That is a judgement which I have included amongst the set of papers submitted in my application. That is the matter of -- I will refrain from mentioning the names of the parties, H versus L. It was a very complex matter Chief Justice and the fact that the judgement was reserved for such a long period of time assuredly was not as a result of any indolence or incompetence on my part, but also as a result of many other circumstances by which I was confronted by during the course of my return to practice having completed my acting stint. You will observe Chief Justice and Commissioners that that judgement has been commented on by the Professional Body of which I am a member namely these in Cape Society of Advocates. They fairly objectively commented that the judgement was not a simple matter. It was indeed complex Chief Justice. It certainly involved a dispute in the construction and demolition industry and the matter, if I may just mention to state, the manner in which the papers were drafted, the papers were drafted on the basis of expert reports which were not crafted in a way that could be comprehended very easily by a lay person. So, Chief Justice, I, sitting as a single judge having adjudicated the matter was settled with the ultimate responsibility of having to sift all the information. You know eventually to say Chief Justice that that particular matter comprised two applications that were consolidated so the volume of the paperwork was close onto 700 pages. I had to sift through all the material in a manner subset upon writing the judgement, the summary of facts and the reasoning would have been logical and lucid.

CJ M. Mogoeng: I gather from your answer that it was an application not a trial.

Adv. Rugunanan: It was indeed. Yes.

CJ M. Mogoeng: Now, -- and I assume you had the benefit of written submissions.

Adv. Rugunanan: Indeed I did Chief Justice. Senior council appeared before me and made written submissions in their very detailed heads of argument.

CJ M. Mogoeng: Now, would you say senior council were helpful in helping you to distil issues that has -- that were central to the determination of the matter?

Adv. Rugunanan: I would say yes, Chief Justice but the ultimate responsibility for ensuring that justice was done was mine.

CJ M. Mogoeng: Always.

Adv. Rugunanan: I had to take -- I -- well, I won't say deliberately take my time. The responsibility for ensuring that the arguments were properly -- well, martialled, comprehended and reasoned was ultimately mine. And in addition to the submissions made in the heads of argument by senior council, I also had to embark on research of my own.

CJ M. Mogoeng: What in your view is the acceptable period to keep judgement reserved for in a very complex matter?

Adv. Rugunanan: Chief Justice one is guided by the norms and standards which sets the period of three months. This was considerably more than three months, I accept responsibility therefore but I've indicated the reasons why the judgement was delayed.

CJ M. Mogoeng: No, no, no. Norms and standards aside, just by your own standard what is an acceptable period for which to keep a judgement reserved in a very complex matter?

Adv. Rugunanan: By my own standards Chief Justice I would gage it to be a reasonable period that's obviously circumstantial. I wouldn't venture to want to prescribe any specific period. All I can say that it would be a reasonable period.

CJ M. Mogoeng: What -- no, no, no, no, no, no. Please help me.

Adv. Rugunanan: Yes.

CJ M. Mogoeng: I'm seeking to understand you made reference to the complexity of the matter and other issues which I assume you're not comfortable to mention but all things considered, what in your opinion is an acceptable or reasonable period over which to keep a judgement reserved in a very complex matter?

Adv. Rugunanan: Well, Chief Justice this was the first matter of such complexity that I was confronted by. I returned to practice having completed that stint. I did my level best to try delivering the judgement as soon as I could. I expected the judgement to have been delivered within three months; circumstances precluded that. I expected then the judgement to have been delivered within four months. That would have been four to six months I would guess the reasonable period Chief Justice.

CJ M. Mogoeng: Four to six would have been reasonable?

Adv. Rugunanan: Yes.

CJ M. Mogoeng: Yes. You see I'm sitting on this thing because we've had a fair amount of challenges relating to reserve -- judgements reserved by practitioners who were acting, you know, some take as long as ten months, twelve months, even two years and when the Judge President says when can I expect a judgement; I remember reading a letter from one advocate who was no longer acting and said listen, I -- I'm not able to commit myself to any date. I'll deliver it when I deliver it. So, I -- that's why I'm seeking to understand whether reserved -- when you go back to practice does it enjoy priority? If it does why -- how then is it possible for it to be kept reserved for as long as nine months? So, I'm just trying to give you the benefit of the doubt so that we don't draw inferences.

Adv. Rugunanan: Indeed Chief Justice.

CJ M. Mogoeng: We work on the basis of the reasonable explanation that you provide us with.

Adv. Rugunanan: Chief Justice, when I returned I -- the matter was heard in September last year and when I completed my acting stint at the end of September

last year I came back into practice and was met with a tide of professional commitments that accumulated in my absence. These commitments spewed through into the first term and although I sought to find time to write the judgement in between --

CJ M. Mogoeng: To find or to make?

Adv. Rugunanan: Let me correct myself on that score to make the time Chief Justice. The delay was entirely circumstantial.

CJ M. Mogoeng: Acting Judge President?

AJP Nhlangulela: Thank you. Good afternoon Mr Rugunanan.

Adv. Rugunanan: Good afternoon Acting DJP -- Judge President.

AJP Nhlangulela: A comment was made by my colleagues to me with regard to your application and that of others how that your acting stint has not been sufficient enough for the candidates, not just you, to proceed to this platform for the purposes of an application. What's your comment that's -- what my senior judges had to say to me? Would you regard the period within which you have acted to be sufficient for you to be appointed as judge?

Adv. Rugunanan: Well, I must confess that it's the first time I hear this but I ... I must say with all humility that during the number of acting stints that I performed I discharged my duties in accordance with the judicial over at office. Most of my judgements circulated on the SAFLII website have been delivered on time. I've always been accessible to practitioners and when I was confronted by situations I conferred with senior judges so as not to venture out of my depth without any consultation. During my acting stints there's not been to my knowledge any complaint about my conduct or the manner in which I've dealt with practitioners both in chambers and in court. I do believe, and this is entirely a subjective view, that having regard to my career, my practice at the bar and the occasions that I've acted in Port Elizabeth, Grahamstown and recently in Bisho and in East London that this

Commission may consider that I'm appropriately qualified and fit and proper to hold judicial office.

AJP Nhlangulela: Thank you President. I have no further questions.

President Maya: Thank you AJP. Premier?

Premier: I'm fine. Thank you, thank you.

President Maya: Hlope JP?

JP Hlope: Thank you very much President. Just two things that I would like to put to you. I'm speaking now as a head of court. The experience shows that with regard to acting positions and reserved judgements colleagues who reserve judgements for far too long when they are acting, the moment they are appointed and they are permanent they become worse, they become worse and you are stuck with them in the system, right. I'll give you an opportunity to comment on that. Secondly, it seems to -- I would like you to take us to confidence relating to this matter, the judgement of which was reserved for nine months; what was so difficult considering that it was motion proceedings and you had the benefit of two senior council appearing before you; what was so difficult about it? Please explain to us. Thank you.

Adv. Rugunanan: I might have to venture into some detail regarding the facts and the law of the matter and I'm not quite sure, I'll seek guidance from this Commission if I should do so considering that an application for leave to appeal can say a judgement has been launched which application I will be dealing with on Friday this week. The matter contained -- concerned a dispute between two land owners in Kenton-on-Sea and it's been reported on fairly widely in the media in the Eastern Cape. It concerned the demolition of a luxury home and it also concerned the application of the relevant legislation concerning the implementation of demolition -- the demolitions and safety regulations attendant on the implementation of demolitions. The matter had a complicated history going back many years, more than ten years, and in that period the matter received the attention at some point of

the Supreme Court of Appeal; it also received the attention I believe of the constitutional court which dismissed an application for leave to appeal and it came back to the Eastern Cape division on an altogether different issue mainly the variation of a court order issued by a judge of equal standing coupled with relief that one of the parties were seeking that the person who was directed to demolish the dwelling be held in contempt for failure to do so within a specific period of time. That's as far as the facts go. I'm not quite sure if I'm at liberty to expand any further. I have indicated that --

JP Hlope: So far I haven't heard anything difficult. Carry on.

Adv. Rugunanan: Yes. The dispute between the parties was encapsulated in expert reports that have been referred to in the judgement, also in what was called the demolition implementation plans and demolition environmental management plans. And the number of the issues simply is whether -- well, the party is seeking variation, contended that he sought a variation of an order of court on the basis that he was in possession of an administrative resolution taken by a municipality which authorised him not to demolish the premises for safety reasons. The opposing party said no, you cannot do that you need to approach this court on the basis that if you are seeking to vary an order of court given by a sitting judge, then you need to approach the matter on the basis that you make out a case on the common law. That was one of the issues. The other issue dealt obviously with the contempt part of the application. To have written the judgement required me to read as I indicated the papers were extremely voluminous; I have also had to have regard to the judgements of the court in Grahamstown (inaudible 00:19:40) the first instance as also the court of -- the supreme court of appeal.

JP Hlope: Sorry, through you Chief Justice in the interest of time I've gone through the judgement, it was 28 pages at the end of the day.

Adv. Rugunanan: Yes.

JP Hlope: Did you have occasion to read the papers? You said it was 700 pages.

Adv. Rugunanan: Yes.

JP Hlope: Did you have occasion to read the papers thoroughly before you went to court so that at the time when the matter was heard you were on top of issues and you could ask council, you could direct them to address you on specific issues which you will have read before you went to court?

Adv. Rugunanan: Yes, I did have opportunity to read the papers but obviously being confronted by subject matter of the nature I gave council the latitude of making their detailed submissions. I also sought clarity on a number of aspects in particular what was the status of I as a sitting judge recognising or giving recognition to the administrative decision taken by the competent authority. So, yes indeed I did interact with council. There was also an application to strike out which preceded the hearing of the main application and that application was argued at considerable length, I did comment thereon in my judgement.

CJ M. Mogoeng: So, just for my own sake if you were to say one, two, three what were the very complex issues? Well, was it the law, was it the facts, was it the multiplicity of applications; what were the very complex issues?

Adv. Rugunanan: Thank you for summarising it in your question. That's the one, two, three Chief Justice. I could not put it any better.

CJ M. Mogoeng: Okay, thank you. Deputy Minister?

DM J Jeffrey: Thanks Chief Justice. Good afternoon.

Adv. Rugunanan: Good afternoon.

DM J Jeffrey: I'm not sure why we had to have the secrecy about the judgement, you know, you wouldn't give us the case name; it was H versus L and it's only then looking through the documentations and seeing it referred to in a letter and then finding as I'm sure JP Hlope did, finding that we've got the judgement in our file.

Adv. Rugunanan: My sincere apologies.

DM J Jeffrey: Okay. But having said that I wanted to know as far as that judgement did you get permission from the JP to delay the handing down of a judgement?

Adv. Rugunanan: I did confer with the senior judge at the time I finished my acting stint and earlier this year I did so as well. It was brought to my attention what the norms and standards required but as I indicated I assume responsibility alone Chief Justice and honourable members of this Commission for the delay in the judgement.

DM J Jeffrey: Yes. But you -- so, you didn't get the permission of the Chief -- of the Judge President or Acting Judge President?

Adv. Rugunanan: I simply spoke to the senior judge at the time.

DM J Jeffrey: Okay. Are you aware of the judges' code of conduct article ten sub two. A judge must deliver all reserved judgements before the end of the term in which the hearing of a matter was completed but may -- A, is not relevant, B, where a reserve judgement is of a complex nature, I think that's what you're saying this one was or of any other cogent and sound reason and with the consent of the head of court deliver the reserve judgement during the course of the next term. You didn't keep to that bit; you didn't contact; you didn't with the consent of the head of court --

Adv. Rugunanan: No, it's been --

DM J Jeffrey: -- you didn't abide by this code?

Adv. Rugunanan: Yes.

DM J Jeffrey: Okay, thank you.

CJ M. Mogoeng: Commissioner Norman?

Commissioner Norman: Thank you Chief Justice. Good afternoon council.

Adv. Rugunanan: Good afternoon Commissioner.

Commissioner Norman: Sorry. I just want -- just one question for me. If you -- you've attached a judgement Fatima Van Breda versus the State.

Adv. Rugunanan: Yes.

Commissioner Norman: What struck me is the fact that you signed on behalf of the senior judge.

Adv. Rugunanan: That's correct. I did so with his expressed permission.

Commissioner Norman: Is that the practice in the Eastern Cape?

Adv. Rugunanan: I'm not aware if it was a practice but I -- at the time the judgement was written I was in one centre, he was in another and I did confer with him on this and he indicated to me expressly that I could sign it on his behalf. I'm not sure whether this is the practice in the Eastern Cape.

Commissioner Norman: Well, I've acted in that division. In fact I've acted in -- throughout the country. I've never come across a situation where a junior judge signs for the senior judge. Thank you Chief Justice.

CJ M. Mogoeng: Thank you. Now tell me advocate did you know or did you not know that at the end of eight months if you keep a judgement reserved for that long you must actually be reported to the Judicial Service Commission for disciplinary measures to kick into operation?

Adv. Rugunanan: In all sincerity Chief Justice I was not aware of that.

CJ M. Mogoeng: You were not even aware that it is only with the permission of the head of court that you can be allowed to go beyond that period which is already too long; you didn't know?

Adv. Rugunanan: That's correct Chief Justice.

CJ M. Mogoeng: You didn't familiarise yourself with the environment within which you operate?

Adv. Rugunanan: To the extent that -- yes.

CJ M. Mogoeng: When did you become aware --

Adv. Rugunanan: Chief Justice --

CJ M. Mogoeng: -- of that reality that norms and standards three months, it's red lights. Finish, finish, finish, finish. Eight months you must now face the consequences.

Adv. Rugunanan: Chief Justice I only became aware of it during the course of this year. I can't say when exactly. It must have been round about July or August.

CJ M. Mogoeng: Yes. Thank you very much. You're excused sir.

Adv. Rugunanan: Thank you Chief Justice. Thank you.