

## Judicial Services Commission interviews

6 October 2015, Afternoon session

### Northern Cape High Court

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### Interview of Adv L G Lever SC

Chairperson (Deputy Chief Justice Moseneke): Welcome, Adv Lever, to the JSC. How do you pronounce Lever? Our primary task is to assess whether to recommend you to the President for nomination to the High Court in the Northern Cape. The JSC will ask questions for forty-five minutes. Please feel relaxed.

Chairperson: Where were you born?

Adv Lever: Johannesburg.

Chairperson: You now live in Mafikeng. Why do you live there?

Adv Lever: I have lived there for quite some time. I have had my professional career there mostly.

Chairperson: Tell us about your childhood, the quality of your education, and your time at Rhodes University.

Adv Lever: I was born and raised and schooled in Johannesburg. I remember it as a happy childhood. My education was of good quality. My time at Rhodes was during a turbulent time, but Rhodes was a bit of an island of relative calm. There were many political developments.

Chairperson: Were you involved with the political turmoil of the time?

Adv Lever: I was not actively involved; I was preoccupied by the newfound freedoms of University life, though I was aware of the political situation of the time and not disengaged.

Chairperson: You taught at the University of the Northwest for a few years. Why?

Adv Lever: I taught there for two years. I first did my pupillage at the bar, followed by a short stint in academia.

Chairperson: You were an MP in the NCOP for a time.

Adv Lever: I was in the NCOP from 1999-2004, and have not been involved in politics since. Afterwards, I built my practice up again from scratch.

Chairperson: Why did you join the Lawyers for Human Rights organisation?

Adv Lever: They represent the values I share and I felt that I could assist them.

Chairperson: After 2004, did you continue political affiliation?

Adv Lever: Not at all. I went straight back to practice.

Chairperson: Hopefully you are now settled in. Please give us a description of judicial functions.

Adv Lever: Judges must regulate social contracts, commercial contracts, and also to administer justice where required.

Chairperson: From where do judges draw societal objectives and the values that drive the Judiciary?

Adv Lever: Primarily, the Constitution. That is the primary source of our aspirations.

Chairperson: Are you a progressive? Do you embrace the mission of the Constitution?

Adv Lever: I view myself as progressive. I support the Constitution.

Chairperson: You took your Silks in 2014. Congratulations. How would you describe your practice? You suggest a split in your papers; your practice seems very general.

Adv Lever: I practiced in a very small, rural bar, which requires one to be a jack-of-all-trades. I have also practiced in Botswana. My practice has generally been commercial and widely cast.

Chairperson: Why do you seek a post in the Northern Cape?

Adv Lever: Kimberley is similar to Mafikeng. It is not important to me to remain in one place. I lived in Cape Town as an MP.

Chairperson: You appear to have two reserved judgments. What is their status?

Adv Lever: They have been handed down.

DJP Tlaetsi: You are currently acting as a judge in the Northern Cape. You have also acted in the North West from 2007 to 2009. Your spreadsheet shows 44 weeks of service. Your current acting stint began in August. Why Kimberley?

Adv Lever: I enjoy Kimberley and the work.

DJP Tlaetsi: What types of law have you not been exposed to?

Adv Lever: Labour law. It is not something that we would do in the high court.

DJP Tlaetsi: Others have observed that you are motivated for your work.

Adv Lever: Thank you.

DJP Tlaetsi: You were one of the founding members of Lawyers for Human Rights when it was launched in Mafikeng. During that period, we did some political cases together. There were women marching and students revolting that we represented.

Adv Lever: Yes; the first application was a late night urgent application to gain access to that.

MEC Shushu: Would your appointment serve the cause of transformation? What prompted you to leave your practice for public politics? How can you convince us that you have been cleansed of your political ideologies? Politics creates an ideological slant on issues like transformation.

Adv Lever: Transformation aims to remedy the past practice of the judiciary wherein it only protected the interests of white males. The Northern Cape has a large coloured population, Afrikaners, and Tswana and Xhosa people. Transformation is a Constitutional imperative, though not an absolute imperative. I am who I am; I cannot change that. I believe that I live by the values of the Constitution, and that I will continue to promote these values. This practice of mine will promote transformation. As for politics, all South Africans have political ideologies, but different political groups in this country share the same aspirations. I believe that I can help South Africa reach these aspirations. I hope I have the privilege to make a contribution.

Mr Malema: You were in University in the 1980s. You were conscious of what was happening at the time. You decided not to be involved at the time.

Adv Lever: I was not involved with politics then.

Mr Malema: In 1999, when not much was going on, you got into politics. Why then? What made you shift?

Adv Lever: In the 1980s I was preoccupied by being a student. People do develop and change. I am grateful for the opportunity to participate in Parliament, but realised eventually that my political shelf life was at an end thus I went back to being an advocate.

Mr Malema: Why did you join politics in 1999?

Adv Lever: I believed that there was a political contest going on and that I could play a role. I was privileged to be in Parliament. I cannot explain it further.

Mr Malema: Why did you leave in 2004? Who encouraged you to do this?

Adv Lever: I experienced politics and realised that it was not for me. My political shelf life expired.

Mr Malema: Would it be appropriate for political parties to push people to be a judge?

Chairperson: Have you been deployed by a political party to become a judge?

Adv Lever: I have not been deployed by any party.

JP Kgomo: I invited you to come and act in the Northern Cape for several stints. When last did you practice?

Adv Lever: I have not practiced actively since 2013. I may have had an urgent application, but it is difficult to commit to a client when you know that you are going to be an acting judge.

JP Kgomo: We discussed that your acting stint ends on 31 October of this year in order to conclude a long-running racketeering case. Is that correct?

Adv Lever: Yes.

Minister Masutha: When were you a member of Lawyer for Human Rights?

Adv Lever: 1987-1988.

Minister Masutha: Why did you leave?

Adv Lever: I shifted my focus to academia around that time.

Minister Masutha: When did you begin again to practice?

Adv Lever: I still worked for Lawyers for Human Rights (LHR), just not as actively.

Minister Masutha: Was your relationship with LHR purely due to the litigation at the time?

Adv Lever: I primarily assisted with litigation. I joined LHR before I got involved in litigation. I would not characterise it in the way that you do.

Minister Masutha: Would it be unfair to say that your involvement with LHR was very short and did little to influence you? What should we make of your association with LHR?

Adv Lever: I was a member for a short time; I assisted where I could during that time. I do not want to misrepresent the experience.

Minister Masutha: When did you join the Democratic Party?

Adv Lever: I joined in 1999, and then soon thereafter went to Parliament.

MsMagadzi: I wanted to ask about communal land issues in relation to mines. How do we deal with property rights and the relationship to tribal leaders and how is land entrusted in order to take care of it? If you get appointed to the Northern Cape, one of the challenges is fetal alcohol syndrome. How will you address these societal ills?

Adv Lever: These issues have come up around communal property associations. Who controls assets and who gets mining rights is problematic. This area needs to be dealt with sensitively. Many solutions will be political. Alcohol is often the underlying cause of the criminality. The principal solutions would be political.

MsMagadzi: These may be political matters.

Dr Motshekga: If one wants to interpret a statute of the Constitution, one must consider the history of that statute or the Constitution. What are some documents that are the history of the Constitution?

Adv Lever: The interim constitution, charters of political parties, and the Freedom Charter.

Dr Motshekga: Your background with the DA will influence your interpretation of the Constitution.

Adv Lever: I hope to emphasise commonalities rather than differences.

Dr Motshekga: How will you preserve the independence of the judiciary?

Chairperson: The JSC will have to decide whether past political affiliations should affect an application. Adv Lever properly disclosed his political past. We cannot make assumptions. Adv Lever answered that he has not been deployed by a political party. Past affiliation should not be a bar in and of itself. It is time for closing remarks.

Adv Lever: My record stands well. I have always only considered cases based on the facts, not by ideology, and I will continue to.

Chairperson: The Bar Council's recommendation was glowing. You are free to go, Adv Lever.