

Judicial Services Commission interviews

6 October 2015, Afternoon session

Northern Cape High Court

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Interview of Adv S L Erasmus

Chairperson (Deputy Chief Justice Moseneke): Welcome, Advocate Erasmus. You will have forty-five minutes, you will field questions, and you will do most of the talking in order to persuade the Judicial Service Commission (JSC) to recommend you to the president for permanent appointment to the High Court of the Northern Cape. I will question you, then the DJP and the MEC from your province, then the Committee at large. Feel free to ask questions at any time.

Chairperson: Where were you born? What do you remember of your upbringing? Was it a pleasant upbringing? Did you live in a farm town?

Adv Erasmus: I was born in Hartswater, a small town about 120 kilometres from Kimberley. I did all my schooling in my hometown. There were about 300 learners. I was lower-middle class with a police officer father and a chemist mother. It was a pleasant upbringing. My community was rural but I lived in a town.

Chairperson: How were you able to go to University?

Adv Erasmus: I performed well in school received a state bursary from the old Department of Justice with their old fifty-fifty scheme. In the summer I would work in the Magistrates office in Hartswater and during the term I attended university. My first year was at Rand Afrikaans University and my second and third years were at the University of Pretoria.

Chairperson: So your parents could not by themselves afford university.

Adv Erasmus: No, they could not.

Chairperson: So your hard work made this all possible. From there your work was very closely followed by your LLB from the University of South Africa, something we share in common.

Adv Erasmus: I started off by being appointed as a prosecutor, and because the work was all-new to me I decided not to proceed with my studies in my first year of work. Thereafter, I enrolled at UNISA for my LLB while remaining a prosecutor.

Chairperson: Where you already had a BJuris. You show remarkable consistency; you stayed with the Department for over twenty years.

Adv Erasmus: Yes, from November 1980 to 2007 with one break when I had my only child in 1997.

Chairperson: What is your view about your prosecutorial role? Did you like it? Where you good in that role?

Adv Erasmus: I loved being a prosecutor. Though for some of it I was in Pretoria, most of that time I spent in Kimberley. Things changed over time, and I eventually became Chief Prosecutor of the Northern Cape. I was mostly involved with administrative functions and staff issues during that time; I started missing the court setup. I eventually resigned and joined the bar in Kimberley in 2007 to widen my views and experience.

Chairperson: And you have occupied that position up until today?

Adv Erasmus: Yes.

Chairperson: What was the big change in moving to the bar?

Adv Erasmus: Moving from criminal to civil. I expected to be doing criminal cases, but actually she had many civil cases. I am very grateful for the fact that 90% of my work at the bar was civil litigation.

Chairperson: Why do you want to change again now?

Adv Erasmus: I started acting in 2011. I enjoyed the work very much. Again, this job would allow me to have an even wider scope of experience doing both criminal and civil litigation.

Chairperson: What is the primary role of a judge?

Adv Erasmus: A judge must be fair so that everyone feels that justice has been served. People must understand your decision.

Chairperson: How would your background/life experience help or inhibit your role as a judge?

Adv Erasmus: given my age, wide experience, and knowledge of the province, I will ensure that justice is served receive a perception that I am someone who understands the people and who can do the work. In general, I will have a positive reception.

Chairperson: Why should the number of women be increased on the bench?

Adv Erasmus: Although there are three women of colour on the bench in the Northern Cape, more women are necessary, given the general composition of the bench in this country.

Deputy Judge President Tlaetsi: Your acting stint began in June 2011?

Adv Erasmus: My first one, yes. My current one started in April.

DJP Tlaetsi: According to my assessments, you have been acting for 38 weeks. During your acting stint, what aspects of law have you not covered?

Adv Erasmus: I have little experience with Constitutional law. Other than that, all things.

DJP Tlaetsi: Have you been on circuit court?

Adv Erasmus: Quite often. 53% of the Northern Cape people are Afrikaans. I have done much circuit court work in rural areas like the Karoo towns.

DJP Tlaetsi: How do you find your relationship with you colleagues?

Adv Erasmus: I get along well with my six colleagues; it is essential that a small bench like ours get along. They have been very supportive.

DJP Tlaetsi: What will your strongest contribution be if you are appointed? .

Adv Erasmus: I have broad experience, but my best attribute is that I work very hard and fast.

DJPTlaetsi: During this period, what challenges did you come across? How did you handle them?

Adv Erasmus: The major challenge in the Northern Cape is the distances between towns. Sometimes you travel to Upington from Kimberley only to find that a matter has been postponed. Our administrative support from the Office of the Chief Justice is good. I have not experienced challenges with work.

DJP Tlaetsi: With postponement of cases, there is a system of case-flow management where the where we hold pre-conferences before we send judges out to circuits in order to ensure that cases do proceed.

Adv Erasmus: This helps a lot. I am actively involved in case-flow management. Some issues are unavoidable such as consultations of the legal board with their client, or more than one accused creating a conflict of interest. Such things cause postponement.

DJP Tlaetsi: Have you encouraged legal aid to ensure that there are prior consultations for local matters?

Adv Erasmus: Yes, we do that. These matters are covered in pre-trial.

MECShushu: You say that you understand the people of the Northern Cape well. This would put you in good standing to adjudicate. As an advocate, how have you been involved in community outreach or development programmes to help people understand and access the legal system? Many ordinary people on the ground do not have a proper understanding.

Adv Erasmus: This is a problem in the Northern Cape. Throughout my career, I have been actively involved in outreach work on the ground. As an advocate, I act as bar representative whenever there is community outreach. I am also the bar representative to the Northern Cape Efficiency Enhancing Committee. The president thereof organizes efforts to educate the people of the Northern Cape; I help him with that.

MECShushu: Many of these examples are mandatory with your responsibilities. Outside the scope of your job, what have you done voluntarily?

Adv Erasmus: As I say on my CV, I am a member of the Rotary Club and I have worked with children of disadvantaged communities to educate them of their rights through the Rotary Club. I am Chairperson of a school governing body involved in informing children of their rights and the dangers of drug and alcohol abuse; substance abuse is a major issue in our province.

AdvHellens: What is your understanding of the doctrine of separation of powers?

Adv Erasmus: The judiciary must be independent. Our Constitution is the supreme law of the country. The judiciary must protect the separation of powers and enforce the rule of law. One section must not interfere with another section.

AdvHellens: What is your understanding of judicial accountability?

Adv Erasmus: All judicial officers should adhere to the conduct and the norms and standards. Should you divert from that, you can be held accountable. The process of reviews and appeals also hold judicial officers accountable.

AdvHellens: What is your judicial philosophy?

Adv Erasmus: A judge should be aware of where he or she comes from and that judgments should be given with empathy. A judge should know where people come from. A judge should stay independent and avoid external influence.

Adv Semenya: I notice that you hold equity in a building housing the bar counsel in Kimberly. Are you aware of the difficulties that this creates in conjunction with housing for black colleagues?

Adv Erasmus: As you are aware, we have a problem with representivity. We currently only have one black member of the bar. He is housed in the same building. The code of conduct prohibits judges from holding positions of director in companies. We had problems in acquiring suitable chambers. We bought the building as the bar, but not all people could afford this. Those of us that could, we bought the building. Now the Northern Cape Society of Advocates is renting the building from us, but all members of the bar are housed there.

Adv Semenya: Are you aware of the history of the rules of bar counsel there saying that this black member cannot access the library at a certain time?

Adv Erasmus: No, this is not a problem in the Northern Cape.

Adv Semenya: We, as advocates for transformation, sought audience with the Chairperson of the Northern Cape Bar because the situation of this single member was made intolerable. Were you aware of this?

Adv Erasmus: I am aware that there are disciplinary actions against a certain member of the bar. But, the library is open to all advocates and members of the bar 24 hours a day.

Adv Semenya: No black pupils can take pupillage unless the entire Northern Cape Bar agrees. Are you aware of this?

Adv Erasmus: No, that is not correct. I am the pupillage coordinator and I do the shortlisting. We sit as a committee and we select the candidates. Currently there are three members that make the selections. There are two pupils at our bar currently; there is one black male and one black female.

Adv Semenya: Can you tell us what were the difficulties of having black members at your bar?

Adv Erasmus: I think that people use the Northern Cape if they cannot make the bar anywhere else; people come in from the outside. What we try to do is to get people from the Northern Cape and have them serve pupillage in hope to retain them. However, sometimes people leave after serving pupillage.

Adv Semenya: Have there been any efforts to assist the solitary black member?

Adv Erasmus: I am not sure to whom you refer; we have one full time black member at the bar who resides in Bloemfontein. We had associated members as well.

Adv Semenya: The only member you have. Are you aware of any times where other colleagues have brought him into their matters?

Adv Erasmus: There are very few matters in the Northern Cape where more than one Counsel is employed. The type of work is rarely of that nature. Up to 2015, there was only one Senior Counsel. Now there are two.

MsNtlama: You remark in your application that you have not appeared before the Constitutional Court. Is the application of constitutional law limited to appearance before the Constitutional Court?

Adv Erasmus: I have not. No, it is not so limited.

MsNtlama: How will you apply the Constitution without knowledge of it?

Adv Erasmus: My response in my application there was referencing work specifically with Constitutional matters; obviously the Constitution applies to all matters.

MsNtlama: Do all matters not hinge on the Constitution?

Adv Erasmus: Yes, surely if you deal with, for example, an unlawful arrest, you must reference the Constitution. My reference there is that I have not argued a specific point of the Constitution or having legislation declared unconstitutional.

Dr Motshekga: What is your mother tongue?

Adv Erasmus: My first language is Afrikaans. 53% of Northern Cape people speak Afrikaans. 36% speak Tswana. The rest are divided up between the other languages; English only comprises 5%. The San and the Khoi people have their own languages, for example.

Chairperson: All 11 languages are acceptable. Anyone can burst into any language at any time.

Mr Malema: Why do you want to be a judge?

Adv Erasmus: I can help the Northern Cape and I enjoy the work. It gives you the opportunity to do research into more specific matters, to listen and to adjudicate. I have enjoyed practice at the bar, but to me the work of being a judge is very enjoyable.

Mr Malema: So you want to be a judge to do research?

Adv Erasmus: No, my answer is much wider. I am there to adjudicate and to serve justice.

Mr Malema: What is your understanding of judicial transformation?

Adv Erasmus: We should address inequality and promote a diverse bench in the country. Diversity in race and gender is essential.

Mr Malema: So you agree that the JSC has a duty to transform the judiciary. If the JSC appointed a black person instead of you, would you think that that is the right thing to do?

Adv Erasmus: There are no white women on the bench in the Northern Cape. My appointment would promote diversity. The last white female was in the 1970s.

Mr Malema: What does 'practicality of interference' with regards to the state mean? For instance, if you say that the Judiciary should not interfere with the Executive, what do you mean? How is interference done?

Adv Erasmus: The Judiciary should only interfere within the scope of Constitution.

Mr Malema: So we agree that the Judiciary can interfere with the Legislature and the Executive?

Adv Erasmus: Yes, should it be required by the terms of the Constitution.

Mr Malema: What is your understanding of a unitary state?

Adv Erasmus: I am not into politics, but that would be where Parliament is sovereign.

Mr Malema: I am asking a simple question. You emphasise that you are from Northern Cape. South Africa is not a federal state, but a unitary state. Anyone from anywhere, therefore, could be of service in the Northern Cape.

Adv Erasmus: Indeed so; we are one country. There is one Judiciary. However, you should look at the specific province.

Mr Malema: If we appoint a qualified person from KZN, we will not be wrong because South Africa is a unitary state.

Adv Erasmus: I can never say that it will be wrong; if it is there to promote transformation then it must be done.

Mr Malema: So why do you keep emphasising you being from the Northern Cape if South Africa is a unitary state?

Adv Erasmus: I am here applying for a Northern Cape position. If the JSC decides that it should be a person from elsewhere, then I will abide by any such decision.

Mr Malema: We should look at the qualifications of an individual, not the geographic location.

Adv Erasmus: That is correct.

JP Kgomo: How long have you served as a judge in the Northern Cape?

Adv Erasmus: It has been 38 weeks, according to Judge Tlaetsi.

JPKgomo: I have been on the bench for 17 years. If I did not go outside the Northern Cape, would there be any black or female judges in the Northern Cape who are from the Northern Cape.

Adv Erasmus: There are not. The only judge from the Northern Cape is Judge Olivier.

JP Kgomo: You were involved in two long-running cases. Who would I have appointed for those cases if not you?

Adv Erasmus: I am the third most experienced person at our bar.

Chairperson: You have been on the bar since 2007.

Adv Erasmus: Yes.

Chairperson: You are also a member of the Northern Cape Society of Advocates since 2011.

Adv Erasmus: Yes.

Chairperson: The Northern Cape Bar Council did not recommend another candidate who is competing with you. Are you aware of this? They did support your candidature.

Adv Erasmus: No; I have been acting since April. There are four other members of the bar; I was not a part of the decision, though I heard about it. The Office of the Chief Justice informed me that they are supporting my candidacy.

Chairperson: Many questions have referenced this intra-territoriality. It's a small bar; everyone knows everyone and their career goals. How can one instill a breath of fresh air there?

Adv Erasmus: Our Chief Justice has succeeded in drawing fresh air. Our bench represents the demographics of the country.

Chairperson: So you accept the value of diversity. The more the same we are, the poorer we are.

Adv Erasmus: Yes. I fully agree. Each one of us brings something unique to the bench.

Adv Nkosi-Thomas: Given your awareness and support of diversity, what have you done personally to contribute to the development of diversity in this country?

Adv Erasmus: As a prosecutor and as chief prosecutor, I was responsible for recruiting prosecutors. We ran programmes to promote diversity. This was not all me, but the prosecution service has been transformed. On the bar, I have sought pupils that would promote transformation. This past year, our two pupils are a black male and a black female.

Adv Nkosi-Thomas: It is harder to retain pupils. What have you done to prevent pupils from exiting through the proverbial revolving door?

Adv Erasmus: I have not been at the bar for most of the year. If I went back, I would definitely take back the pupil that was allocated to me. I have known her since her high school days; she has great potential and I will take her under my wing. I will ensure that she, along with the other two females there, goes to court and learns. The important thing that we should note with young advocates is that they should start in motion court and short trials.

Adv Nkosi-Thomas: In Johannesburg, in my group, the Silks have established a junior fund. So, when you get briefed and you do not have a junior and there is an individual who has potential of going to the SCA or the Constitutional Court, you will have a junior, previously disadvantaged, getting exposed to the attorneys, work, and courts, and the group will pay. You may want to consider this.

Adv Erasmus: The province has considered that, but that the province is poor. The type of litigation we do is much different. I have definitely taken note of this idea, however. The practices of the advocates in the Northern Cape are not big practices, but that they are committed to transformation.

Adv Semanya: You are a member of the General Counsel of the bar from 2007 to date.

Adv Erasmus: Yes, through my bar. I am not serving on any committee there, but the Northern Cape Bar is so affiliated.

Chairperson: It is your moment to tell us why you should be appointed.

Adv Erasmus: My appointment will bring much broad experience and promote diversity on the bench.