

## Judicial Services Commission interviews

6 October 2015, Morning session

Gauteng High Court

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### Interview of Mr M L Twala

Chairperson (Deputy Chief Justice Moseneke): Good morning to MrTwala. You may speak whichever language you are most comfortable. In forty-five minutes, you should convince the JSC as to why you should be recommended to the President for permanent appointment.

Chairperson: Where and when were you born? Describe your upbringing. What stands out in your childhood?

MrTwala: I was born in Germiston on 20 June 1955. I am now 60. I was brought up by both parents in a good Christian home. I was taught to respect the elderly and everyone and to not judge people until I know them.

Chairperson: Was poverty was an issue?

MrTwala: My parents were illiterate and that they struggled to make ends meet.

Chairperson: Were you aware of inequality? I want to hear about the striking things about your childhood and the conditions in which you grew up.

MrTwala: I grew up in the township; townships are rife with poverty.

Chairperson: Why did you choose to be a lawyer?

MrTwala: When I first registered at university in 1976, I registered as a BComm student. The university was burned down that year during riots. When I came back in 1977, I was told that I did not qualify for BComm because I did not have Maths as a subject in Matric. I had to either do a BA or law. I chose law.

Chairperson: So you became a lawyer by chance. You have been an attorney since 1986.

MrTwala: Even now I strongly enjoys my work and I do not regret the change.

Chairperson: Why do you want to be a judge?

MrTwala: I want to serve the people of this country on another level. I have served them as an attorney for many years. I am qualified, competent, and diligent. I am grateful to have had the opportunity to be a judge and confirm that I can do the work.

Chairperson: What three things would you change about the judiciary?

MrTwala: This is a difficult question. First, there should be more judges because there is more work to be done. Second, more black and women judges are necessary. Five candidates today are women; this shows improvement in the profession.

Chairperson: Let me reframe the question as what could judges do better? I am trying to gauge how you would behave as a judge and improve the judiciary. The judiciary needs new blood and new ideas. I would like, for example, the work of judges to be digitised and for there to be access to a search mechanism for judge's records

to promote efficiency. I want to find ways to dispose of cases more promptly. I want judgments to be written more efficiently and I want South Africans to be able to understand judgments.

MrTwala: Your wish list can be achieved through training. Judges can be trained to use computers.

Chairperson: I am asking for your wish list. I am inviting you to show the JSC that you will be a judge who advances change in the workplace.

MrTwala: I have not thought of any.

Chairperson: You must be one of the early and few African conveyancers in this country. You opened many township title registers. That is a very socially sensitive role.

JP Mlambo: Here is a spreadsheet showing forty weeks of acting stints, though this may not cover everything.

MrTwala: I recorded forty-one weeks.

JPMlambo: You have done your fair share, more than most in the Urgent Court. Four weeks in total. How is that work?

MrTwala: It is difficult because the decision must be given at that time.

JP Mlambo: As Judge President I get to hear about the things that are happening in my courts. There is a week where you were in the Urgent Court as a Junior Judge. The convention is that the Senior Judge takes the more complex work, but in that week you handled a business rescue matter with something like six SCs.

MrTwala: There were seven.

JP Mlambo: How was that experience?

MrTwala: I was thrown in the deep end and I successfully swam in that situation.

JP Mlambo: White Silks normally would take this case away from an acting judge of colour that they do not know. I can confirm that you judged competently. Hopefully South Africa has now moved to a place where colour does not determine the competency of a judge. This spreadsheet includes three full terms. Did these terms harm your practice?

MrTwala: These experiences are invaluable, and that harm to the practice is fixable.

JPMlambo: You have done eight weeks in appeals. Have you ever served in a full court?

MrTwala: I have served in a full court in Pretoria with two Senior Judges.

JP Mlambo: A nice mark of confidence. Who wrote the judgments?

MrTwala: I wrote one and the other two wrote the other two. It was Judge Baqwa and Judge Fourie.

JPMlambo: You have done seven weeks in that appeals court. That is a difficult court.

MrTwala: You need to read your documents; otherwise you will end up giving orders that you do not understand.

JP Mlambo: I received no complaints about your time there. It is one of those courts that black judges often find difficult. Thank you for flying the flag. You are a township boy. What message will your appointment send to kids in the township about the legal system?

MrTwala: As an attorney, I am already a role model. To be a judge would really earn the respect of the people. The people will believe in the justice system and know that those sitting up there understand their problems.

Chairperson: In MrTwala's papers, certain disclosures about past legal troubles are made. Should these have been disclosed to the Judge President sooner? I am not diminishing the efforts that you have made; you stopped drinking in 1989. Congratulations. None of these issues have to do with honesty.

MrTwala: Yes, I should have informed the Judge President. I was not, however, trying to hide it.

Chairperson: Disclosure is very important in showing honesty. Judges have to demonstrate a permanent inclination to be honest. I am not suggesting that there is any dishonesty here. Is there anything you want to say about this disclosure matter?

MrTwala: I want to apologise for not disclosing to the Judge President. This was an oversight on my part.

Dr Motshekga: All candidates thus far have been well known and have received adequate guidance from the judge president. Would you say the same of yourself?

MrTwala: I am not a judge president. I have worked with colleagues at both the Johannesburg and Pretoria Courts, and I have received assistance from those colleagues including the Judge President.

Dr Motshekga: You seem to be a very modest person. You say very little about your good contributions; you only talk about them when the Judge President asks you about them.

MrTwala: This is only your assessment.

Dr Motshekga: I am amazed that you do not have three goals for improving the judiciary. How could you forget transformation? As far as transformation, this concept is not about replacing white with black, but rather about appointing progressive lawyers who seek social justice.

MrTwala: I agree with you. I mentioned that, coming from Gauteng, five candidates are women. This is part of transformation.

MrA Nyambi, Member of the National council of Provinces: Can you share your understanding of the doctrine of separation of powers?

MrTwala: There are three branches of government: the Legislative, Executive, and Judiciary. The Legislature promulgates the rule of law, the Executive enforces the law, and the Judiciary oversees that the laws and the execution of the laws is in line with the Constitution. The Judiciary, as the Deputy Chief Justice has said, is like the conscience of the three.

Mr Fourie: With regards to the two convictions for negligent driving and intoxication: were they after your admission as an attorney?

MrTwala: This is correct.

Mr Fourie: So you could not have revealed these incidents when you applied to be an attorney. You were already a practicing attorney.

MrTwala: I disclosed both of them when I applied for admission as a conveyancer and when I applied for admission as a Notary Public.

Mr Fourie: I actually wanted to ask about that. In your application, you say that you have done one-fourth criminal cases. Then, when you get to Constitutional law, you write "n/a". Should you not have said zero?

MrTwala: I should have said zero so that the percentages would add up. It was not my intention to disregard Constitutional law.

Mr Fourie: You are a member of a Transport CC? What does this CC do?

MrTwala: I own steel transport trucks through this CC.

Mr Fourie: Since you are the only member of this CC, if you resign, would that be the end of the business?

MrTwala: I hope not. I am the only person, but my wife could take over.

Mr Fourie: Does she have the skills for the operation? Has she been involved at all?

MrTwala: I think that she could learn. She has been involved.

Chairperson: MrTwala, it is time for your last word. Why should we appoint you? Why have you never been to the third court?

JP Mlambo: The candidate is correct in that he has no control over the allocation of cases. Since you started acting, I have put you in a pool of candidates for future appointment. Please tell the JSC about conversations between myself and you on how you found your time as an acting judge, whether you had problems in particular areas, and whether you ever needed support.

MrTwala: At the end of an acting judge stint, I would thank the Judge President for the opportunity and discuss problems from the case. I cannot recall any problems from my acting stint that required the attention of the Judge President except the one from Urgent Court with seven SCs.

JP Mlambo: You are here due to my encouragement.

MrTwala: That is correct.

Chairperson: Again, it is now time for final comment.

MrTwala: Thanks to the Judge President for the invitation. I believe that I am qualified to be a judge, competent, and diligent. I have been an attorney for twenty-nine years and have seen it all. I want to serve on a different level.

Chairperson: Thank you for coming. Please invite in the final candidate for Gauteng.