



JUDGES MATTER

**Judicial Service Commission interviews
12 April 2018.**

**KwaZulu-Natal Division of the High Court
Interview of Adv E S Law**

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CJ M. Mogoeng: Good morning Advocate Law.

Adv E S. Law: Good morning Chief Justice.

CJ M. Mogoeng: Are you well?

Adv E S. Law: I am thank you.

CJ M. Mogoeng: Are you relaxed?

Adv E S. Law: Relatively.

CJ M. Mogoeng: Okay. Where did you study law?

Adv E S. Law: I studied Law at the University of Natal as it was in those days in Pietermaritzburg.

CJ M. Mogoeng: On a lighter note did you study law because you really wanted to or did the surname Law propel you in that way?

Adv E S. Law: It is a question that is frequently asked. Because I wanted to and also in the town that I studied it was very much expected that for you to go into one of the professions if you were going to go down that road, and law was the one that just attracted me.

CJ M. Mogoeng: Yes, What did you do after completion -

Adv E S. Law: Of my law degree?

CJ M. Mogoeng: -- Of your LLB degree?

Adv E S. Law: I did a post-graduate diploma in Industrial Relations at Durban University.

CJ M. Mogoeng: Full time?

Adv E S. Law: It was a full-time course, but it was a night course. So the classes were held in the evening, I think it was three nights a week and during the day I got a job as an office administrator.

CJ M. Mogoeng: Yes, thereafter?

Adv E S. Law: Thereafter I went overseas for what is today called a Gap year where I was in London for just under a year working on something completely unrelated to the law in the catering industry as you would have seen from my curriculum vitae –

CJ M. Mogoeng: Yes.

Adv E S. Law: -- And that was quite an experience.

CJ M. Mogoeng: Is there any part of that experience that you think have really made you a better person? A better lawyer?

Adv E S. Law: Absolutely, I think it was a very good life experience and it was also an experience where I learned quite a lot of humility especially where I experienced discrimination first hand. –

CJ M. Mogoeng: As a woman?

Adv E S. Law: It was more based, being in the UK they have quite distinct class divisions sometimes – or certainly at that time – and it was as a woman. Not so much as a woman, but as a foreigner and as somebody who was working in the position as for example when I was working at one of the multi-national companies there; I was working in the Directors kitchen and we had to take tea and coffee around to the boardrooms and I found that people looked down at you. For example, the director's secretaries would look down at you because you were the tea lady, so to speak, and they spoke to you in quite derogatory terms. There was one instance where I was working temporarily at a bank and I was alone in the kitchen when a call comes through from the boardroom and somebody said we need some coffees here, please. And all the other people who were in the kitchen on that day were out. So got the trolley ready, I went out, I came back and everybody in the kitchen was back and they said, where were you? And I said I took some coffee to boardroom X. How could you do that? How dare you do that? Did you know what to do properly and because my accent was different these women were speaking to me in a different accent?

CJ M. Mogoeng: Yes.

Adv E S. Law: And obviously it is – I found because I was other, because I was different to those people, yes. And I was taken down ten notches for showing initiative and doing something like that. And they did not think I had the capability of doing it.

CJ M. Mogoeng: Yes, did that in any way enlighten you in relation to how to deal with litigants who might be illiterate in case you are a presiding officer when they appear before you? Or people who are disadvantaged, one way or the other?

Adv E S. Law: Yes. It is obviously something I was not aware of before my own experience. But actually experiencing it first hand, highlights it to you. So certainly I think patience, empathy you do definitely have to be tolerant and to understand peoples differences and peoples difficulties in communicating.

CJ M. Mogoeng: Coming back home did you in any way apply that experience in your interaction with others? And if so how?

Adv E S. Law: Well definitely. I mean I have always treated others with respect and I think it is just taught me, just reinforced respect and patience and understanding. And also never judge a book by its cover, because obviously at that stage when I was in the UK, you know I was already a graduate with a number of degrees and people do not see that. So it is; do not judge a book by the cover always realise that everybody is more than what you see on the outside. Do not -

CJ M. Mogoeng: Yes. Now tell me if you add up all the years of your practice how long did you practice as an advocate?

Adv E S. Law: I have been practising for almost twenty-three years.

CJ M. Mogoeng: Yes. And how many times have you acted as a Judge of the High Court?

Adv E S. Law: I have acted for a total of twenty-three weeks, Chief Justice. I did three sessions last year and then I did the first two sessions of this year.

CJ M. Mogoeng: Yes.

Adv E S. Law: I had a part-heard which I completed at the end of January and then I went straight into the first and second sessions.

CJ M. Mogoeng: Just boast a bit in relation to your suitability for appointment to the Bench.

Adv E S. Law: I think that the grounding which my practice has given me, it is relatively wide I have a very good grounding particularly in civil procedure and working at the rock phase for as long as I have. I do obviously have some criminal experience as well as you would have seen from my questionnaire and my CV. I have thoroughly enjoyed the acting. I found it to be very challenging and very stimulating.

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

Adv E S. Law: It has been five months, Chief Justice.

CJ M. Mogoeng: Never more?

Adv E S. Law: Never more. There is one matter that is still outstanding, it was the one referred to in my questionnaire which was the full Court Appeal where we had asked for further written argument when we heard the Appeal. A point subsequently came up that nobody had considered. I was the scribe in the matter and whilst I preparing the judgement a point came up that had not been considered by anybody involved so we had to call for written argument and that only came to hand last month. So I have not yet had a chance to finalise that, but I am close to doing a draft to give to the two judges who were on the Appeal with me.

CJ M. Mogoeng: Yes, Deputy Judge President Madondo?

DJP M.I. Madondo: Thank you, Chief Justice. Miss Law, would you say that the acting stints have given you adequate exposure and experience in both criminal and civil matters?

Adv E S. Law: Deputy JP I have not done – in my first few – in my first acting sessions last year I did not do any criminal matters apart from the criminal appeals. In my last two sessions that I have done for the first session in Durban, I sat for the entire session doing crime. And there was one trial that was run before me that was set down for the whole session and it has gone part-heard. Then I did not have a trial that ran in the second session but there were a number of guilty pleas. So I do believe that the criminal experience I have had in the last few months and these last two sessions have certainly reawakened that well of stored knowledge that I had from the time I did criminal work when I was practising. And I do believe that, yes, it has given me sufficient experience. I think it was very valuable to have that one trial that it ran for the whole of the first session.

DJP M.I. Madondo: Am I correct to say you have not finalised a single matter in crime?

Adv E S. Law: I have finalised there were some guilty pleas which were finalised.

DJP M.I. Madondo: I mean the trial?

Adv E S. Law: Not a trial. No, not in the time that I have been acting.

DJP M.I. Madondo: So in the circumstances can you still say you have sufficient experience in crime?

Adv E S. Law: Look I think when it comes to the, certainly at the running of the trial and as I say with my previous experience in actually practising and having done some criminal work, albeit a long time ago, certainly when it comes to conducting the trial I think I feel very comfortable in that. And when it comes down to the judgement writing I think the skills are, you know, they are not vastly different to when one would be writing a judgement in any other matter. So yes, I am – there is probably room to develop.

DJP M.I. Madondo: Okay, thank you. What do you regard to be your major contribution to the Bench should you be appointed?

Adv E S. Law: I am very diligent. I am very hardworking and I think I am a person of integrity, so I would certainly put my shoulder to the grindstone and help with the work in this Division.

DJP M.I. Madondo: Do you have any outstanding judgements?

Adv E S. Law: The only outstanding reserve judgement I have got is the full Court Appeal one that I mentioned to the Chief Justice.

DJP M.I. Madondo: Okay. Will you say that your appointment to the Bench would improve demographics in the KZN Division?

Adv E S. Law: I certainly think from the gender point of view it would.

DJP M.I. Madondo: Are you conversant with the traditional legal system?

Adv E S. Law: I beg your pardon, with the?

DJP M.I. Madondo: Are you conversant with traditional legal system?

Adv E S. Law: No I am not.

DJP M.I. Madondo: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, DJP. MEC Thusi.

MEC W. Thusi: Thank you, Chief Justice. Good morning Advocate Law.

Adv E S. Law: Good morning.

MEC W. Thusi: Can you elaborate on the contribution you can make in transforming the judiciary? In ensuring that there is fair representation of black Africans and

women in particular on the Bench considering the demographics and Section 174(2) of the Constitution?

Adv E S. Law: Okay, do mean the contribution that will be made by my appointment?

MEC W. Thusi: That is correct.

Adv E S. Law: Well I would hope that my appointment would serve as some form of inspiration to other women who would like to be on the Bench. The issue of transformation is obviously a very difficult one because it involves transformation almost of the entire profession and not just the judiciary. So certainly I think will, from a gender perspective, there would be transformation. And I would hope that my appointment would serve as an inspiration to other women who might feel that it is something that is out of their attainment. I am not sure if that the answer you were looking for.

MEC W. Thusi: No I am not. It is not the answer that I am looking for, but you have answered -

Adv E S. Law: I do not know if I have answered your question?

MEC W. Thusi: Yes.

Adv E S. Law: Thank you.

CJ M. Mogoeng: Commissioner Nayambi?

COMM A.J. Nayambi: Thank you, CJ. Can you share with us your understanding about the rate of transformation of the judiciary in our country?

Adv E S. Law: I understand that the rate of transformation insofar as gender transformation has been rather slow. The reason for that is as I alluded to earlier possibly it is because transformation in the profession itself as a whole has been rather slow. I also think because it was for such a long time such an exclusively male

profession women entered the profession somewhat later, so to speak, so it has taken a while. When I think about when I began practising as an Advocate there were only ten women at the Bar. That has changed quite dramatically now over the years. So my understanding is that more obviously need to be done from a gender perspective. My understanding from a racial perspective is that there has been, that has improved in leaps and bounds from where it was let's say twenty odd years ago. On that score, we are much closer to attaining the desired levels. But, yes, does that answer your question?

COMM A.J. Nayambi: Are you able to speak any of the African languages?

Adv E S. Law: I do not. I am not.

COMM A.J. Nayambi: Thank you, CJ.

CJ M. Mogoeng: Thank you Commissioner Nayambi. Commissioner Nkosi-Thomas.

COMM L. Nkosi-Thomas: Thank you, Chief Justice. Good morning Miss Law.

Adv E S. Law: Good morning Commissioner.

COMM L. Nkosi-Thomas: Miss Law we have been furnished by the BLA with comments -

Adv E S. Law: Yes.

COMM L. Nkosi-Thomas: -- As regards to your appointability. -

Adv E S. Law: Yes.

COMM L. Nkosi-Thomas: -- And the comment that has been put forward is that your overall time as an Acting Judge is way too short to have prepared you. -

Adv E S. Law: Yes.

COMM L. Nkosi-Thomas: -- For the position in respect of which you are applying i.e. a period of three months. Would you care to comment on that, please?

Adv E S. Law: I have done a further two sessions, subsequent to that. So that would have been an additional, I think it is, another nine weeks was added. I do believe that is has been sufficient. I have done quite a wide range of things in the time that I have been acting, obviously. I have done civil trials, the motion court, I have done case flow court, many criminal appeals. I have got the criminal trial that I am dealing with at the moment that is part-heart. Or that I was dealing with that is part-heard. So I do believe that the twenty-three weeks that I have had has given me sufficient experience to certainly make me feel as if I am in a position to able and adequately do this job.

COMM L. Nkosi-Thomas: Has that afforded you the opportunity for a example to write judgements? Have leave to appeal applied for? For example to have matters serving as it were before the SCA and then being overturned or otherwise?

Adv E S. Law: Yes, no not to that extent. Obviously, I have – I noted that I think one of the comments, I think it was from the GCB had said something that I have written limited judgements. That is not strictly correct. I did not put all the judgements that I have written up on with my questionnaire because I did not want to burden the papers. I simply put up a selection of four which I felt were representative. I have written more than that, but nothing has been taken on appeal as yet.

COMM L. Nkosi-Thomas: Thank you. Thanks, Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Nkosi-Thomas. Commissioner Norman?

COMM T. Norman: Thank you, Chief Justice. Good morning, Miss Law.

Adv E S. Law: Good morning Commissioner.

COMM T. Norman: Thank you. I know you as a colleague at the Durban Bar, but you have mentioned to an answer to the MEC about transformation, you mentioned that you believe that transformation of the judiciary would be influenced by transformation of the profession as a whole. -

Adv E S. Law: Yes.

COMM T. Norman: -- What I would like to find out from you is what has been your contribution towards the transformation of the profession?

Adv E S. Law: Of the profession? I have mentored five pupils, four of them who were women. I have been involved in advocacy training on and off. And as with most people at the Bar, as you know, I have a very open-door policy. My door is open for anybody who wants to come to discuss matters with me. You will have seen from the letter of nomination from Gabriel SC that she seem to have regarded me as being an inspiration and a role model to her. Which I must say came as something of a surprise, I was not aware of that especially of somebody of her calibre. So I hope that I have been able to provide similar inspiration to other female members to the extent that Gabriel SC has commented.

COMM T. Norman: Thank you, and then my follow-up question; the mentoring programme at the Bar is almost compulsory because look once you reach a particular level at the Bar -

Adv E S. Law: Yes.

COMM T. Norman: -- You are given a pupil to mentor.

Adv E S. Law: Yes.

COMM T. Norman: But that does not really answer my question. My question goes beyond that. At the stage then where now you are practising you see there is to many now African females that have come onto the Bar as you mentioned. Have you worked with any female, African female, on any matter?

Adv E S. Law: I have not.

COMM T. Norman: Thank you. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you. Judge President Japie.

JP A. Japie: Thank you, Chief Justice. Advocate Law, how would you describe the workload in the Division? Both in Durban and in Pietermaritzburg?

Adv E S. Law: JP it is heavy. I certainly found when I acted last year I managed fine with the workload, but it is quite an onerous punishing workload, you do have to keep at it. I found when I did Appeals, for example, in October/November last year that was something of a baptism of fire. I was quite overwhelmed by the volume of reading that one had to do. But since the system has changed and the Appeals have now been spread between Durban and Pietermaritzburg I found that the workload when I was in Pietermaritzburg in this last session it was much more manageable now that the Appeals have been spread around.

JP A. Jappie: Something that has been alluded to already in the interviews today is do you think, taking into account the limited period that you have been acting, that you are now ready for an appointment to the Bench? What would your comment be about that?

Adv E S. Law: JP I would say; yes, I am.

JP A. Jappie: And why would you say that?

Adv E S. Law: Because as I have said, I found the job very stimulating and challenging. I feel that I have coped relatively well with the workload. I have, where has been necessary, taken on more than has been allocated to me if something has collapsed or if I had free time.

JP A. Jappie: Yes, thank you, Chief Justice.

CJ M. Mogoeng: Thank you JP. Minister?

MIN M. Masutha: Good morning, Advocate.

Adv E S. Law: Good morning, Minister.

MIN M. Masutha: Something concerns me.

Adv E S. Law: Yes?

MIN M. Masutha: In your answer. Are you telling me in twenty-three years of your practice as an Advocate you have never had the opportunity, desire and so on to tag along a junior member of the Bar who is African? Let alone African woman? Or was it a matter of choice that you preferred not to expose yourself to that situation of having to work with a person in that category?

Adv E S. Law: Minister no. I mean I would not say it is a matter of choice, of choosing not to do that. It is just never been, as I said my door has always been open to people to approach me for mentorship or for assistance in any way. -

MIN M. Masutha: Sorry, if I may, Chief Justice?

Adv E S. Law: Yes.

MIN M. Masutha: Sorry for being rude by interrupting you.

Adv E S. Law: No.

MIN M. Masutha: Is it a matter of being approached or is it something that should be a two-way street? Where you yourself could identify somebody and give them an opportunity to grow under your wing? I am just trying to understand -

Adv E S. Law: Yes.

MIN M. Masutha: -- Whether it is a systemic issue where you can only be approached, or does it take a situation of – in other words, I am trying to understand whether you are a transformation agent inherent in yourself or whether transformation is not quite part of what your orientation is at.

Adv E S. Law: Yes, I am –

MIN M. Masutha: Especially in the light of your personal experience that you related when you were in Britain.

Adv E S. Law: Yes and also, I supposed starting at the Bar myself where things were very much different as they are today. Look it is not only a question of having to be approached. It is so that I have not actively gone out and identified people and said; come along and join me on this case. But I certainly have made it known to people that I am there, and my wing is there to be taken under. Also, Minister my practice as you have seen from my questionnaire and my CV has largely been a family law practice and I am not certain how many people, because it is, how many people want to actually get involved in that. There has been a bit of a stereotype attached to people in the family law field or to the practice of family law. But yes, I have not proactively gone out and invited people to join me in cases.

MIN M. Masutha: My last question relates to the fact that twenty-three years down the line you have not acquired silk status. Have you ever been nominated? Have you ever come forward? Do you believe that you are silk material? I am just trying to understand -

Adv E S. Law: Yes.

MIN M. Masutha: -- How it happens that having been at the Bar that long you have never -

Adv E S. Law: Taken silk? I have been asked by colleagues previously why I do not have silk. Why they said you ought to. The reasons for me for not doing so have

been partially altruistic and partially selfish. On the altruistic side, as I have said I primarily do family law and I have felt that if I were to take silk it is going to put my services beyond the reach of most of the middle-class people who require and have used my services. That is the altruistic aspects and there are quite a few silks in the arena and it is a fairly small pool and we do not have very money divorces in the KwaZulu Natal. So I have not wanted to put services out of the reach of people who need them. And then on the selfish aspect it has been that indeed I do need to make a living and one does not want to price oneself out of the market from that perspective as well.

MIN M. Masutha: Sorry, Chief Justice, one last follow-up.

Adv E S. Law: Yes.

MIN M. Masutha: Are you bound to set a higher, shall we say a much higher fee upon acquisition of silk? Is it something that is fixed? Or is it a prerogative of the silk how they want to make their service accessible or not accessible?

Adv E S. Law: Well it is partially a prerogative of silk but there has also been criticism of silks in the past who, people who have gone and taken silk and then they have sort of undercut the junior Bar. So by taking silk they have gone and elevated their status and are seen and attract possible more work because of that but then they have kept their fees at junior level, which then has been seen to take away work from the other juniors who have not taken silk, unfairly. So yes, it is partially prerogative and partially what is expectations within the society as well.

MIN M. Masutha: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Minister. Commissioner Notyesi.

COM N. Notyesi: Thank you, Justice. For now, let me pass on.

CJ M. Mogoeng: Thank you. Commissioner Fourie?

COM C.P. Fourie: Thank you, Chief Justice. One of my questions was covered by the Minister regarding the silk status. Good day.

Adv E S. Law: Thank you.

COM C.P. Fourie: Sorry for only say so now, Miss Law. I just think in all fairness I need to refer you to the nomination letter by Advocate Gabriel -

Adv E S. Law: Yes.

COM C.P. Fourie: Who is an African female, is that correct?

Adv E S. Law: Yes, she is.

COM C.P. Fourie: She talks very complimentary of you and she amongst other things says that, if I can just find the place; "I think it is important to note that when I commenced practice there was only a handful of women at the Bar. Miss Law and I were of similar ages and the presence and steady reassurance convinced me that I too could do this job. The value of this cannot be lost and it something for which I remain immensely grateful to Miss Law. Female role models at the Bar are a rare commodity and I was so fortunated to have that in the presence of Miss Law". I thought that was quite a compliment.

Adv E S. Law: It was.

COM C.P. Fourie: There are others that in the same letter that I will not repeat. Perhaps just a last question, there is reference twice in the nomination letter of Miss Gabriel that you succeeded and built a good practice and a good reputation despite personal setbacks. You do not have to, but are you prepared to elaborate on that reference to personal setbacks?

Adv E S. Law: Yes, just very briefly. There was in a fairly short period of time there were three people very close to me who died. One unexpected and sudden

circumstances and then there was my health with is dealt with in my questionnaire, my diagnosis in December 2014.

COM C.P. Fourie: Thank you, Miss Law. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Fourie. I just need to understand something here. It appears that you helped Advocate Gabriel SC grow in her practice as an Advocate Is my impression correct?

Adv E S. Law: Yes, well that is from what she had said in her letter. That is correct.

CJ M. Mogoeng: So she found you there?

Adv E S. Law: She found me there, yes.

CJ M. Mogoeng: How is it, considering gender prejudice racial prejudice that she managed to grow and venture into a wide range of fields beyond you the mentor and became SC and you were not able to venture into other areas or diversify so that though family law appears to be your passion you could also be seen to be growing, achieving like your colleagues?

Adv E S. Law: Yes, Chief Justice -

CJ M. Mogoeng: Let me open and tell you where I am coming from because nothing is hidden. You see it could give rise to an unfortunate impression that there is something about your performance as an advocate that has kept you somewhat stagnant. And that is why you mentor Gabriel from a thoroughly disadvantage background, comparatively speaking. She comes up, shines, appears before the Constitutional Court from time to time. So maybe you need to just explain that not so easy to understand the situation. It would be easy to understand with the benefit of an explanation from you I think.

Adv E S. Law: Yes. Chief Justice, she is certainly one of the women who has managed to break out of the mould of being sort of side lined so the speak in the

profession. I do not believe that there is anything about my ability as an advocate as such which has kept me back. But I did find that when I started practice and in my first, let us say the seven years, I did not want – I mean I tried to avoid getting pigeonholed into the family law aspect. Because there was some, the perception of that is what woman are good to do, you know, particularly back then. Unfortunately for me, it seems that I did not manage to break out of that mould and when people starting giving me family work I began to take it and once the floodgates opened, so to speak, that is the niche that I went into. Miss Gabriel probable because she managed to break the mould and I cannot explain. Perhaps she was given more opportunities than me because of her interests in, you know her talent in Constitutional Law. It is difficult to explain. -

CJ M. Mogoeng: Interest or talents?

Adv E S. Law: It is her passion, it is her talent it is her – yes. Not in -

CJ M. Mogoeng: Yes.

Adv E S. Law: Yes. No thank you, Miss Law. Commissioner Mpofu?

COMM J. Mpofu: Thanks CJ. I am sorry I thought you had noted me. Thank you.
Good morning, Miss Law.

Adv E S. Law: Good morning.

COMM J. Mpofu: Yes, look on this silk thing. I represent the GCB and AFT and you know how that works? Yes. You know I am not quite sure. You know both Commissioner Cane and I have chaired the Silk Committee at different times in Johannesburg, I do not know how it works down there. But if you had never mentored or taken a black African junior when there are opportunities to do so, I doubt if you would attain silk in Johannesburg. I do not know about other places particularly if there is no explanation for it. Was that one of the impediments that made you not to apply or is that an issue at the Durban Bar?

Adv E S. Law: No, it is not one of the impediments that made me not apply.

COMM J. Mpofo: Okay, right. Now the second issue is to do, you know, this transformation thing has got to do with the numbers and all the cosmetic stuff. But more seriously it has to do with softer issues such as empathy, which I described as the ability to put yourself into somebody else's shoes. Having gone through the experiences that you went through in the UK, and I appreciate what you say it was the first time you experienced it. Maybe it was the first time you experienced it as a person but surely being South African you had seen other people being degraded and assumed just because of the biological appearances to be incompetent, stupid, inferior or lazy. Did you, coming back from that experience, not find it necessary to yourself make sure that other people in the profession are not put in that position?

Adv E S. Law: Commissioner -

COMM J. Mpofo: I am sorry, what I really saying is that I am sure you sympathised and so on but taking practical steps to make sure that black advocates in general and black female advocates even worse are not judges by the cover, as you say, and are given opportunities to be taken under your wing and so on.

Adv E S. Law: As I said I have been empathetic to the plight and as I have said my door has always been open to offer guidance and encouragement and support. But as I said I have not actively pulled people on board to become involved in cases that I have been in.

COMM J. Mpofo: Okay. Thank you, CJ.

CJ M. Mogoeng: Thank you. Thank you, SC. Miss Law thank you very much, you are excused, mam.

Adv E S. Law: Thank you, Chief Justice. Thank you, Commissioners.