

Judicial Services Commission Interviews

Friday 09 October 2015

Eastern Cape Division of the High Court (Port Elizabeth)

Chairperson: Chief Justice MogoengMogoeng

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Interview of Advocate MG Ndzondo

Chief Justice Mogoeng: Tell us why you believe you are ready for judicial appointment?

Advocate Ndzondo: Well, I believe that I got the necessary experience to be admitted on the bench on a permanent basis.

Mogoeng: Let us take it one step at a time. What qualifications do you have, academic qualifications?

Ndzondo: I have got a BA LLB from Fort Hare University.

Mogoeng: And after completion what legal experience did you pick up and from where?

Ndzondo: Well I joined the erstwhile Department of Ciskei. Firstly as a prosecutor, and then as a senior public prosecutor. As a Magistrate in the District Court.

Mogoeng: For how long were you a Magistrate in the District Court?

Ndzondo: I started in 1985 after the time I resigned from service.

Mogoeng: When was that?

Ndzondo: That was in 1990.

Mogoeng: And then after resigning?

Ndzondo: Well I joined the bar in 1990 and then I practised at the Bhisho bar and also the Port Elizabeth bar until to date.

Mogoeng: What kind of practise have you had over the year? Just boast a bit about those aspects of your practise that you believe have stood you in good stead for the purpose of the application, the post you have applied for.

Ndzondo: Well I'll say that a little bit of criminal law because when I started my practise I did mostly criminal law. And then I proceeded to do mostly civil work, state law applications, obviously also policy advices of course to various departments in the Eastern Cape government, municipalities and a little bit of constitutional law. In most cases I appeared with senior council in constitutional law. I would say, my experience is, at the moment, is civil law.

Mogoeng: I've heard some advocates say that leaving practise and coming to the bench is an equivalent of a declaration of insolvency. Are you sure you will survive with the salary of a judge? Considering what practitioners are used to?

Ndzondo: Yes, I know. I have been a legal practitioner as well, an experienced one. I have experience of over 20 years. I've sat on the bench. I have survived on the salary of an acting judge. And I know for example that when you go back to your practise. You have to start.... Obviously, sometimes it takes time to warm up. But, I have survived on the salary. For example I have been away from my practise for almost the whole of this year and this has not had any dent on my bank balance.

Mogoeng: Have you enjoyed you acting stint?

Ndzondo: Oh yes. I always enjoyed it.

Mogoeng: What is the longest you have kept a judgement reserved for?

Ndzondo: For my entire period as an acting judge?

Mogoeng: Yes

Ndzondo: The last judgement took me something like 3 months.

Mogoeng: What is the longest?

Ndzondo: 3 months is the longest.

Judge President Sangoni: This the not the first time for you making the application. Were you not given a reason the last time as to why you were not taken?

Ndzondo: Well,if I recall, the then Chief Justice, Justice Ngcobo, told me that there were no female judges in Bhisho. I applied for a post in Bhisho. At that time, in 2009, there was no female judge in Bhisho. What I gathered that the Commission had decided that Bhisho needs a female judge and it was on that basis that I did not succeed.

Sangoni: And you did apply again?

Ndzondo: No, I did not apply again.

Sangoni: The reason?

Ndzondo: The reason being that I was told in the presence of the Minister, the policy of the government was that there should be female judges. Thereafter, most acting judges were female, including my wife. And then I decided to step aside to possibly she might be considered for an appointment on the bench. She did come here for the interview but she did not succeed. So the gap between then and now was basically the fact that I must take the back seat and allow her to try her best to be appointed as well. But then as I said when she did not make it then I said I will come back.

Ndzondo: My apologies. I thought that I switched this off. (cellphone)

Mogoeng: Don't worry it happens to all of us. It happened to one Minister of Religion and he was reprimanding the whole congregation "How dare you come with a cellphone in the church" only to find that it was his.

Sangoni: Anyway so it's your turn now again.

Ndzondo: Yes it's my turn.

Sangoni: Is it not the position that you were a bit selective earlier on. You say in 1999.

Ndzondo: 2009

Sangoni: 2009, sorry. You would have preferred then a vacancy in Bhisho?

Ndzondo: That's correct. There was a vacancy in Bisho. Yes, I was in fact asked by the then Acting Deputy President.

Sangoni: You thought the other places were too far for you because you were based in Kimberley?

Ndzondo: That was not basically the reason why. Because of the vacancy. Because I acted mostly in Bisho.

Sangoni: But you would prefer to be placed

Ndzondo: Yes I accept that.

Sangoni: What is your position now. You would take the vacancy in Port Elizabeth? You would have no problems? You have been acting in Port Elizabeth?

Ndzondo: I have previously.

Sangoni: Now is there is any reason why you are not suitable for the post? Whatever the reason you consider yourself not suitable.

Ndzondo: No. I don't thinkthere is any reason why I should not be considered.

Sangoni: You feel you ready.

Ndzondo: Yes I feel I'm ready.

Minister Masutha: I see according to the notes that you acted as a judge between 2002 and 2015. That's about 13 years in different stints at different times. Why did it take you so long to finally be up for consideration? How many times have been up before the JSC for appointment?

Ndzondo: Only once in 2009.

Minister Masutha: So this is your second time.

Ndzondo: Yes

Minister Masutha: Why did it take you so long to eventually get to here?

Ndzondo: You mean between 2009.

Minister Masutha: Between 2002 when you started acting and 2015 when you are being considered for the second time.

Ndzondo: I must say between 2002 and 2009 I did not see the need then to make myself available. It was only in 2009 when I decided.

Minister Masutha: Why was that so?

Ndzondo: Well it was quite a long time ago Mr Minister.

Minister Masutha: I'm trying to understand why didn't you see the need then but you see the need now?

Ndzondo: As I said to the Honourable Judge President, I was asked by the then Acting Judge President to make myself available. He was of the opinion that I gathered enough experience on the bench to make myself available to be judge and I applied.

Minister Masutha: Because I am asking myself don't you think you waited till too late. Ordinarily people retire at the age of 65. Of course judges can go on until 75. But you are 63, if that is correct.

Ndzondo: 62, I will be turning 63 in December.

Minister Masutha: This year.

Ndzondo: That is correct.

Minister Masutha: Be that as it may. That is very late in the day to now make serious moves in this direction. I'm just asking myself, was it something that you never really considered as your career path to become a judge until much later in life or has becoming a judge or was becoming a judge been one of your serious career path considerations for some time.

Ndzondo: Well Mr Minister one of the reasons why I accepted the acting appointment in 2002 is because I saw myself making a career out of this. That is why I accepted the acting appointment.

Minister Masutha: And now you made yourself available 7 years later. In 2009 for the first time.

Ndzondo: Yes. I was convinced. As I said, the Head of the Court at the time was also convinced that I had the experience.

Minister Masutha: It took you 7 years to get ready?

Ndzondo: It was 7 years. There were periods in between when I went back to my practice.

Mr Fourie: Good afternoon Sir. I must at the outset say that I found it difficult to read your answers provided in the questionnaire.

Ndzondo: I accept that.

Fourie: A good idea would have been to rather have the answers typed. On that score, there are some answers that I can decipher that I really don't follow. Question 3 on page 5. The Question is: In regard to major publications, indicate by whom they have been reviewed. And your answer is, if I read it correctly is: Commentary on the Criminal Procedure Act.

Ndzondo: That is correct.

Fourie: Is that an answer to - In regard to major publication indicate by whom they have been reviewed?

Ndzondo: That is a major publication in my view. That is an author of note.

Fourie: And then in paragraph 4 - If any of your writings have been cited in judicial decisions please identify those decisions and indicate whether the citing was with approval. Then your answer was - Save for above. I am assuming you are referring to your answer to Question 3. Save for the above. None that I am aware of. Is that a prudent answer to that question?

Ndzondo: I was just thinking. Maybe I did misunderstand what was required there. That can't be the correct answer, because I have written many judgments. I don't know whether the commissioner do have my supplementary submission.

Fourie: Yes, I have seen that. And then my last question, still on your questionnaire. Question 1 - also on page 5 I think. The question is - Please outline your applied areas in law giving an indication of your principle areas of legal interest and involvement. You say I have been a practising advocate as a member of the Port Elizabeth Society of Advocates and Bhisho in the Eastern Cape, civil and administrative law, labour and to a limited extent constitutional law. That is your answer as I read it there. But then further on where you have to give the percentages and the proportions of your litigation work. You say constitutional law 30% which is the second highest percentage. The other one is administrative law, 60%. Does that tally up with each other, those two answers?

Ndzondo: 60% administrative law and 30 % constitutional.

Fourie: No no. In your first answer you say to a very limited extent constitutional law. When you have to give proportions you say 30%.

Ndzondo: Yes, I see your concern that. That is not typed in correct. Should be less than that. It should be less than that I must concede.

Fourie: The completion and proper completion of the questionnaire is of utmost important to this Commission. I'm sure you appreciate that.

Ndzondo: Yes.

Fourie: Thank you. I rest my case

Advocate Hellens SC: Still on your questionnaire you were asked to answer this question - What would you regard as your most significant contribution to law and the pursuit of justice in South Africa. Your answer is taking the time out from my busy practise, with all the financial implications resulting there from and serving as an acting judge. Do you think that is an appropriate answer? Do you think your serving as a judge is a significant contribution to law and the pursuit of justice in South Africa?

Ndzondo: That is how I understood the question, and if I may add, it is not in the questionnaire, I must concede, the training of pupil advocates.

Hellens: In what why was your acting as a judge a significant contribution to the law?

Ndzondo: As I stated in my answer is taking time out of my practise to contribute.

Hellens: You take time out of your practising and losing financially, that is a significant contribution to the law?

Ndzondo: I do not think one should emphasize more on losing financially. My answer is to leave my practise and contribute to the students.

Hellens: You seem to hold yourself out as rather special. You do a bit of name-dropping. People say you lost out because of females. You don't seem to have a sense of modesty.

Ndzondo: Sorry, I don't follow that.

Hellens: You seem to hold yourself out as special, you do a little bit of name-dropping here and in your application. You don't seem to have a sense of modesty.

Ndzondo: I do have. I do.

Ms Didiza: Thank you very much. If one was to follow the questions that were asked earlier by Honourable Fourie in terms of the different aspects of law that you have practised. You said in your answer that no it is not correct that you 30% in terms of your own assessment of constitutional law. But I was reading your CV and you stating that between 1984 and 1990, more particularly 1991, you were asked to support the Ciskei government to participate in the negotiations, CODESA. You specifically say that your advice and I am sure the team of legal people was advising on constitutional issues and the levelling of the playing field in respect of the elections pending then, and then amendment to and or abolishment of security legislation. Just taking

that is it consistent with your answer that you gave or maybe you were not part of that team in Ciskei that was given advice on constitutional and other legal matters.

Ndzondo: Yes Commissioner, I was not directly involved in constitutional matters. I only stayed for one year. That questionnaire was limited to my practice, and I conceded that at my practice I do not do so much constitutional work. At CODESA yes, is the only one and I was not specifically assigned to the section that dealt with constitutional issues.

Mr Nyambi, Member of Parliament (National Council of Provinces): If you can explain to us your understanding of the doctrine of separation of powers.

Ndzondo: It means that one branch of government should not assume the responsibilities and duties of another branch. When it comes to for example to the courts. Courts cannot assume or usurp the powers of the executive. That is not permitted. Not permissible. That is what I understand separation of powers to be. Each branch must confine itself to the functions according to the constitution and law.

Nyambi: Is it right for politicians to criticize judges?

Ndzondo: If the criticism is well informed, is reasonable and falls within the ambit of his competence The judiciary is accountable to the public as well. If the criticism is justified. Just As much as my judgement can be criticised. That can happen. But there is a limit of course to that. It must not be, it must be justified. So the answer would be yes.

Nyambi: What about judges criticizing politicians?

Ndzondo: And vice versa. If I am making a judgement, for example, and I feel it appropriate to say a few harsh words about the conduct of the politician. I see nothing wrong with that.

Mogoeng: Do you have a copy of your judgement of Mofongusivs Nel with you now?

Ndzondo: I don't have it with me. Yes I do have it in my briefcase.

Mogoeng: In the result I propose that an order in the following terms be issued made an order as follows. What does this mean? In the result I propose that an order in the following terms should be issued made an order as follows. And then 1.

Ndzondo: It should be an order should be issued. Full stop.

Mogoeng: Did you not go through your judgement after preparing. Or what happened?

Ndzondo: Look at the colon, you don't go further than that.

Mogoeng: It was an oversight. Should I give you mine?

Ndzondo: No No. I know what you saying. It doesn't make sense to me.

Mogoeng: It didn't make sense to me either.

Ndzondo: This must be a mistake. Look after issue there is a colon after issue.

Mogoeng: Whose mistake is it?

Ndzondo: There is a colon after issue which means that that is the end.

Mogoeng: But the words are there. Who put them there?

Ndzondo: This is repetition, I accept that it should not be like that.