



JUDGES MATTER

**Judicial Services Commission interviews
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**Gauteng Division of the High Court
Interview of Adv S Yacoob**

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CJ M. Mogoeng: ...are you well?

Adv S. Yacoob: I am, thank you.

CJ M. Mogoeng: Where did you obtain your degrees?

Adv S. Yacoob: My first degree was at the University of Durban, Westville. My...

CJ M. Mogoeng: And when was that?

Adv S. Yacoob: In 1996.

CJ M. Mogoeng: And the second?

Adv S. Yacoob: The second degree was my LLB at UCT.

CJ M. Mogoeng: Where did you go from there?

Adv S. Yacoob: From there I came to Johannesburg. I worked at the Land Claims Court. I worked as a researcher in an attorneys' firm and I came to the Bar and then I went to Amsterdam to do an LLM.

CJ M. Mogoeng: Well, let's take it in stages. How much time did you spend at the Land Claims Court?

Adv S. Yacoob: Two years.

CJ M. Mogoeng: Two years and then you said from there, where did you go?

Adv S. Yacoob: From there I went to the Bar. I actually spent six months at an attorneys' firm before the Land Claims Court.

CJ M. Mogoeng: Okay and then you went to the Bar?

Adv S. Yacoob: Then I went to the Bar.

CJ M. Mogoeng: How long were you at the Bar before you pursued your LLM program?

Adv S. Yacoob: A year and a half.

CJ M. Mogoeng: And why Amsterdam?

Adv S. Yacoob: I was offered a scholarship and I accepted it gracefully.

CJ M. Mogoeng: And do they teach in English there?

Adv S. Yacoob: It was an English program, yes.

CJ M. Mogoeng: Yes. What university was it?

Adv S. Yacoob: It was the Vrije Universiteit.

CJ M. Mogoeng: What line did you pursue?

Adv S. Yacoob: It was International Business Law.

CJ M. Mogoeng: And how has your practice been?

Adv S. Yacoob: My practice has been up and down. It has been good. The trajectory has been lower than my colleagues who are white males, so I've suffered the usual travails of black women at the Bar, but it's been on the whole good.

CJ M. Mogoeng: What really is the problem? Why does the disinclination to give women good work generally speaking continue? I know some do get work, but why do most not get that good quality work, however competent they may be?

Adv S. Yacoob: Chief Justice, I've never been on that side of the line, making the decisions. I can only speculate and I can say what has been said in the research, which we all read. I can say for sure that it's not because we can't do the work. We can.

CJ M. Mogoeng: Tell us a bit about your experience at the Land Claims Court as an Acting Judge.

Adv S. Yacoob: As an Acting Judge, it was – I found it emotionally taxing.

CJ M. Mogoeng: Why?

Adv S. Yacoob: Because the issues that we deal with there are issues that firstly affect – a lot of the people who are affected are those who have very little and who are very deeply affected by what we do there and the decisions we make have sometimes more of an impact than some of those at the High Court. So, I find it difficult. I found it more emotionally taxing than intellectually taxing. But I also enjoyed it.

CJ M. Mogoeng: Maybe let's take it in stages in this manner. In terms of the Judge compliment and the absence of permanent Judges in that Court, what impact, if any, does it have in enabling the Court to discharge its mandate?

Adv S. Yacoob: It's a huge impact. It's very difficult. Firstly the Act provides of course that the Judges in that Court have inquisitorial powers and the Act and the rules provide for quite an extreme level of case management. That's very difficult when you don't have consistent Judges. You'd get a file and you'll find another Judge has been managing the matter and has made interim orders and you don't know what they were thinking or why and you've got to almost reinvent the wheel. That's very difficult. On another level it's difficult because in addition to there not being permanent Judges and therefore no institutional memory, the Court is itinerant a lot of the times. So, you might have five Acting Judges, but you might be the only one sitting in Johannesburg at that time, so It's also lonely. There isn't as much collegiality. It's a difficult Court to be in.

CJ M. Mogoeng: You only have one permanent Judge. Is it?

Adv S. Yacoob: Yes, that's right.

CJ M. Mogoeng: Now, I'm not going to ask you to venture into the volatile land reform section of the discussion. I just want you to tell us, what will it take – in what state must this Court be to facilitate land reform in terms of the current legislative framework?

Adv S. Yacoob: Chief Justice, there are two parts to my answer. The first is that a lot needs to be done and I think a lot has been done in the last three years to facilitate matters getting to the Court, but once matters get to the Court, that Court – well, either that Court must have permanent Judges and must be a fully functioning Court or they must think about other solutions like making it a part of the High Court in the way that the Equality Court is. I don't know. I 'm...

CJ M. Mogoeng: Yes.

Adv S. Yacoob: There must be another solution which provides for continuity and permanency, which allows people to get to grips with things and get them done.

CJ M. Mogoeng: Do the problems – that explain the slow pace at which the mandate of that Court has been carried out? Do they arise at Court level or elsewhere? Where are they located? Where is the problem? Why is the process so, so slow?

Adv S. Yacoob: In my experience, Chief Justice, the problems arise before they get to the Court.

CJ M. Mogoeng: Is it at a commission level or elsewhere?

Adv S. Yacoob: I don't know exactly. I think between the commission and the department there are issues, which are being addressed. I don't know.

CJ M. Mogoeng: Alright and what kind of experience did you pick up that you believe should stand you in good stead should you be appointed a Judge of the High Court?

Adv S. Yacoob: Chief Justice, generally...

CJ M. Mogoeng: Just that and you can add your High Court experience as well.

Adv S. Yacoob: I think my High Court experience more so are much more valuable, simply because of the different kind of work and in the High Court I've had – it was a very steep learning curve the first few times that I acted. I've had exposure to a very broad spectrum of legal issues, which I've not been able to get in my practice and to a very high volume of work and I think that my ability to deal with those things has been developed and will stand me in good stead were I to be appointed.

CJ M. Mogoeng: I forgot to declare that your father was my colleague and we had a good relationship and that I know your mother and I know you. I'm declaring now.

Adv S. Yacoob: Thank you, Chief Justice.

CJ M. Mogoeng: Yes. Otherwise, why should it be you, just generally speaking? Why should you be one of the five?

Adv S. Yacoob: I believe I'm ready. I am the sort of person who needs to make a difference. I believe that being a Judge in the High Court is the place where I can make that difference most effectively. I am committed to the administration of justice to the constitution and to doing what needs to be done.

JP Mlambo: Thank you, Chief Justice. Advocate Yacoob, good afternoon.

Adv S. Yacoob: Good afternoon, JP.

JP Mlambo: It's been a long day?

Adv S. Yacoob: It has for you more than me.

JP Mlambo: You acted a total of 29 weeks in the Land Claims Court?

Adv S. Yacoob: Yes.

JP Mlambo: And I know you said you acted 57 weeks, but I've reduced it to 52, because I checked through my rosters in Gauteng.

Adv S. Yacoob: Really? Okay. The information I gave you was from my diary, but your rosters must be correct.

JP Mlambo: Yes. So, I'm just alerting you to that, because that's the spreadsheet that's in front of you there.

Adv S. Yacoob: Okay.

JP Mlambo: Now, what's your speciality?

Adv S. Yacoob: In my practice, most of my work has been in administrative and constitutional law.

JP Mlambo: Okay and you've done eight solid weeks in Opposed Motions Court?

Adv S. Yacoob: I have.

JP Mlambo: How did you find that?

Adv S. Yacoob: It was a lot of work. I didn't sleep very much. But it was a challenge which I enjoyed.

JP Mlambo: And any reserved judgments that took long from those eight weeks?

Adv S. Yacoob: Not in the High Court, no.

JP Mlambo: Not in the High Court?

Adv S. Yacoob: No.

JP Mlambo: And I see you also spent some time in the Urgent Court?

Adv S. Yacoob: I did.

JP Mlambo: I think you did two weeks there.

Adv S. Yacoob: Yes.

JP Mlambo: And how did you find it?

Adv S. Yacoob: I – again, a challenge which I enjoyed. I liked the fact that it was immediate and one feels very much at the (indistinct) [00:10:57] phase.

JP Mlambo: *Ja* and the fact that you've not done any criminal trial work, am I correct that it's compensated by the fact that you sat in criminal appeals?

Adv S. Yacoob: I believe so, JP and I have no aversion to doing criminal work at all.

JP Mlambo: Right. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, JP. MEC?

Mr J. Nyambi: Thank you, Chief Justice. I'm covered. Thank you so much.

CJ M. Mogoeng: Commissioner Mpofu?

Mr Mpofu: Thank you, CJ. Can I also...? I'll make the same declaration as the CJ now, so that – you were in my group for a long time. I wanted to ask you two quick things. One is around – because you've done so much work in the Land Claims Court and given the terrible back logs in that system, there is a view that says that we'll probably never resolve those cases if we go through them through the Court system as it were. It's just intractable and there's another view that says all that needs to happen is that the land should just be transferred to the ownership of the state for redistribution. In other words, instead of doing it in a piecemeal fashion of me having to prove that I was removed from this place and that place, that might or might not be a workable shortcut, so you might not want to answer the second part, but do you agree with the first part that at the current pace the land claims might never be resolved, at least in our lifetime if we do them in a piecemeal fashion as we are doing them now?

Adv S. Yacoob: Commissioner, I don't know whether the problem is the piecemeal fashion or other things, but certainly the way it has been happening, it will not resolve. You know as well as I that the initial life of the Land Claims Court was supposed to be five years and they kept extending it, because A, we underestimated the extent of what needed to be done and B, I think the way that we went about it was problematic, but I wouldn't like to speculate more than that.

Mr Mpofu: Thank you. Then the second thing is, I know you as a gender activist, now whether the land redistribution is done through the Courts or through the state or whatever, in your experience, what have you picked up as regarding the absence of the women's voice and the women's issues around this whole big buzz about land currently, because it seems like it's missing, both from the Courts and just from the (indistinct) [00:14:15] generally.

Adv S. Yacoob: All I can say is that in the matters that I've been involved in, the voices that were predominant were male ones.

Mr Mpofu: Yes, that I agree with, but what can be done, both from the bench and other parts of the discourse to change that?

Adv S. Yacoob: I'm not sure that it can be changed from the bench. It may be that it's something that needs either legislative intervention or some kind of work between parliament and traditional leadership to develop the place of women in those communities. I don't know.

Mr Mpofo: Thank you, CJ.

CJ M. Mogoeng: Thank you so much, Commissioner. Commissioner Nkosi Thomas?

Ms Thomas: Thank you, Chief Justice. Adv S. Yacoob, good afternoon to you.

Adv S. Yacoob: Good afternoon, Commissioner.

Ms Thomas: Should I declare that you and I have a professional relationship that borders on friendship?

Adv S. Yacoob: I will declare it if you don't Commissioner.

Ms Thomas: Well, I hear Commissioner Mpofo referring to you as a gender activist and looking at the questionnaire that you've put up – the answers rather, on page 9 you state there that you've consistently spoken out against racist and sexist behaviour, practices and policies, particularly where these have been unarticulated and appear wrongly to be neutral. Would you like to enlighten us further on what you mean by this statement and perhaps to give us examples, if any come to mind?

Adv S. Yacoob: Commissioner, it's very difficult to give examples, because it's something I do all the time. I can give one example that Commissioner Mpofo will be aware of, that I was sitting in the Bar Council. We were hearing a Disciplinary matter and the person representing the member asked that we should be lenient because this poor man has got two ex-wives and I raised that as an issue with the Bar Council and requested that the person who made that submission be made aware of the extreme sexism of that statement and that's consistent with the way in which I interact in all of the committees on which I sit and both on a race and gender level.

Ms Thomas: Thank you and now then you go on to say that you've played an active role in ensuring that the policies of the Bar are revised accordingly in order to apply equally to the members of the Bar and so on, but have you had occasion therefore to work on the policies of the Bar to ensure that the voices of female counsel are heard? In other words, what work have you done, if any, to ensure that women's voices are heard at the Bar?

Adv S. Yacoob: The policies on which I've worked and on which for example we revised the maternity policy, sexual harassment policy, the silk policy, all of those things that I assisted in drafting were with teams predominantly of women. When in the professional committee we deal with issues that arise, I certainly do my best to ensure that the women's voices are heard. For example, at the moment there are only three women on the committee and it can be very intimidating to sit there and hear all these men talk, so I will speak sometimes just to make a point that we need to be heard and sometimes one finds that other women will speak after that, so sometimes the very fact of a woman being there and a woman being vocal opens the door for the other women to be heard.

Ms Thomas: And were you to be appointed or were you to be recommended by the JSC, do you wish to continue with that work of your gender activism?

Adv S. Yacoob: I don't think I have a choice. I would not be able to stop.

Ms Thomas: Thank you, Adv S. Yacoob and thanks, Chief Justice.

Adv S. Yacoob: Thank you, Commissioner.

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

Ms T. Norman: Thank you, Chief Justice. Good afternoon, Adv Yacoob.

Adv S. Yacoob: Good afternoon.

Ms T. Norman: I must also declare that we both hold chambers at (indistinct) [00:19:18] chambers and we are both on the fourth floor?

Adv S. Yacoob: Yes.

Ms T. Norman: And I see you have attached one of the matters where I appeared before you at the Land Claims Court where you were sitting with Judge (indistinct) [00:19:28].

Adv S. Yacoob: Yes.

Ms T. Norman: And Prof Loots. Thank you. My question simply relates to a matter which you handled – you heard, the Matsane *versus* the Road Accident Fund.

Adv S. Yacoob: Yes.

Ms T. Norman: You remember that matter? You've attached it to your bundle.

Adv S. Yacoob: Yes.

Ms Thomas: It's pages 39 of your bundle – 39 to 47.

Adv S. Yacoob: Yes.

Ms Thomas: The only question I have really relates to what is recorded in paragraph 3 of that judgment. It relates to an amount of money for medical aid expenses. Do you see that?

Adv S. Yacoob: Yes.

Ms Thomas: And then the defendant's counsel was not opposing that amount of money. They said there's documentation and then therefore they were leaving it in the hands of the Court. Am I right?

Adv S. Yacoob: Yes.

Ms Thomas: So, that's R1 680.00, but then what I can't understand and I'd like your explanation, if you have, is the fact that in paragraph 34 you acknowledge and you make a finding that the plaintiff has proven those expenses and is entitled to them. So, we're still talking R1 680.00 and then the order that you make, then you say that the defendant is then to pay the plaintiff 70 percent of the past medical expenses of R1 680.00.

Adv S. Yacoob: Yes.

Ms Thomas: Can I just understand why you felt that she was not entitled to the full amount of R1 680.00, but to 70 percent of that?

Adv S. Yacoob: Commissioner, if I may refer you to paragraph 2 of the judgment, the matter came before me only to hear the quantum. The merits have already been dealt with and the decision was that the plaintiff was to get 70 percent that there was a sharing of liability there.

Ms Thomas: Was there an agreement?

Adv S. Yacoob: Yes, the merits were settled – 70 percent of that.

Ms Thomas: 70 percent. Okay, thank you. Thank you, Chief Justice.

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

Mr Singh: Thank you very much, Chief Justice. Good afternoon, Adv S. Yacoob.

Adv S. Yacoob: Good afternoon, Commissioner.

Mr Singh: Since you served more in the Land Claims Court, my concern which Commissioner Mpofu expressed, I share his concern that – and your concern that the department and the Land Claims Commission have not done us justice in the last 20 years or so in dealing with land claims. There are thousands of land claims that were lodged in 1998 that have not been processed, even for *prima facie* evidence that there is a claim, so that must be of concern, but what I'd like to know, when the Court sits, what are the kind of matters that you and the Court have dealt with? Is it more matters that have required a judgment on whether a claim is valid or not or the quantum part and have you found sitting on that Court that there have been incidents of irregularities that have been committed by officials of the department in overpaying some of the farmers for land that has been claimed? Thank you.

Adv S. Yacoob: Commissioner, the types of matters that the Land Claims Court is empowered to deal with are three and those are matters under the Extension of Security of Tenant Act, which is basically evictions from farm lands. The land reform will have a Tenants Act and the Restitution Act, so in dealing with that in terms of numbers of matters, the vast majority are automatic reviews of evictions under ESTA, which are done by Magistrates, but in terms of size of matters, the biggest ones are Tenancy Claims and Restitution Claims. As far as the Restitution Claims, which have come, which I have had something to do with, are

concerned, the – I have not seen any irregularities as far as the payments are concerned. I believe that there was a policy in trying to agree amounts that should be paid at the owners of the farms, but there's not been any irregularities that have been identified. We deal – we've dealt with a number of issues dealing with – where the commission or the department has to be ordered to take a step in the process and then also with entitlement. There have also been matters where we deal with the amount of compensation or the type of compensation that would be appropriate.

Mr Singh: You are aware that we are engaged in a process in parliament now on possible amendment to the constitution?

Adv S. Yacoob: Yes.

Mr Singh: Section 25, but in your view and just following on the Chief Justice, what do you think South Africa requires? What do we need to do to resolve these land issues?

Adv S. Yacoob: Commissioner, that's a policy issue. That's for parliament to decide. I don't know enough and I can't offer an answer.

Mr Singh: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Singh. You're excused, Ma'am.

