



JUDGES MATTER

Judicial Service Commission interviews

12 April 2018.

Free State Division of the High Court

Interview of Mr P E Molitsoane

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Mr P. E. Molitsoane: Good evening, Chief Justice.

CJ M. Mogoeng: Before I pronounce your surname I, assume UmuSotho therefor is Moditswane it is not Molitswane, am I mistaken?

Mr P. E. Molitsoane: You are not mistaken, Chief Justice.

CJ M. Mogoeng: Thank you. How are you sir?

Mr P. E. Molitsoane: I am all right, I am okay.

CJ M. Mogoeng: Yes, very well. Tell me where did you obtain your law degrees?

Mr P. E. Molitsoane: University of Zululand, Chief Justice.

CJ M. Mogoeng: When?

Mr P. E. Molitasoane: 1999.

CJ M. Mogoeng: And what degree did you obtain there?

Mr P. E. Molitasoane: BProc, Chief Justice.

CJ M. Mogoeng: And what have you been doing?

Mr P. E. Molitasoane: I did articles in 1992 with Molefi Litheko Attorneys in Thabamochu the 17th of August 1995 I was admitted as an attorney. I then practised and later 2006/2007 acted as a Magistrate and then I was appointed as Magistrate in Edenburg on the 1st of November 2008. I have been Head of the Court at Edenburg and 2016 I acted at the backlog court for about three months in Botshebelo then I had thirty-two weeks in total of acting stints in the High Court, Free State which ended the last term 30 March 2018, Chief Justice.

CJ M. Mogoeng: Did you enjoy support or not as an acting judge?

Mr P. E. Molitasoane: The JP, Chief Justice, has a system in place of mentorship and I honestly enjoyed the support, the mentorship. I must confess, I have not knocked at the door of any Judge who would turn me and say to me he was too busy to assist me. So I enjoyed my stint in the High Court Free State.

CJ M. Mogoeng: Was there a stage when you kept judgement reserved for too long before you could deliver judgement?

Mr P. E. Molitasoane: I do not think so, in fact, I have not done so.

CJ M. Mogoeng: What is the longest?

Mr P. E. Molitasoane: It is about two months and a week, I believe, Chief Justice.

CJ M. Mogoeng: Have you had problems with part-heard matters?

Mr P. E. Molitsoane: I have not had, in fact, it is only once when I had a part-heard matter. It was a criminal trial. Instead of this matter starting on a Monday, it started on a Wednesday simply because the accused – I think on four occasions – before I came on the scene would change counsel. So on the Monday when his trial was due to start he came again with a new counsel and I refused arraignment, unfortunately, counsel said the date was not arranged with him, did not suit him and then withdrew. And then I in fairness to the accused, I then remanded the matter to a Wednesday, for him to procure a counsel who would be prepared to proceed with the matter. Indeed on Wednesday, he came with counsel, they were prepared to proceed, and we were forced to sit only for three days when the matter was actually scheduled to sit for about five days. And then I finalised the matter during the recess period. I think it sat down for five days.

CJ M. Mogoeng: Yes. For how long then did you have to wait before it resumed?

Mr P. E. Molitsoane: It could have been a few weeks.

CJ M. Mogoeng: Okay.

Mr P. E. Molitsoane: During the recess, the next recess it could have been a few weeks.

CJ M. Mogoeng: Yes.

Mr P. E. Molitsoane: About four at the most five weeks.

CJ M. Mogoeng: Yes. Very well, JP?

JP M.B. Molemela: Thank you, Chief Justice. Good afternoon Mr Molitsoane.

Mr P. E. Molitsoane: Good afternoon, JP.

JP M.B. Molemela: Mr Molitsoane according to your CV you became a professional assistant in 1995, is that correct?

Mr P. E. Molitsoane: That is correct.

JP M.B. Molemela: Meaning that you have been in the legal profession, post your admission as an attorney, for twenty-three years?

Mr P. E. Molitsoane: Indeed so, JP.

JP M.B. Molemela: In response to a question by the CJ you indicated that you acted for thirty-two weeks at our Division?

Mr P. E. Molitsoane: I did, JP.

JP M.B. Molemela: Where you were exposed to all aspects of the law in terms of case allocation or are there cases that you have never done? Have you done several criminal trials? Applications -

Mr P. E. Molitsoane: I have done them.

JP M.B. Molemela: -- Appeals?

Mr P. E. Molitsoane: I have done civil appeals, I have done criminal appeals. I am currently seized with a civil matter and I have done criminal appeals. I have done administrative law matters. I have done them. I have been adequately exposed, JP.

JP M.B. Molemela: Last question, over and above your normal functions as a presiding officer; whether in the Magistrates Court or in the Division have you been able to do anything extra? And if so what is it?

Mr P. E. Molitsoane: Right from the Magistracy I have always done prison visits and even in the High Court I have done a prison visit.

JP M.B. Molemela: When did that happen?

Mr P. E. Molitsoane: It was, I think, during February/March just before my stint ended.

JP M.B. Molemela: And you submitted a report?

Mr P. E. Molitsoane: I submitted the report, Judge President.

JP M.B. Molemela: Yes. Thank you, CJ.

CJ M Mogoeng: Thank you JP. MEC?

MEC S. Machinnini: No, I do not have any further questions, thanks.

CJ M. Mogoeng: Well since there is nobody with a question let me just ask this: One of the problems we use to have as the court system was that because inmates did not seem to have easy access to Legal Aid South Africa it would take up to five, ten years before applications for leave to appeal were noted, and this has frustrated the system for a long time. When you visited prisons did you notice that there has been a change? Do legal advisors or legal aid officials visit prisons regularly so that whoever needs to apply for legal assistance has access to those who can assist.

Mr P. E. Molitsoane: Chief Justice, it is indeed so that mostly when one speaks to the inmates they would always tell you about the challenges they face with legal aid. I have always taken it up with the justice centres involved. At times I found that it is not actually as of now the problem of the legal aid board itself but in some instances, it is the practitioner. By way of an illustration when I was at Grootvlei prison on my last visit I received concerns that legal aid people did not go and visit them in prison, but when I went to the authorities I found that they even keep a register of legal aid personnel. The challenge I had was the inmate could not tell me who his legal aid practitioner was but such a matter I took it up with the JCE in Botshebelo because that was the main point of contention. They spoke about Bothsebelo not attending,

but there was a register. There was a register which has been kept for the practitioners when they arrive so that the legal aid board can be able to see if its practitioners attend Court and do actual visits or not. The other thing which maybe I should bring to your attention, Chief Justice, in another matter when I attended a prison visit at Grootvlei I found an inmate who was sentenced to death in 1993 on three counts of murder, and then his sentence was commuted in 2003, but the Court there then did not antedate his sentence. He came with that plight and said, well I have been in custody for ten years now, but now I have been deemed to have been sentenced ten years later. My sense of justice told me that something might not be right and then in fairness to him, I contacted the legal aid board. They even confirmed that those matters they do handle, and they undertook to go and see the inmate, Chief Justice.

CJ M. Mogoeng: Yes. One of the complaints that the Department of Correctional Services has against the Courts is that awaiting trial inmates would be in their system for as long as two years, three years and even five years. Is that still the problem that you picked up when you visited Grootvlei?

Mr P. E. Molitsoane: It is not a problem which I picked up. I specifically asked them about whether they had problems in the implementation of Section 49 and they said; no they did not have.

CJ M. Mogoeng: Yes.

Mr P. E. Molitsoane: In fact, just by the way, during my visit, one inmate raised the very issue but then it became clear to me that he was not actually asking for himself. Probably asking for another person. Although he was referring to himself I then requested the prison authorities to inform me as to what is happening. Then they have a system at Grootvlei that after a certain time their system already reflects which people have been in custody for a particular time so that they are able to monitor those people who would be in for a period of about two years.

CJ M. Mogoeng: Yes now finally and very briefly, while I was still doing prison visits I noticed and was told by the officials that one of the reasons why there is recidivism

people are released, they come back having committed similar crimes was because there was not much rehabilitation happening in our prisons. Some of the skills transfer projects that use to be embarked upon had been discontinued. Even some of the educational programmes. Gardening, bricklaying and a number of other things. You would find maybe they are left with sowing clothes and that is just about all that is left. What was your experience at Grootvlei? Are skills that people could use after being released actually been transferred now? I know there was also some difficulties with the Department of Labour that was apparently supposed to assist in that regard. What was your experience, very briefly?

Mr P. E. Molitsoane: My experience also in the prison that I do at Bethulie is that once people are released, not much is done in terms of rehabilitation.

CJ M. Mogoeng: No, before the release. While they are still in prison?

Mr P. E. Molitsoane: Whilst they are still in prison. In Grootvlei another gentleman raised a concern, we were just talking, and he said to me I am a carpenter. I am able to work with my hands. There are no tools here for me to perform my skill. The prison authorities at that stage chipped in and said; we will attend to it. We will assist him.

CJ M. Mogoeng: Yes.

Mr P. E. Molitsoane: Very well, you are excused, sir. Oh, yes MEC?

MEC S. Mashinini: Just one last question, after your visit at Grootvlei do you think the skills that is being obtained, you know, inside the prison to prepare a person to enter back into society, do you think – and it links to what the CJ said – Do you think the problem is us preparing, or the system preparing an inmate when he goes out or he is being prepared, but the problem is that the environment when he gets outside that is where the challenges come?

Mr P. E. Molitsoane: Thank you MEC. Unfortunately, it is a reality that some employers do not want to employ people with previous convictions. Even if the

system prepares them we also need to change the mind set of society that look: this person has done his dues; this person has acquired the following skills; this person should be given another chance. I mean one of the purposes of punishment is rehabilitation. My view is there are people in society who take such people, there are people who do not take such people.

CJ M. Mogoeng: Well you know Mr Molitsoane I was actually approaching it from a different angle. In the interest of time I chose to go not as far as the MEC had gone but very briefly you can comment on this. One, one of the problems that I picked up in several - and I visited quite a number of them in a number of provinces - was that skills transfer intended not only to rehabilitate an inmate but to capacity them for meaningful employment once they are released had been significantly scaled down. That was the first problem. The second problem was a programme designed to facilitate reintegration and employability was not being meaningfully embarked upon. Some correctional facilities you will find that there are NGO's that seek to link inmates with potential employers so that they are not shunned in the manner that the MEC alludes to. You prepare potential employers so that people are not seen as criminals. They go out, nobody wants them they then commit crimes so that they can have to what to eat if they do not have what to eat. So those are the two legs the responsibility to prepare you by skilling you and the responsibility to prepare you and other for reintegration. Very briefly what is your experience, or did you not go that far in your observations.

Mr P. E. Molitsoane: I did not go that far, Chief Justice

CJ M. Mogoeng: All right.

Mr P. E. Molitsoane: I did not go that far.

CJ M. Mogoeng: No thank you so much, you are excused, sir.

Mr P. E. Molitsoane: Thank you, Chief Justice. Am I through?

CJ M. Mogoeng: Yes. Do you want more?