



JUDGES MATTER

Judicial Service Commission interviews

4 April 2016, Afternoon session

Eastern Cape Division of the High Court

Interview of Ms N Saba

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Chairperson (Chief Justice Mogoeng): Good Afternoon Ms Saba.

Ms Saba: Good Afternoon, Chief Justice.

Mogoeng: Are you relaxed or do you need help to be more relaxed?

Saba: I need help.

Mogoeng: You have a diploma Juris, that's where you started?

Saba: Yes. I did it at Unitra.

Mogoeng: And then B. Juris, LLM through Unisa?

Saba: Yes.

Mogoeng: You started off as a prosecutor – was it at the District Court, Regional Court, or High Court?

Saba: District Court.

Mogoeng: And for how long were you a District Court magistrate?

Saba: Since 1996 until 2001.

Mogoeng: And for how long have you been a Regional Court magistrate?

Saba: Since 2004 until now.

Mogoeng: Just tell us how your role as a magistrate and acting High Court Judge has prepared you for what you are now applying for.

Saba: Mostly I did criminal cases in the District Court and in the Regional Court, but when I was still in the District Court I did a few civil matters. And in the Regional Court, now that we have civil jurisdiction, we also do civil matters, and with the years that I've been on the Bench, I think I am prepared for an appointment in the High Court.

Judge President Sangoni: As far as you are aware, is anyone or organisation opposed to you being recommended for appointment?

Saba: I saw a document from the General Council of the Bar from the Western Cape.

Sangoni: What does it say?

Saba: It says a lot of things – it says they are not supporting me and, in fact, they were asked by the General Bar Council in the Eastern Cape if they know me and they said the only thing they could mention is what happened in 201,2 when I applied for a post in the Western Cape where they did not support me and then they attached the abstract.

Sangoni: What is your reaction? Was it based on experience, competence or what?

Saba: Firstly, I must say, when I looked at it this year, when I was preparing for the interview, I realised that when I was shortlisted in 2011 for the post in the Western Cape, they said the same comments in 2012 – that is a year after I'd been shortlisted in 2011. So to me, they did not apply their mind or make it clear.

Sangoni: Now, have you got any preferences? Mthatha? Port Elizabeth?

Saba: No, I don't although I have a home in Port Elizabeth, but depending on the outcome.

Sangoni: Do you think you can manage to go to Mthatha?

Saba: I can.

MEC Makupula: The general perception out there is that the justice system is just ice – it melts when it's heated – would you confirm or reject that?

Saba: No I don't believe it melts when heated – it remains the same as long as one upholds the Constitution.

Mr N Singh: I note your residential address is not far from where I and Honourable Schmidt live in Goodwood. You last acted in 2013, I'm still trying to understand why is it that you only had one acting stint in the Eastern Cape when the Western Cape accommodates so many acting stints. What are you doing currently? Are you in practice?

Saba: I am a magistrate in the Regional Court in Bellville. To answer the first question about my stay in the Eastern Cape, there were problems when I went there – it was said people from outside the Eastern Cape should not be because of budgetary constraints, that's why I remained there for the duration of the period I was invited.

Singh: I will accept your answer that it was because of financial constraints that the Eastern Cape did not accommodate you for longer ,as you would have liked. I see you did a LLM – and your dissertation was on what?

Saba: I did not do a dissertation – it was an LLM rather in coursework. It was an LLM paper in the law of evidence and an LLM paper in criminal law.

Mogoeng: I don't understand, I did the same LLM through UNISA, four courses and one dissertation – have they changed it?

Saba: In my case, Chief Justice, it was not the case. I did not do any dissertation – it was two LLM papers.

Singh: My last question is, you're based in the Western Cape and you've worked here for many years – are you aware of vacancies in the Western Cape, and did you apply for any of them?

Saba: Yes, I was aware of vacancies but I did not apply because I am from the Eastern Cape and I want to move to the Eastern Cape, if I could be afforded that opportunity.

Advocate Motimele: In 2012, you appeared before this Commission, is this not so, for an interview?

Saba: Yes.

Motimele: At that stage you applied for the position in the Western Cape High Court?

Saba: Yes

Adv Motimele: Then, Deputy Judge President Traverso did not support you for your application.

Saba: I believe so.

Motimele: You believe or you know so?

Saba: Well, she did not say that, she just asked me a lot of questions.

Mogoeng: I think maybe this is a complicated question and we'll deal with its complexities later. There is information in that document that is not supposed to be available to her and others and I think your question is based on it.

Motimele: In answer to your question about the GCB, General Council of the Bar's comments, which are not supportive, you say they were just trying to be negative. Can you give the Commission the basis for putting that motive?

Saba: I think so because the comments they made in 2012 were the same comments they made in 2011 that I had an encounter in court with junior counsel and I was not consistent in the motion court. To me, they did not apply their mind or, between 2011 and 2012, I did not do anything wrong in their eyes that is why they repeated the same comments made in 2011.

Mr Notyesi: You have never been in the Mthatha High Court?

Saba: No.

Notyesi: You do not know how many judges are there?

Saba: No.

Notyesi: So is the situation with regard to the PE High Court – you have never been there?

Saba: I did go there, when I was acting in Bisho, I was acting in PE for a week.

Notyesi: My point is based on the fact that you acted in Bisho for a few weeks and once, you don't know anything about Eastern Cape.

Saba: I disagree, I was exposed to work there, and there were counsel that appeared before me when I was there, and I even wrote five judgments in the five week period that I was there.

Notyesi: Lastly, your family here in the Western Cape, your family is right here, your children here in the Western Cape?

Saba: Since I am from the Eastern Cape, my family is in the Eastern Cape, but I have my children here - one is at varsity and she stays there and the other one is still young. Otherwise my family is in the Eastern Cape.

Notyesi: Your motivation to go to the Eastern Cape is because you want to go back home, that's why you applying for a post in the Eastern Cape?

Saba: I always wanted to go back home, it's just that opportunities came first here in the Western Cape, and I had to grab them.

Notyesi: I am asking you precisely because there are two posts available right now in the Western Cape, for Judges.

Mogoeng: Commissioner, she has made her choice, she wants to go back home and it's not wrong.

Notyesi: What is your understanding of the principle of legality?

Saba: Principle of legality, it means that we are bound by the law, as Judges, we cannot go out of what ... We are bound by the law of the country.

Mr Fourie: Have you seen the comments made by the Eastern Cape Society of Advocates?

Saba: Yes.

Fourie: It says: the only time when the applicant acted in the Eastern Cape was a few weeks in the Bisho division where she was not exposed to any of our members with the result that the society is not really in a position to comment on her suitability as a Judge. The Society is however of the view that the applicant should not, unless very special circumstances exist, be appointed to a division where they have not acted, as this precludes the legal practitioners practising in division from assessing her qualities as a Judge. The applicant furthermore does not clarify why, with the exception of the brief period she acted in Bisho , she has not acted for a period of more than three and a half years, why she stopped acting in the Western Cape, and why she's applying for appointment in the Eastern Cape and not the Western Cape. Have you got any comments on these comments that I've read out to you that comes from the Eastern Cape Society of Advocates?

Saba: They say they would prefer a person to have acted in the division – I did act in the Eastern Cape, although it was for a short while and as for not acting for more than three and a half years, I explained that when I was in the Eastern Cape there were problems, the Judge President invited me but there were problems with budgetary constraints .

Fourie: You acted in the Western Cape in 2011 and 2012, and never again – is there any particular reason for that?

Saba: When my contract was not renewed, I did not approach the JP again for another stint.

Fourie: Do you approach the JP or does the JP approach you?

Saba: He approaches a person but when it was extended I did not pursue that.

Mogoeng: Thank you Ma'am, you are excused.