

Judicial Services Commission interviews

5 October 2015, afternoon session

Gauteng High Court

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Mr TP Mudau

Moseneke: Mr Mudau, you are a judicial officer through and through, aren't you? Why then do you want to become a Judge, when you are already quite a senior regional court adjudicator?

Mr TP Mudau: I have been a presiding officer for approximately twenty-three years. I have been immersed in the workings of the justice system from a very young age, and I was the first person of colour to be appointed a senior magistrate in Johannesburg. Since then I have acted as a Judge, developing a keen interest in jurisprudence. Colleagues and peers have advised me to apply.

Moseneke: At which stage of your career did you receive your LLM?

Mudau: Shortly after the passing of the Equality Act. I was involved in the training side of the Equality Court, and developed a keen interest in the aspect of the law. I received the LLM in 2004.

Moseneke: Did you ever think of leaving the judicial services?

Mudau: After 1994, given the challenges we have faced, I thought that this was an area I could add value.

Moseneke: I was struck by the way you have been following your children through their schooling. You were a member of the GCB in the Rand Park Primary School and later the SGB of the Rand Park High School. You are engaged with education in your community, tell us more about that.

Mudau: It was not only because of my own children: I have a soft spot for children in general. I was the first member of colour at Rand Park Primary.

Moseneke: You list no publications, comments on publications, and generally have provided quite an unusual set of answers in the form. You're a different kind of candidate. What would make you a suitable Judge?

Mudau: I understood that many of the questions on the form were aimed at practitioners or those with an academic background. I have never practised as an attorney.

Moseneke: Is this a gap in your legal experience? Is it filled up by your acting experience?

Mudau: Yes, I believe my acting experience fills the gap.

Mlambo: The spreadsheet indicates you have 51 weeks of experience as an acting Judge, mostly in the Criminal Trial Courts. Is this correct?

Mudau: Yes, it's correct.

Mlambo: You've done approximately five weeks in the Opposed Motion Court.

Mudau: Yes.

Mlambo: You know Judge Geraldine Borchers?

Mudau: I know her very well, I sat with her for at least six months at Palm Ridge.

Mlambo: You know Judge Maluleke?

Mudau: I know him very well too, we also worked together at Palm Ridge.

Mlambo: What is common about them?

Mudau: They work hard, are persons of integrity, and I emulate their work.

Mlambo: They are both retiring this year, and you have worked closely with both of them.

Mudau: Yes, JP.

Mlambo: In my experience people like you, who come from the regional courts, are accustomed to bigger volumes than Judges, and are able to work very efficiently in the High Court.

Mudau: I must agree.

Mlambo: You've also spent a lot of time in the appeals court, and the bulk of your judgements are in criminal law. Criminal work is your strong point?

Mudau: Without doubt.

Mlambo: You consider your twenty-three years as a judicial officer and 51 weeks as an acting judge sufficient experience for a permanent appointment?

Mudau: I have no doubt.

Mlambo: You and I have talked about your career, have we not?

Mudau: Yes.

Mlambo: Do you remember the circumstances of our last meeting?

Mudau: We met at the gym, you were with your daughter. It was in 2013.

Moseneke: Looking at Section 4 of your form, you've indicated 'yes' in a number of unexpected places, for example where you are asked whether you have ever been convicted of an offence involving dishonesty. It might be a computer error.

Mudau: It must be a computer error. The answer in all cases is 'no.'

Hellens: The Johannesburg Bar comments that their overall impression of your performance in the Urgent Court was that you seemed to be in awe of the work and simply ruled the majority of the cases to be not urgent. In one case the Judge-President had to overrule your ruling. Can you comment?

Mudau: In law, context is everything. I find this comment unfortunate, and I have received unsolicited favourable reports on my performance in the Pretoria Urgent Court. Furthermore, I think we will all agree that the Urgent Court is the most abused court. Many matters that come to it really aren't urgent. I am confident that I applied the law appropriately in all cases.

Hellens: The Johannesburg Bar also comments that you "do not display outstanding positive attributes which would compensate for the negative aspects identified, [such as] lack of breadth of legal knowledge and experience." They say that your appointment would signal a drop in standards.

Mudau: If one writes judgements that are reported, that are referred to in the commentary, I can't see what would signal a drop in standards. I disagree.

Fourie: Mr Mudau, you're a regional Magistrate in Randburg. You deal with the allocation of cases to Magistrates. One of the biggest challenges of our judicial system is the backlog. What was done during your time as an acting Judge? Didn't your absence increase the problem?

Mudau: When I was acting, there was always a replacement to my position.

Fourie: They don't miss you in Randburg.

Mudau: They miss my collegiality, but they manage to rise to the challenges they face.

Motshekga: I did a doctorate on the principle of legality in criminal law. Do you think that the Western criminal justice system gives too much support to criminals? A perpetrator receives legal aid, while the victim receives nothing. Similarly, land claimants in South Africa do not receive the same legal support as criminals. Do you think we need to start looking for an African solutions to African problems? Should we be looking to implement restorative justice?

Mudau: South Africa is a constitutional democracy. There are good reasons to be looking for new solutions to our unique problems, but we must refer back to the Constitution, and work within the rule of law.

Singh: Can you give us an update on the six reserved judgements referred to in Section 9.5 of your questionnaire?

Mudau: These judgements have now all been delivered. I only indicated them there out of caution.

Mabunda: We received a letter of support from Advocate Ivy Maliga (couldn't confirm this name) expressing unconditional support for your application.

Mudau: I'm grateful that a person of his eminence gave me his support.

Advocate Singh: A case of robbery with aggravated circumstances has caught my attention in which a twelve year sentence was passed despite the fact that this crime carries a minimum sentence of fifteen years. You heard this case on appeal but did not take the opportunity to impose the minimum sentence. The reason I raise this is that in Limpopo we have a problem of ritual killings, which also carry a minimum sentence of fifteen years. Would you insist on the minimum sentence in such a case?

Mudau: Each case has to be dealt with on its merits. In the case you refer to, I considered the sentence just, given the circumstances. Equally, the sentence in a case of ritual killing would depend on the facts of the case.

Moseneke: Mr Mudau, do you have any final comments?

Mudau: I am honoured and humbled to have been given the opportunity to appear before the Commission. The choice is not about me, it is about the interests of the country. Thank you.