

Judicial Services Commission interviews

5 October 2015, afternoon session

Gauteng High Court

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Ms LT Modiba

Moseneke: Ms Modiba, why do you want to become a Judge?

Ms LT Modiba: I believe I am appropriately qualified, a fit and proper person, have a valuable contribution to make to upholding the rule of law in South Africa, and as an African female, my appointment would contribute to the transformation of the judiciary.

Moseneke: You were born in Alexandra?

Modiba: Yes, I was.

Moseneke: What connection do you see between the place you grew up, which is known to have significant challenges, and your subsequent academic rise, in which you had the privilege of going to some of the most prestigious universities?

Modiba: My experience of poverty is that it is oppressive, it keeps people in bondage, and it is difficult to overcome. People who had the same upbringing as I have not been able to escape it, so I count myself very privileged.

Moseneke: Yes, I have had the same experience. But you seem to have found the formula for escaping poverty. How?

Modiba: I think my personal background has a lot to do with it. My mother was a teacher and my father was a clerk. My mother died when I was three, and I battled with this throughout my life, imagining how much better my life would have been. But this became a motivation for me. We were very poor, and our house did not have electricity, so to escape the cold I would go to the library, because it was warmer.

Moseneke: After school you worked at the Alexandra Law Clinic.

Modiba: Yes. That was not by design. I graduated with a BProc in 1994, and I would have liked to study further, but I had to start working to support my family. I volunteered at the Alex Clinic for a few months before they got funding from the legal aid board, and my articles were registered.

Moseneke: Then you went to the Rand Afrikaans University, and ended up a professional assistant at Moloto Molamu Attorneys. Thereafter you go to the office of the State Attorney. What prompted this move? Public spiritedness?

Modiba: I was pursuing destiny!

Moseneke: From the State Attorney, you go to Tshwaranang Legal Research and Advocacy Centre, again in a public space. Don't you like money?

Modiba: Well I do, but having come from a life of desolation, my passion is to change the lives of ordinary South Africans.

Moseneke: And then in 2004 you went to Harvard to do a Masters.

Modiba: Yes.

Moseneke: And you have been in practice since 2007?

Modiba: Yes, that's correct.

Mlambo: The spreadsheet before you indicates the time you spent as an acting Judge. Does it correctly reflect what you have done?

Modiba: The only thing missing is three weeks when I acted during recess.

Mlambo: Yes, it does not reflect service during recess. Do you recall the occasion when I allocated you back-to-back urgent calls, and you complained to me. Can you tell the commission what I said to you?

Modiba: You said that you were testing me, and that you were impressed that I didn't break.

Mlambo: That is what I wanted you to tell the commission. None of the other candidates has had that kind of test, and you passed it with flying colours.

Modiba: Thank you.

Mlambo: The comments about your candidature are very good. We have spoken a lot about your future, and I encouraged you to apply for a permanent appointment, because I thought you were ready. Do you think I was wrong to think you were ready?

Modiba: I do agree that I am ready. I have sat in all the Courts, doing the work of a Judge. I must mention though that I could not have got to this position without the extensive support that has been given to me.

Mlambo: There were two occasions when you sat with two permanent Judges in the Appeals Court, and dissented from them. That is brave, for an acting Judge!

Modiba: One of the fundamental qualities of a Judge is to apply the law without fear, favour or prejudice, and that apply equally to one's colleagues. I have reverence for my seniors, but I exercise my judicial independence.

Lesufi: Quality is quality. Do you have to justify yourself with gender and race factors?

Modiba: I agree, neither race nor gender would be sufficient reason to appoint any candidate. But judicial transformation is important to ensure the legitimacy of the judiciary in the eyes of the people. Without suggesting that a white male, for example, will be unable to deliver a just verdict in a sensitive case, a black woman sitting as a Judge sends a message to the people that they will be treated fairly.

Lesufi: You identified education as a key factor in your escape from poverty. Can you talk about the importance of education in the community you came from?

Modiba: Education is key. With it, a person is assured of escaping the trap of poverty. This is what my father used to tell me. My schools did not offer quality education, it was Bantu education. I just had a hunger for learning that allowed me to advance in life.

Ms T Didiza MP: You've talked a lot about issues of gender representation. Beyond this, what is it exactly that women bring to the judiciary?

Modiba: I've already talked about the effect of a black woman sitting as a Judge on the legitimacy of the Court. Women can bring a nuanced experience, particularly to cases where gender is an issue.

Didiza: I've looked at some of the work you've done, in particular the Extension of Security of Tenure Act and the Prevention of Illegal Eviction from and Unlawful Occupation of Land (PIE) Act. Do you think the property clause as it is in the Constitution is actually sufficient to advance issues of land rights?

Modiba: I do believe it is. What needs to be improved is implementation. When you read reports of land that has been successfully redistributed, you often find that the beneficiaries are not equipped to use the land productively. The question is more complex than whether the Constitutional provision is adequate.

Motshekga: Ms Modiba, I have a passion for public interest law, and I distinguish between public interest lawyers and legal entrepreneurs. You appear to be a public interest lawyer *par excellence*, and therefore someone who is qualified to advance social justice in our country. I would like to ask: do you think that the

ordinary courts will be able to address the backlog? And if not, won't we continue to have places like Alexandra and Tembisa, where people are unable to access justice? I remember that in Alexandra we had the best community courts. Do you think that they could be revived, so that people can access justice without having to have gone to school to understand the system?

Modiba: Community courts do have a role to play in resolving transgressions in communities, but it would be important that their operation should be guided by rules of justice. According to my recollection of the people's courts in the townships during apartheid, they were not a mirror of justice. Accused persons were not given the opportunity to give their side of the story.

Motshekga: The community courts were infiltrated by National Party agents who discredited them and turned them into kangaroo courts, but prior to that they did dispense justice. The picture you paint is correct, but that scenario emerged after interference.

Mr N Singh MP: Looking at your CV, you are clearly an excellent candidate, and your interview has impressed me even more. You are relatively young. Where do you see yourself in thirty years?

Modiba: If I am not retired, I see myself in the Constitutional Court.

Singh: You indicate membership of a number of Christian organisations. As a Judge, how would you balance Christian positions on, for example, the right to life and gay and lesbian rights, against your commitment to the South African legal system?

Modiba: I have dealt with cases involving religious rights, which will show that my Christianity does not blur my judicial reasoning.

Mr Nyambi MP: Can you talk about the sponsorships you've given to orphans in Alexandra and Tembisa?

Modiba: I have a soft spot for orphans, having lost a parent myself. My support is varied and needs-based. I supply groceries, school uniforms and, with a group from my church, career guidance and counselling.

Nyambi: Can you explain your understanding of the doctrine of separation of powers?

Modiba: It is a principle entrenched in our Constitution, which makes a clear distinction between the three functions of government (the legislature, executive and judiciary), supported by a system of checks and balances to ensure accountability and that no arm of government abuses its power.

Mabunda: I know this candidate from my student days, and can testify to her generosity.

Prof. Ntlana: We have heard you speak about the gender representation of the Bench.

Moseneke: The GCB commented that "[your] appointment would demonstrate the sea changes that have occurred in our society, and convey the message that with effort and commitment, achievements such as appointments to the Bench are now within the reach of all South Africans, regardless of gender or race."

Modiba: Thank you to the GCB for their kind words.

Moseneke: Do you have any final comments?

Modiba: I'd like to take the opportunity to thank the Judge-President in public for his support, as well as the Judges of Gauteng.