



JUDGES MATTER

**Judicial Services Commission interviews
2 October 2018**

**Gauteng Division of the High Court
Interview of Mr M L Senyatsi**

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CJ M Mogoeng: If you could switch on your mic please.

ADV Mr L Senyatsi: Good afternoon chief justice.

CJ M Mogoeng: Are you well?

ADV L Senyatsi: Under the circumstances yes CJ but lot of butterflies and I hope they will go away.

CJ M Mogoeng: Ok the butterflies was going to be my next question. You you've been an attorney all your life am I right?

ADV L Senyatsi: That's correct CJ.

CJ M Mogoeng: Is the total period 17 years or a little more than that?

ADV L Senyatsi: It is a little more than that CJ, I got admitted in 1992.

CJ M Mogoeng: Yes.

ADV L Senyatsi: Then I've been on the roll of attorneys since then and yeah it is definitely more than 17 years.

CJ M Mogoeng: In that capacity did you appear in the High Court or were you doing office work?

ADV L Senyatsi: Well I have appeared mostly in the magistrates' court and to the extent at the time when we were in Polokwane, I used to instruct lot of correspondents in Pretoria to do matters on my behalf but when I move to Johannesburg I appeared in the High Court.

CJ M Mogoeng: Yes and for how long did you appear in the High Court?

ADV L Senyatsi: Well.

CJ M Mogoeng: How many years?

ADV L Senyatsi: I was with the Norton Rose from 1997 until 1999 and then I moved into corporate, but I continued to appear together with the lawyers that I was briefing in the High Court as part of the in-house lawyer.

CJ M Mogoeng: By appearing in the High Court do you mean arguing the case yourself or being in attendance being present as Advocate.

ADV L Senyatsi: In attendance in person as part of the team that was appearing.

CJ M Mogoeng: Ok, and what did you do as legal manager at IDC?

ADV L Senyatsi: That job CJ involves quite a lot, I head the litigation cluster within the legal department we do all the types of litigation from commercial litigation we do a lot of insolvency related matters we do business rescues we do liquidation enquiries we do very complex schemes of arrangement I'm responsible and for making sure that the papers that are put together are correct and acceptable before court

CJ M Mogoeng: How do you see the totality of your experience benefiting the bench, if at all it will?

ADV L Senyatsi: That totality will be of benefit to the judiciary CJ, because, with the benefit of hindsight, I am aware that probabilities are that if I had not switch to corporate and do the things that I did that opportunity would not have been presented to be so I feel that they're being part and parcel of the teams inside those companies that I've been involved in actually has equip me well enough to be ready to do the job.

CJ M Mogoeng: Now, what kind of advocates did you brief?

ADV L Senyatsi: Well, we brief essentially black advocates as well as black law firms when we do the briefings.

CJ M Mogoeng: Any, I used to be a black advocate but at that time very few black women advocate where briefed, was there any sensitivity towards woman as well?

ADV L Senyatsi: Luckily not, but where I have been involved.

CJ M Mogoeng: Luckily?

ADV L Senyatsi: Luckily in my case, I mean, where I have been involved CJ, I have tried to make sure that we brief even woman, especially attorneys and conveyancers.

CJ M Mogoeng: Yes, I did not understand the luckily not part, fortunately you clarified it. And, have you had a problem with reserve judgements or not?

ADV L Senyatsi: Reserve judgement It's a problem generally but in my case I have tried as much as I can to really try and deliver judgement on time except that there was one judgement where I did and two combined matters of which one judgement was delivered on time the other one I was only told later where the parties had agreed that because the factor all the same they relate to this related parties one Judge order that actually they should be had by one judgement but by one Judge but other than that I did not have any problem with Reserve judgement.

CJ M Mogoeng: How long do you generally take to deliver results?

ADV L Senyatsi: Well I've looked at my spreadsheet CJ and you know they hover from all of them take it from one months sometimes to about three months in the mail. I can part of the reason it's you know I just tend to be very cautious before I hand them down.

CJ M Mogoeng: You're aware of some judges even permanent who take embarrassingly long to deliver their reserve judgement are you not?

ADV L Senyatsi: I Have become aware of that CJ.

CJ M Mogoeng: What do you think is the challenge why I can't they do what you do?

ADV L Senyatsi: I think, the challenge there is CJ, that we just need to be focused on what we do personally I don't sleep when I have a reserve judgement I get so concerned about it I get so concerned because my issue is we owe it to the parties that appear before us it's a constitutional mandate that you must discharge and you must do it diligently and one time so I think it's a matter of diligence we all need to be diligent and make sure that they get delivered on time.

CJ M Mogoeng: Yes, JP.

JP Mlambo: Thank you CJ. I think the outset Chief Justice I need to declare that I know the candidate, we were at varsity together one day he chased me out of his room when I laughed at him because he couldn't do Latin. We've kept in touch, so I know that candidate. Mr Senyatsi.

ADV L Senyatsi: Yes JP.

JP Mlambo: I just want to go back to the reserve judgement issue mentioned because I wanted to give it proper explanation or to clarify the issue there, that's the judgement in number 38 of your list that correct?

ADV L Senyatsi: That is correct JP.

JP Mlambo: Now you say the other judgement you are related to it, what do you mean because I understood you to be saying these were two matters that were combined into one, which required one judgement.

ADV L Senyatsi: Yes

JP Mlambo: Can you clarify your answer please?

ADV L Senyatsi: This matter as I said related to the same parties, facts where all the same and parties appearing before me through their councils agreed that the one judgement in respect of the one will be exactly the same in respect of the other so when I delivered the first judgement I think that is regarding Mokwena which was delivered sometimes in December 2017, for some reason the file of a Dave's Delivery was not with me and I made a mistake of not just putting the same the case number regarding Dave's Delivery and making sure that the same judgement was delivered so I was only elected by the attorney's sometimes this year I think it was around July or August at or by the way judge we still we still having this judgement that is part of the Mokwena judgement that forgot to have been delivered and part in fact it delivery would have been exactly the same it would have been the same in December 2017.

JP Mlambo: So if I understand you and what judges do is, they would put the names of all the parties and reflect the case numbers of all those case number the cases that have been joined together and hand down one judgement.

ADV L Senyatsi: Absolutely JP that's what should happen, and this is what I missed out.

JP Mlambo: Thank you very much let's go to your spreadsheet, you've done six weeks in the opposed motion court. How did you find coming to the bench from the sidebar as you were and mostly as an in-house lawyer?

ADV L Senyatsi: Initially it was a bit challenging I must say that the only experience I had in terms of writing anything remotely related to a judgement was the disciplinary enquiries that I often chair, but it was challenging but with the support of colleagues that I had I soon started running with it was it was it was a learning curve but I eventually get to understand what needed to be done.

JP Mlambo: Ja. Let me just go back to your experience, especially as an in-house lawyer. What sort of legal work did you do at Nampak?

ADV L Senyatsi: Nampak was a very interesting public listed company which specialises in packaging of materials being food, chemicals and so forth. So I did lot of commercial litigation I did intellectual properties in terms of registration of patents and prosecution of violations thereof. I also did

trademarks and designs so that opportunity actually assisted me in understanding exactly how the intellectual property law actually functioned because we worked with local lawyers together with lawyers all over the continent as well as overseas.

JP Mlambo: And then at the South African Airways.

ADV L Senyatsi: South African Airways when I went there I had very little experience in aviation law, but my stay there opened my new avenues into aviation law in the sense that not only did we deal with bilateral air services which are like State to a State, but we also dealt with lot of litigation as well as a competition law related matters. South African Airways especially cargo of which I was the stationed at dealt with a lot of farm complaints against it by a from other Airlines when we were held before The Competition Commission or Tribunal now and again and I was responsible on the Cargo side of putting the papers together in defence of SAA but not only that, SAA as an airline was also charged at one time by the American antitrust regulators I was very responsible in working with American lawyers putting all the papers together and even after I had left they still visited me and we put all the documents together and we successfully defended those charges so, that experience actually helped me quite a lot and I feel that it can stand in quite well for me on the bench.

JP Mlambo: And then at the IDC that's where you dealt with a lot with liquidations and business rescue.

ADV L Senyatsi: Correct JP.

JP Mlambo: And financial arrangements.

ADV L Senyatsi: Correct JP.

JP Mlambo: Right, now what do you say to the criticism against you by the bar that you do not have enough exposure as a lawyer in private practice?

ADV L Senyatsi: Well that criticism would be valid if I was not practicing law at corporate level but I have been always practicing law at corporate level I have never done anything else other than practicing law at all the companies that I've worked for. I have never lost touch with the law I've always been part and parcel of the law I was actually never lost to the legal fraternity.

JP Mlambo: I see that in the second term of 2018, you did six weeks of criminal trial work.

ADV L Senyatsi: Yes, I did JP.

JP Mlambo: And how did you find that?

ADV L Senyatsi: It was very good because criminal work its where I actually started, that was the foundation of my practice when I started as a lawyer. And, initially

I was a bit intimidated, but again with the support of colleagues I was reminded that as a lawyer you will always be there, you will always be able to grasp the issues. I am glad to say that the stint that I spent at that court was of such a nature that I was able to at least finalise one big matter within a week and the other one was part heard. It is still going to trial beginning of the new term, it was a good experience.

JP Mlambo: Thank you CJ.

CJ M Mogoeng: Thank you JP, MEC Lesufe?

MEC Lesufe: Thanks so much CJ, I think I'm covered thank you so much.

CJ M Mogoeng: Thank you Minister.

MINISTER M Masutha: Thank you CJ. I am particularly interested in your experience in the area of intellectual property law with a specific focus on the recognition and protection of indigenous knowledge systems, to what extent would you say that South African law as it stands is poised to ensure that indigenous communities have full benefit and to not continue to incur exploitation without reward of their own indigenous knowledge systems be it in the arts, and science, medicine and various other areas of human endeavour.

ADV L Senyatsi: Thank you Mr minister I think that's a very important area of the law that I think policy needs to be developed there because as matters stand now our community with all the indigenous knowledge that they have, have not organised themselves so well to be able to pursue registration of their knowledge through the regulatory system. I believe the policy should be created in terms of which that knowledge can be protected, and that policy can only be created from the regulatory point of view with the intervention of the state. I will give you an example of where I come from there are people with knowledge they are called the Mohololas(?), they have knowledge of a particular herb that they used to cure the broken bones that knowledge it's lying somewhere nobody knows the true secret of it but I believe that it is something that from the policy point of view can be looked at in terms of which people like that can be assisted to get a knowledge like that properly patented.

MIN M Masutha: Minister: And just in terms of north and south issues, just on the same subject do you believe that that an international law level, be it at W.T.O. level that sufficient systems are in place to safeguard the expatriation and exploitation of knowledge systems of indigenous communities in the developing world.

ADV L Senyatsi: I do not think that in international law there is that protection in fact in my view is that there's a lot of the more international expats or companies who are involved either in medicine or any other avenue that can be economically exploited I am of the view that they take advantage of indigenous knowledge and convert it into converted into commercial benefits for themselves and I feel that perhaps state to state when you know the state

need to deal with this issues this is some of the things that they should be looked at to try and protect that indigenous knowledge globally cause at the moment it is not organised Mr Minister.

MIN M Masutha: And flowing from the two questions my last question then becomes do you see in the interim whilst our law needs to be further developed at least through legislation in the interim do you see much room for the judiciary to play any role in ensuring that to some extent the rights of indigenous people to the exploitation and benefit of their indigenous knowledge systems are protected do you see real possibility for the judiciary?

ADV L Senyatsi: Real possibility a real possibility Mr Minister would start in my view from organising communities having workshops nationally getting to understand at local level what information and knowledge is there and what it is that can be done, but I think this is something that would be required to be driven more by government from a regulatory point of view then regulations can be put in place to actually protect that knowledge.

MIN M Masutha: Thank you CJ.

CJ M Mogoeng: Thank you Minister, Commissioner Schmidt. Yes follow up. Commissioner Didiza wants to follow up, please?

C H Schmidt: Sure.

CJ M Mogoeng: Please bear with us? I'm sorry.

Ms T Didiza: Thank you very much, it's just a follow up. I hear you talking about the need for government to create policy, legislation and improve legislation because it's there but also mobilisation of communities. One of the things I would ask you, I'm not sure whether you might following the case with regards to South African agricultural industry and European Union on issues of geographic indications where and this is not what you call a traditional communities where the European parties particularly different States felt that South African agricultural industry can't use certain names which they have used for a number of years such as a champagne, grappa, uzo(?) so how would you say you know from where you sit and the work that you have been doing in commercial or some of those issues particularly on trade matters states can protect themselves from arbitrary because I would work from a lay persons point of view I thought it was arbitrary in the manner in which it was used?

ADV L Senyatsi: Thank you Commissioner Didiza. My view it's simply this, that if the word use of any name or trademark has been in existence long before anybody else could start I mean like champagne, champagne I think it's just it's just a word that is acceptable related to wine but I do not think that there is any country in the world that is actually entitled to the use of that word champagne. As far as I'm concerned in our law if that invention is not new there should not be any protection afforded to it. My view South African

organised agriculture is correct to resist the protection of the use of that name, because it's not new.

Ms T Didiza: They lost it because they used it in reference to a location that's why it's called geographic indication because it is associated with a region in France which is called Champagne.

ADV L Senyatsi: I'm not even sure that, I hear you miss commissioner, but I'm not sure if you asked me and I'm a layman when it comes to wines but champagne, I took it to be just the wine in particular kind of a wine at least my understanding.

CJ M Mogoeng: Commissioner Schmidt.

C H Schmidt: Thank you CJ. Mr Senyatsi, you indicated that you were a ANC member from 1999 to 2012. Did you occupy any office within the ANC or did you hold any public office?

ADV L Senyatsi: I did not occupy any office within the ANC. I was just a member

C H Schmidt: And no public office.

ADV L Senyatsi: No public office.

C H Schmidt: Thank you Mister CP.

CJ M Mogoeng: Commissioner Cane.

C J Cane: Thank you CJ. Good afternoon.

ADV L Senyatsi: Good afternoon Commissioner Cane.

C J Cane: You've been employed, I understand in an executive capacity into state owned enterprises, the SAA and IDC. What is going to be your approach when a review application is brought against either of those institutions and you sitting on the bench?

ADV L Senyatsi: Well first of all if I was never personally involved in the matter myself, I do not see any reason why I should not be able to deal with it. But to the extent that the matter may involve some of the agreement that I may have signed, I would definitely recuse myself, Ms Commissioner.

C J Cane: Thank you and one more question. What would be your approach be in relation to disclosure of the record of the decision in the possession of a state-owned enterprise?

ADV L Senyatsi: The, that is regulated by law and to the extent that the law requires any state enterprise to disclose any information to any interested party that information should be disclosed.

C J Cane: Thank you Sir Senyatsi.

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

C N Thomas: Good afternoon Mr Senyatsi, thank you CJ.

ADV L Senyatsi: Good afternoon Commissioner Nkosi Thomas.

C N Thomas: One is due to bound to bring this comment to your attention which is contained in the report, provided to us by the GCB. Paragraph 16.1 page, well do you have it?

ADV L Senyatsi: Page?

C N Thomas: Page 83, there is, perhaps I should do this. This is book 1 of 1.

ADV L Senyatsi: Yes, I have page 83.

C N Thomas: Of the GCB report?

ADV L Senyatsi: And then it's paragraph?

C N Thomas: Paragraph 16.1. See that. Book 1 of 1.

ADV L Senyatsi: Book 1.

C N Thomas: Of 1.

ADV L Senyatsi: Book 1 of 2, Book 1 of 1, yes.

C N Thomas: That's right. And there is a divider there, which is marked GCB, mine is...

ADV L Senyatsi: Yes.

C N Thomas: The green face to it.

ADV L Senyatsi: And that page?

C N Thomas: Page 83, paragraph 16.1. it's a comment I consider adverse[*sic*], but let's just help each other.

ADV L Senyatsi: Yes, yes.

C N Thomas: They say it...

ADV L Senyatsi: 15.1?

C N Thomas: 16.1

ADV L Senyatsi: Yes, I see that.

C N Thomas: Thank you, so just so we all on the same page.

ADV L Senyatsi: Yes.

C N Thomas: It reads a review of the candidate's judgements. Discloses a paucity of references to constitution and the constitutional principles. The candidate was not involved in community projects in his professional capacity. I'm concerned pretty much with the first two lines, that are you able to explain? Is this, first of all correct? And if so, why has there been such a paucity in your referencing as regards to constitution?

ADV L Senyatsi: There is one, there is one judgement Commissioner Thomas Nkosi Thomas that I wrote involving a matter of constitution and I think that case involved a, it was an NGO vs Ekurhuleni Municipality where the issue was really whether or not the municipality that pledges to support a cause or a sponsor an event whether they could rely on the provisions of, I think it's section 217 of the constitution for not paying. As well as section 116 of local government Public Finance Management Act. What happened in that case was that after giving that pledge, when it was time for the municipality to pay, after being prominently displayed in the promotion material as a sponsor of the event, they then refused and said well we did not comply with the provisions of the constitution and my view was when I referred to the constitution in that case was that, that case the section was neither procurement of service or purchase of goods. And I specifically made reference in that case in passing that what ought to happen is that there's a need for our legislature to review on how sponsorship should be dealt with. And in particular had in mind although I didn't write about it, that the judgement of our fun, I mean the funeral of our founding father of this Nation, actually from the media report that we saw, there were a lot of issue around how the sponsorship of that funeral was actually dealt with. So my view is yes, I might not have had an opportunity of actually dealing with lot of constitutional issues but when those issues did present themselves, I did actually refer to the constitution. And my view is, is as and when I'm confronted with any matter dealing with the constitution, I should be in a position to actually apply the constitution.

C N Thomas: You see Mr Senyatsi, the constitution is the supreme law of the land and when has regards to your answer at page 15 of book 1, 2, okay what is it? Book 1 of 2.

ADV L Senyatsi: Yes.

C N Thomas: Which asks the question what proportion of your work is in the sphere of constitutional law, you said the 8%. Now, the question that comes to the fall certainly to me, is whether it can be said that you are

adequately proficient in constitutional law and the principles that emerged there from to be elevated to the bench at this stage?

ADV L Senyatsi: As I understood the question, it really related to the time when I was in private practice and at the time when I was in private practise, that was given, the answer was given in the context of that. It was not given in the context of the bench work that I was doing now.

C N Thomas: Perhaps I didn't make myself clear. The question is, are you confident that your adequately...

ADV L Senyatsi: I am confident that I'm adequately equip and ready to deal with and apply the constitution.

C N Thomas: Thank you.

CJ M Mogoeng: Commissioner Norman.

C T Norman: Thank you CJ. Good afternoon Mr Senyatsi.

ADV L Senyatsi: Good afternoon Commissioner Norman.

C T Norman: Yes thank you, just as a follow up to the question Commissioner Nkosi Thomas put to you, it relates to paragraph 16.1 of GSB comment. They say, the last sentence, she dealt with the first part of it, but the last sentence says, the candidate was not involved in community projects, in his professional capacity. But then may I also refer you to what you have stated in your application book 1 of 2, paragraph 7 of that questioner, which is your questioner, it would be page 17.

ADV L Senyatsi: Yes.

C T Norman: Could you just read the last sentence, in fact all of that paragraph.

ADV L Senyatsi: I was a part time lecturer six years from 1990 to 1995 at University of Limpopo. I gave lectures in mercantile law, company law offered. I offered one and a half lectures twice a week on Tuesdays and Thursdays evening. This was for me a way of giving back to the community of students and my contribution to the field of law and I believe that I made a success of it.

C T Norman: So with that comment that you have not contributed to community projects, in your professional capacity, would that be correct then?

ADV L Senyatsi: It's not correct.

C T Norman. Thank you. Thank you CT.

CJ M Mogoeng: Thank you Commissioner Norman, you're excused sir.

ADV L Senyatsi: Thank you.

CJ M Mogoeng: You want more? [indistinct]