



JUDGES MATTER

Judicial Service Commission Interviews

8 April 2016, Morning session

Western Cape Division of the High Court (Deputy Judge President)

Interview of Mr L G Nuku

DISCLAIMER: These detailed unofficial transcripts were compiled to the best of the abilities of the monitor. However due to capacity constraints they have not been fully edited. We have therefore made the video recordings available that were taken during the interviews available. Those wishing to cite or quote from the transcript are encouraged to check accuracy with reference to the video file.

Chief Justice Mogoeng: Good morning Mr Nuku.

Mr Nuku: Good morning, Chief Justice.

Mogoeng: You hold a BProc degree?

Nuku: That is correct, Chief Justice.

Mogoeng: From there you proceeded to Master of Laws?

Nuku: That is correct, Chief Justice.

Mogoeng: So it never became necessary that you do LLB, I suppose? They recognised your LLB and diploma, I beg your pardon, your BProc and diploma for the purpose of doing Masters degree?

Nuku: I got to understand that with some experience, they would recognise those years of experience as well as your BProc degree for the purposes of the Masters.

Mogoeng: Yes, that's what I mean.

Nuku: Yes, Chief Justice.

Mogoeng: And you've been an attorney for about 20 years?

Nuku: Correct Chief Justice, I was admitted in April 1996.

Mogoeng: And I noticed you've also been a member of the Black Lawyers Association for years?

Nuku: That is correct, Chief Justice.

Mogoeng: You've served as Secretary, Treasurer and Chairperson, but in the Western Cape?

Nuku: That is correct, Chief Justice.

Mogoeng: Yes. You've been the council of the Law Society of South Africa as well?

Mr Nuku: That is correct Chief Justice.

Mogoeng: And have acted as the High Court judge for plus minus 7 months?

Nuku: I acted since April last year, Chief Justice, yes.

Mogoeng: Yes, all the way through, until now?

Nuku: Yes, I acted for four terms.

Mogoeng: Yes, have you calculated? Because my calculation lead me to about more or less, yes, about 7 months.

Nuku: You may be correct, Chief Justice, I did not calculate the months, I just worked it out in terms of the terms that I have acted.

Mogoeng: Yes. Now, was judgment writing and the finalisation of trials a challenge during your acting stint, or not?

Nuku: Chief Justice, I would not say that it was a challenge to write judgments. What I would say is that what assisted me mostly was writing my dissertation for the Masters degree. I found that it gave me a way in which you write on a topic, and before I started acting I made it a point that I go through the judgment so as to see how they are structured and when I started acting I was fortunate in that there were judges who assisted me in terms of advising me as to how to write judgments. So it never really became a challenge so I had no occasion to, I never had to delay delivering my judgments.

Mogoeng: On average, how long does it take you to produce a judgment, to deliver a judgment?

Nuku: Chief Justice, except for the last term, for the last term last year, I had always delivered my judgments within that term. In that term I had two reserve judgments that I picked up in the last week of the term, which I then delivered in the following terms, in the following term. So I would say it takes me no less that three months to deliver a judgment, I have never had a judgment -

Mogoeng: No less or not longer than?

Nuku: No longer than, I'm sorry Chief Justice.

Mogoeng: Yes.

Nuku: I have never taken longer than three months to deliver a judgment.

Mogoeng: Yes. Deputy Judge President?

Deputy Judge President Traverso: Thank you, Chief Justice. Mr Nuku, is it correct that in the time that you've been acting in our division you've done a very wide spectrum of work? You were seized with a very wide spectrum of types of cases, is that correct?

Nuku: That is correct, Deputy Judge President.

Traverso: Were there any particular fields where you felt that perhaps you weren't coping, or did you cope with everything?

Nuku: Deputy Judge President, I was able to cope with everything.

Mogoeng: Thank you Deputy Judge President. Ms Stewart?

Ms Stewart: Thank you, Chief Justice. Mr Nuku, what can we do to get more black African females at our Bar? What are we doing wrong, and what can we as the State and as the profession do to get more blacks and African females practicing at the Cape Bar?

Nuku: Commissioner, firstly let me mention that I am an attorney so the affairs at the Bar, I read about them from a distance, so whatever I say must be understood from that perspective. I'm not aware how they recruit the pupils there, but I think that is one area where focus, if they could focus on that it would assist in bringing the African females to the Bar and then in respect of those then that are inside I think could then be supported by the State, if possible as well as the private sector.

Stewart: One more question, when you say "supported" do you mean financially or do you mean by way of briefs?

Nuku: In terms of being briefed, I meant it in that way.

President Mpati: Thank you Ms Stewart, Commissioner Singh?

Commissioner Singh: I just note that in the questionnaire that you filled under item 3 section 3, you state there that on 26 July 2004, "I was found guilty of unprofessional conduct for failing to file a notice of withdrawal as an attorney of record the sanction was a fine of R1000".

Nuku: That is correct.

Singh: That was ten years ago, and thank you for disclosing that. What weight do you think the JSC should place on this kind of sanction, you know, when one has to look at credibility and things like that?

Nuku: Commissioner, I would classify that finding as a lapse of judgment on my part I would not classify it as something that goes to the integrity of the person. I've explained it in the questionnaire, and it's a matter that I take full responsibility for, so with those words I would say that the Commission should attach the necessary weight to it, it's a finding against me, it was not supposed to have happened, but it has happened under those circumstances.

Singh: Thank you for that. Just the second and last question is, under financial and propriety I see that you are a director of many companies, and I can understand some of them, it's related to your being an attorney. But, Mthawelanga Investments and BTA Training Academy in particular, what do they do, what kind of business are they involved in, and are you still active, is it still actively engaging in business?

Nuku: Commissioner, the Mthawelanga Investments is a family, it was meant to be a family investment company that never took off, so it's a dormant company. BTA Training Academy is an academy that is responsible for the training of conveyancing paralegals. I'm involved in there as a director, not an executive director, I am on an advisory capacity.

Commissioner Notyesi: Mr Nuku I must first state that you have been a colleague to me in the Cape Law Society, we serve in the disciplinary committee together, we come from the same University, we were there together, and I know you as a person. What I want to know from you perhaps, what motivated you to apply for a position of being a judge?

Nuku: Commissioner Notyesi, from time to time I have been approached by colleagues asking me to make myself available for acting in the first place. I was reluctant to do so because I thought that to do so would, I would not want to put myself out there. Then I got an opportunity when I was approached by the Judge President to act, I agreed to act, it was on the basis that I was going to act for one term and go back to my practice. Towards the end of the term the Judge President approached me to say that I must take another term and as I continued acting I realised that that this is the kind of work that I enjoy, I was comfortable on

the bench, I think that I have a lot of contributions that I can make if I am appointed. So briefly, that is what motivated me to make myself available for the position of a judge.

Minister Masutha: A question was asked earlier regarding your view as to what could be done to improve transformation at the Bar, and of course you indicated that you come from the side bar hence you were reluctant in offering suggestions. But, lets talk about the side bar, for a moment. How inclusive is the side bar in the Western Cape currently, in your estimation?

Nuku: Minister in my estimation, there is still a long way to in the Western Cape. If you go to the Motion Court that is where you are likely to see how long we still have to go. Also, as a conveyancer I have at times have to go to the deeds office, the picture that I observe there Minister is that we still have a long way to go.

Masutha: Now, much has been said about the role of the State and in particular the State attorney, but they only deal with essentially the advocates' profession because they are attorneys of the State in general terms. What is it that we could do differently as the State to also include the attorneys' profession in our quest to promote transformation?

Nuku: Minister, I think the State has State-owned entities, I think the State-owned entities can play a much bigger role, because as I understand it they constitute their own panels, they don't necessarily use the State attorney for their litigation and advisory work, so it is one area which I think the State can be able to contribute towards the transformation.

Masutha: Now, there are a number of Universities in the Western Cape that obviously produce graduates in the legal profession. Do you believe that the Western Cape, be it the Bar or the side bar, seem to attract any of these, or most of these, newly graduated young people mostly, and if not, what is it that in your opinion seems to alienate young graduates from entering both professions in the Western Cape, in your experience as well? And what could be done to change the situation in your view?

Nuku: Chief Justice, I must confess that it is a difficult question for me in respect of my firm, I'll speak firstly speak in respect of my firm, we recruit particularly the graduates from the Western Cape, although we do recruit from the other Universities. If I must go wider than that I can only speculate that it might have to do with the employers wanting to take the select few from the Western Cape which would then leave the rest of the graduates not being able to afford jobs. As to what might be done to change that approach, I don't think that I am in a position to offer any contribution in that regard. As I had said, to the extent that I am able to contribute, I have recruited the graduates from the Western Cape.

Masutha: Maybe let me put the question differently, I'll beg your indulgence Chief Justice. Different ideas have been offered ranging from encouraging people to change their attitudes which, over 20 years down the line doesn't seem to have worked, to regulation, whether through quotas or other instruments. What is your opinion as to the ideal forms of intervention that, in your opinion and based on your experience, and I do not underestimate your experience with 17 years in practice as an attorney in the Western Cape, I assume, what would you think is the better route that is likely to yield better outcomes? I know you are reluctant to offer solutions, but I am persuading you to dig deep and see what you can get.

Nuku: My reluctance Minister arises from the fact that this is not a matter that I have not considered, I have considered. It is not a matter that I think that I am able to offer an informed contribution.

Masutha: Okay, I think I will leave it at that Chief Justice.

Commissioner Schmidt: You have been a member of the ANC in 1990 and then again in 2009 to 2015, which was last year. Are you still a member?

Nuku: I am not a member currently, Commissioner.

Schmidt: Any particular reason why you're not a member?

Nuku: What happened Commissioner is that when I joined the ANC again, I've always regarded myself as a member of the ANC, although I was not a card-carrying member between 1991 and 2009. And then in 2009 I went back again to formally renew my membership, and then it lapses each and every year. Last year I started acting and since then I have not renewed it.

Commissioner Malema: What will happen to your membership of the ANC when you become a judge?

Nuku: Commissioner, I will not renew my membership.

Malema: You look very young. What will your appointment to the bench do to African young people here in the Western Cape?

Nuku: Commissioner, I think my appointment would send a very good message, a message that says that despite where you started off it is possible for the young Africans to ascend to the bench.

Malema: Briefly, just give us your background of where you come from.

Nuku: Thank you Commissioner, I was born in Libode in the Eastern Cape in a location named Bungu location. I started my primary schooling there at that time it was a mud school, I went up to standard six then and then from there I had to move to another school because the school in that area did not have standard seven. From there thereon I then went to St Johns College where I got my matriculation, my matric, and then I went to the University of Transkei where I did my junior degree. So the message really that would come would be despite the fact that you started off at a mud school it is still possible that, with determination, you can make a meaningful contribution to life.

Malema: The family background, do you come from a well-off family, poor family, what is the – ja – just -

Nuku: My family, I would not describe it as a well-off family. My father started off as a miner, he went to work in the mines. When he was at the mines he found it difficult to cope there, he came back and he went back to school, he was able to acquire a diploma in agriculture, and then he went to work as an Agricultural Extension Officer which was colloquially referred to as *Umlimi*. My mother, when she got married to my father, had not finished her matric, she managed to get into a nursing college, she then became a nurse. But I understand from her that at that time, a person who's married, when she had given birth she would be discharged from service. So she had to have those, she would have to be out of work at times because she had given birth to me and my other siblings. So that's the background generally.

Malema: How many siblings do you have?

Nuku: I have three siblings, one of whom is sitting behind me.

Malema: I'm not asking you these questions because I want you to convince this body. But, I want you to, through answering of those questions, speak to the African masses out there that indeed its possible, thank you.

Nuku: Thank you Commissioner.

Mogoeng: Thank you. Professor Ntlama, you say you want to follow up on the - Okay.

Masutha: Mr Nuku I thought I would leave it at that, but I think I do need to make a follow up question because you are not striking me as somebody who is willing to stick out, stick your hand out as an agent of change. There is a situation in the Western Cape, it does need change, you run a firm, for 17 years you've been an attorney here under difficult circumstances, have you actively in any way used your vantage position to promote other

Africans, other young male and female black people, into the profession from your vantage position at all? Do you think that it's something that you should be pursuing?

Nuku: Thank you Minister, I have done that Minister, firstly I will start with the High School learners. From time to time I get requests from parents who want to expose their children to the field of law so I would allow them to come to our office for shadowing for a day or two or for a week. Secondly, as you might have read in the questionnaire, I am a member of the Black Lawyers' Association. At the time when I was a chair of the Western Cape branch, we instituted a programme where we would arrange for the students at the Western Cape to be placed at the law firms at the advocates' chambers, we would arrange with magistrates and sometimes the judges so that they can get the exposure to the practice of law. I have also in the recruitment in my firm consistently recruited, I have recruited mostly female candidate attorneys and a number of them, except for one, have always been Africans. So I think, Minister to be fair, I have played my part, as smallish as it may be.

Mogoeng: And in your capacity as the Chairperson of the Black Conveyancers Association, have you been able to do anything?

Nuku: In my capacity ... I am involved in ... In the position relating to the conveyancers is a bit different in that you start off with a very thin base, there are very few conveyancers that are around. From time to time I identify people in my firm people that I want them to go into conveyancing, some of them have got no interest, some of them do have interest and pursue it.

Mogoeng: You do encourage them?

Nuku: Absolutely, Minister. It is my intention that I should be able to produce the conveyancers going forward.

Masutha: But with all that active involvement in promoting transformation, why did you come across as being shy from offering suggestions as to how transformation can be achieved?

Nuku: Minister I - In my nature I only speak in respect of something that I think I can. When I am going to defer to the other people, I think that it's unfair, in that it's not going to take the matter any further. But in as far as my contribution can be, that I can vouch for. So I'm a bit reluctant to say that so-and-so can do this, because it's out of my hands.

Commissioner Fourie: I see you're the director of various companies, and you say you will resign should you be appointed as a judge. I'm just interested in what those companies do and if you can briefly assist me. The first is Nongogo Nuku, that's your attorneys firm?

Nuku: That's the most active one, that's where I am a director, yes.

Fourie: And then you say you are a director of Mhlabeni & Associates, what does that company do?

Mogoeng: They were asked those questions, Commissioner Fourie.

Fourie: Sorry, I must have been outside.

Mogoeng: He has already answered, I think you must have been outside.

Fourie: Sorry, I apologise if it has been dealt with I won't pursue it, thank you.

Mogoeng: You are excused sir.

Nuku: Thank you, Chief Justice.