



JUDGES MATTER

Judicial Service Commission Interviews

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Free State Division of the High Court

Interview of Ms S Chesuwe.

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Chief Justice Mogoeng: You have been an advocate for how long now?

Ms Chesuwe: I have been in the Office of the Family Advocate for 8 years now.

Mogoeng: Tell us a bit about your professional life, what has been your experience and how it has prepared you for the position you have applied for?

Chesuwe: After I completed my law degree, I did my articleship at a law firm known as Bezuidenhout Attorneys. After being admitted as an attorney I worked at the same law firm as a PA. Then for a short period of time I went to work at Legalwise. Then I went back to this law firm again. Then when I left this law firm I went to the office of the Family Advocate's Office. While I was at Bezuidenhout Attorneys I had one stint of acting at the Magistrate Court. When I was at the Family Advocate's Office, before I could come over to the OCJ, like this year I had one acting stint in 2012 at the Free State Division. As I can say as far back as 2012, when I first started acting it has exposed me to a lot experience. It gave me a lot of exposure, although it was a short acting stint, I did not get much at that time. But then since this year, to now I have gained much more experience and it has prepared me quite well for this position and I believe with the necessary further exposure, I will be even more prepared. Currently at this stage I feel that from my day of admission as an attorney, to date I have been well prepared and well experienced and knowledge with regard to the post of serving on the bench.

Mogoeng: Stepping back a bit, what was your Master's degree about?

Chesiwe: My master's degree was about contact of children with their fathers. I realised that when I was at the Family Advocate's Office a lot of the mothers refuse the fathers to exercise their contact rights and they had a lot of reasons for that. So I did a research in it to find out what are their reasons, what are the reasons they are refusing, the mothers, to see their children. Especially post-divorce and especially when there are issues of maintenance. So the masters was all about finding out why are the mothers refusing for the fathers to exercise their contact rights for their children.

Judge President Molemela: You have already alluded to the fact that your first acting stint was one term in 2012. Is it also correct that at the beginning of this year you attended an advanced aspirant judges course?

Chesiwe: Yes, I attended aspirant advanced course training in January.

Molemela: Did you find it beneficial?

Chesiwe: Yes, it was quite beneficial, because it teaches you how to handle yourself in court. How to go into writing judgements. It is quite an experience, because when you start acting there are a lot of things you do not know. When you go to this training, there are a lot of things you are taught that you need to look at and how to go about, because obviously as a legal person there are a lot of things you still have to learn when it comes to the Bench. Especially, when it comes to writing judgements. So the training was quite an experience and it helped me a lot as well.

Molemela: You have been acting, I am talking about 2016 now, since the beginning of the year?

Chesiwe: In January.

Molemela: And have you been exposed to a wide variety of work? Different types of cases?

Chesiwe: Since I have been acting since January I have been exposed to all kinds of work. Criminal, civil, reviews. Everything that has been done in the High Court, has been exposed to it. And I believe as far as all those duties were allocated to me, I performed them to the best of my abilities.

Molemela: Did you experience any challenges in any specific area?

Chesiwe: Challenges that I have experienced would mostly, for example when you have a case that you have to do and then having to research on it. Especially, when you know you have limited time to do the case. Then the only challenge is having to research on those cases, but fortunately the library staff and researchers are quite helpful when it comes to researching any matters that you need to attend to, or that you need to research for purposes of writing your judgement or preparing before you

go into court to do a trial. But it is not much of big challenges, its challenges that you can manage.

Molemela: Having been exposed to a wide variety of work, would you say that you are coping?

Chesiwe: I am coping very well, to the extent that I have done circuit court a lot also. All of the Free State has circuit courts that we do, I have been to the circuit courts and in between your circuit courts you still come back to do your court work that you are allocated to. There was a time when I did one circuit court in Kroonstad, I did a prison visit on your request, which I submitted the report. So as far as workload is concerned I have coped well with it.

Molemela: So in addition to your normal workload, you also did a prison visit in respect of which you have submitted a report. Did you manage quite well fitting that into your ordinary work?

Chesiwe: I did it quite well, because I was doing a circuit court in Kroonstad and they adjourned on that specific day and I was able to make an arrangement with the correction services to go and make a visit at the prison. I did a visit of the whole prison, but specifically because it was women's month my focus was more on the women and the children, although I visited the male section as well. The report was about all of it, but the focus was mostly on the women and children in prison. And I coped within that period, because I was able to write the report and submitted the report. As I said when I submitted the report, I took some pictures that shows what is happening in prison.

Molemela: Indeed it was a very detailed report. Now that you have done circuit court duties, and on the last occasion you were there for three weeks, what are your views about female judges having to do circuit court work?

Chesiwe: My views with regard to circuit court, because circuit court is part of High Court, so if you are in High Court, it is not like you are supposed to be allocated certain duties as a female. The fact that we say we need to be empowered, we cannot say I can only do a certain portion of the work and not do another portion. I cannot say I cannot do circuit because I am a female, I cannot leave my family behind, I cannot go to the circuit due to whatever circumstances. My take is that when there is circuit court, it should be allocated to all judges in the Division, it should not have an exception to female. If you are a female, obviously with young children, then you would make arrangements to ensure they are taken care of. Young in the sense of a baby, in my case I do not have any babies coming forth, you might say JP I have a baby and to go to circuit could you at least give me six months to make sure I do not leave my baby alone. In your Division you can make arrangements with your JP, but circuit court should not be an exception only to the male judges, it should apply across the board to everybody.

Molemela: In addition to all the types of cases you have had to preside over in open court, you have also had occasion to do pre-trials?

Chesiwe: I have done pre-trials for the last two weeks when I was on recess duty. I did pre-trials for two Mondays consecutively. In fact, throughout the year there were times when I was allocated for pre-trials, so I have done a lot of pre-trial.

Molemela: So you have been actively involved in case management?

Chesiwe: I have been actively involved in case management, for example I recently had a file where the divorce was instituted in 2013 and the attorneys wanted to postpone it. I told them this divorce comes from 2013, and I fail to see in the file where there is any reasons for continuous dragging, they wanted to postpone the matter. So I said to them they cannot postpone the matter, these parties do not even have assets anymore, there is no reason to fight, to take it any further, to postpone it - can we get the matter settled. They went back, came back, the matter was settled and the divorce finalised.

Premier Magashule: I just want to check with you what your understanding of separation of powers is.

Chesiwe: My understanding of separation of powers is that with the three branches that we have of separation of power: the legislative, the executive and the judiciary. These three branches are supposed to cooperate with each other, but not encroach on each other. For example, if the legislature gives out legislation, the courts must implement that. The legislature cannot issue legislation and at the same time want to implement their own legislatures. If legislature is given out it is the courts' function, the courts' duty to do the imposing of those legislations. For example if you look at the case of Glennister, where the court said separation of powers is a doctrine, a constitutional design thing and cannot be done away with. In one case of De Lange v Smith, where the Constitutional Court again said where an executive member cannot send to prison a person who is an uncooperative witness, that's the duties of the court. And in another case were it was said where the legislature has determined prescribed minimum sentence, they cannot impose the sentence on a prisoner, that is the duties of the court to impose sentence on prisoners. So these three branches cannot encroach on each other, but they need to cooperate with each other. For example if the court gives out orders to which ever branch it is applicable to, to all citizens of the country. When the court issues out orders, all of these branches or whoever the citizen it is applicable to they must comply with those court orders. So these three branches are quite important and are part of the Constitution, and they have to work with each other, but not encroach on each other.

Magashule: My second and last question is why do you want to become a judge? And if appointed, what will be your contribution to the transformation of the judiciary and society in general?

Chesiwe: Why do I want to become a judge? I feel like I need to become like an instrument of justice. I need to contribute to the system. I need to contribute to the people out there, to show that the justice system is a working tool. I feel as an attorney or as an advocate, you have to persuade the judge on behalf of your client, but as a judge you make the decision. Most of the time, those decisions that you make, you make decisions that will contribute or will assist those poor communities out there. In respect of giving out your judgements, your judgments must show independence in that that you are able to contribute to the community. With regard to transformation of the community, what we used to do before I went to the Bench, you go out there and talk to community members, tell them how the justice system works. You make them aware that there's rights involved, because sometimes not everybody knows how the courts work, not everybody knows how the justice system work. So as a judge, you have to show people, especially when they appear in your court, especially when you have those people who come to your court unrepresented, you need to guide and direct them that how the courts will work. You will find you have people who say I do not want legal aid, I do not have money for an attorney, I want to represent myself. So whilst you are sitting on that Bench, you have to guide and direct that litigant to ensure that his rights or the trial is done in such that he is not treated unfairly.

Commissioner Modise MP: I know the Premier just asked you why you want to become a judge. Can you give me what makes a good judge?

Chesiwe: What makes a good judge? It is the skills that you have, you must have integrity, honesty. You must be able to serve the profession with the best of your abilities. You must be competent and diligent. Your judicial duties must take preference. You must be able to serve the bench with all the honesty and reputation. And you must as much as possible, minimise any conduct that will affect your reputation. It is not like you must be a perfect human being, because we cannot be perfect as human beings. But you try your utmost best, to have that kind of conduct and character, that even if you are criticised by whoever criticises you, but you must be able to take anything that comes to you with professionalism and treat people with respect, be cautious, be patient. Be a respectable citizen, that the citizen out there or the community can look up and say this is a respectable person, and the characters he or she displays are the characters of a judge, that we can say it's kind of a fit and proper person, who is competent to do the duties of a judge.

Modise: Does the understanding of the law, the Constitution, come into any play in the description you have just given me?

Chesiwe: Definitely it comes into play, your understanding of the Constitution, your understanding of the law, knowledge of the law, how to apply it and how to analyse.

Modise: Ms Chesiwe, what if I say to you that you left me quite confused in your description of the doctrine of the separation of powers. I really didn't understand half

the things you said. The only part that I understood was that there were three branches. That was correct, but the next I didn't understand. That is why it is important for me to ask you why you really want to be a judge.

Chesiwe: The executive, which is the governing body of one of the branches. The legislature, which is body which does the legislation. Then we have the judiciary that is part of the courts, that controls the independency of the courts.

Modise: Ma'am that is exactly where you lose me. There is the executive, there is the legislature, there is the judiciary. All three of them do separate things, you do get the part right when you move on to the encroachment and so on and so forth, but I am going to step off that, and ask you what you understand about judicial accountability.

Chesiwe: Judicial accountability, what I understand is accountability that the courts must put forward to the community out there. The courts must be independent. Judges should not be influenced by anything, whether it is outside pressure, whether it is media or politicians or anything. The courts must be able to present judgements without fear, favour or prejudice. Be impartial, and be able to present their judgement without having been impartial or biased. Most important, the sign that courts must be independent of any pressure from outside.

Modise: CJ I am going to let it go.

Commisisoner Nyambi MP: I must confess that I am impressed by the CV, to see somebody that has been a nurse for some years ultimately being end up doing what you are doing currently. Maybe if you can share with us, what are the frustrations that you see that make us able to deal with gender transformation when it comes to judiciary. Despite what you have done before, and now there you are, seated there.

Chesiwe: Issues with regard to gender transformation? Issues which are challenging for women, for example when you finish your articles, in fact before you start your articles, it is difficult to get into a law firm to article, because most law firms will have issues of being sceptical to accept you, because of chances of becoming pregnant along the way. And then sometimes that might come as a challenge, but to go and article the salary is not as great. So some people are not prepared to go and article. So you sacrifice a lot of things, you article, and do what you can do. Some of the challenges end up where you go to as far as acting. In fact it is all about having to be mentored and trained and built in that self-confidence, because for us especially when you are sitting where I am sitting now it is not an easy task to do, because it is quite nerve racking. So if that self-confidence is so built well into women, I believe there will not be problems to call women in to come and assist or come forward for acting positions. The challenges you get, it is quite alarming to go to the bench in the first place. It is not an easy task, because you ask yourself will I be able to make it, will I be competent enough, will I be good enough, and then if these answers are not answered by yourself or by any other person, then it makes it difficult to say let me

go forward and nominate myself. But in terms of transformation I would believe it is kind of getting there, although a bit slowly. So it's not easy for a woman to come up and say I am going forward and accepting an invitation to go and act at the Bench, because you are already scared to come forward. But now if these things are corrected and you are given enough self-confidence, then I don't think the challenges can be a big issue. Fortunately, for me to be sitting here I had an acting stint of one year, it built in that confidence little bit by little bit.

Nyambi: Do you find this environment, that you are in now, being very friendly to you?

Chesiwe: Sorry sir?

Nyambi: The process you are in now, the interviews, is it very friendly to you?

Chesiwe: The process is friendly, though nerve racking. That is why I am saying that if your self-confidence has been well motivated, you have been trained, you have been put through challenges, you have been mentored; it makes coming to the proceedings not actually an easy task, but it makes you confident enough to come and sit in front of the panel. For example when I think of, when we talk amongst ourselves, women, people are like it is quite difficult to go there, I am sorry I cannot go there, it is not an easy part to go there. For me it is also an experience for me to come and sit in front of the panel, because the more you come and sit in front of the panel you are able to relax and realise it is not as bad as it looks from outside.

Nyambi: Lastly, I will be failing if I do not commend you for making it possible for us as fathers to have rights to our children, not being frustrated by their mothers. Thank you.

Judge President Mlambo: I just want to get your feel, since you want to be a High Court judge. You say in your application you were in the Family Advocate for 8 years, and before that you were admitted in 2006. Now, in your application you describe the matters you handled, and you said 100% criminal and about 60% constitutional. I would like to understand that 60%.

Chesiwe: It is an error on my side, on my judgment, when I wrote those percentages in my mind I had calculated each one 100%, I was actually supposed to have made them in totality 100%. So it is an error that I realise I should not have done.

Mlambo: I failed maths at school that is why I am a lawyer, so I am not interested in that part. I am interested in the constitutional work you say you did. What did you do?

Chesiwe: Mostly what we did, especially going around on awareness campaigns regard to constitutional Bill of Rights. Going to the rural areas, teaching people about the Constitution, how it works and telling them what are their basic rights. Because not everybody understands how the Constitution works, so mostly with regard to

that. Although litigation wise it was not that much, but mostly awareness of the Constitution is mostly what I used to do when we used to do awareness campaigns.

Mlambo: So you do not refer to actual cases, constitutional cases?

Chesiwe: Actual cases was not as much as awareness.

Mlambo: Did you do constitutional cases?

Chesiwe: One or two, during the attorney days, it was not much, because it was not always that people would come forward with complaints about their rights.

Mlambo: I also looked at the judgments you attached, they all deal with criminal matters.

Chesiwe: That is correct, because the criminal matters the load is more.

Mlambo: You have been acting for 8 months, since the beginning of this year. Did you sit in the opposed motion court?

Chesiwe: I sat in opposed motion court in many matters, Road Accident Fund matters, divorce matters. Sometimes some of the opposed matters, the morning before the trial starts the parties will come and tell you the parties have settled, they give you a settlement order. Not long ago I did an opposed matter for the Road Accident Fund, in which I wrote a judgement.

Mlambo: I think that is where my interest is, you just attached criminal law judgements. You say you wrote opposed motion judgements and you have the unopposed court in the Free State, did you sit in that court?

Chesiwe: I did it recently, I have been doing it a lot also, because I was on recess duty for the past two weeks. Last week I did motion court also and unopposed matters.

Mlambo: You also say in your application that you have appeared in the High Court.

Chesiwe: As an attorney I used to appear in the High Court a lot, but mostly it will be your divorce matters or insolvency matters. It would be those matters that I would appear in court as an attorney.

Mlambo: For how long were you an attorney?

Chesiwe: Since my date of admission, because when I worked at the Family Advocates' Office I worked as a family advocate, but I did not remove myself from the attorneys' role. I remained an attorney, because the post was either you are an admitted attorney or advocate.

Mlambo: Okay maybe I misunderstood that part, so whilst a family advocate you have been appearing in the High Court?

Chesiwe: I have been appearing as a family advocate also at the High Court, with regard to the best interests of the child.

Mlambo: Another thing which struck me is that you say you were a candidate attorney from 2001 to 2006, that cannot be right.

Chesiwe: That cannot be right, from 2001 when I graduated I did two years articles at the same law firm.

Commissioner Singh MP: I note from the papers that have been given to us that you came before the Commission on 9th of April 2013. You were interviewed for a position at the Electoral Court. I would just like to know if your interest or passion to serve on the Electoral Court has waned since then?

Chesiwe: When I came the complication I had then, that time the position was that I was still in government, because I was informed that it was not full time, it was kind of like part time. So I was still employed in government as a family advocate, so it was difficult for me to continue with it. So then I had to go back and review it. It is not like it has moved away, it is still one of those things, that being an electoral judge is still part of being in the High Court being able to serve as a judge. Even better as an electoral judge, because you are doing a much more contribution with regard to elections themselves.

Singh: During that interview there was a question from Commissioner Sibanyoni. He says: I noted on page 3 of your questionnaire, question 8, you stated when you were asked about membership of any political organisation past and present, you mentioned that "ANC 10 years, DA 5 years", and then he went on to ask you are you currently a member of a political organisation and you gave an answer. Maybe you could just tell us about that answer. What I note from that questioning, in this current questionnaire, under item 8, when you are asked to please furnish the particulars of your membership of any political organisation past and present, you say none. Is there not a bit of a contradiction there?

Chesiwe: After those interviews I relinquished all memberships and for the past five years I have not been a participant in any political parties, because I realised that if I want to go to the Bench then I have to be apolitical. So I did not take up any memberships since then.

Singh: But the answer to the question should have been, because they are asking you about the past, should have been yes ANC 10 years, DA 5 years. But you put none, because they do not ask you about the recent past or how long ago, but the past is the past.

Chesiwe: It might also be an error on my judgment, because when I looked at it I told myself that it is five, six years ago. It is a long time ago and is not as recent as the past, now. So I looked at it that it is more than 5 years that I have not been the

member of any political party. Maybe it is an error that I did not look at it as in past, so I did not put it in, for me it was not as recent as past.

Singh: That reminds me of the prescription law.

Commissioner Gcabashe: You speak of appearances in court, both as an attorney and as an advocate. I just want to understand that, appearances as going to court, representing clients, making representations and having an opponent who does the same thing, that is what you are talking about? Not going to court as a witness and reading through a report?

Chesiwe: Appearing as representing somebody.

Gcabashe: The second question is in relation to working with more senior people, I will take the example of sitting in an appeal. One of my more difficult experiences, I would like to say as a woman, but maybe just as a South African, was in disagreeing with a senior about a particular outcome in an appeal, but it is difficult, and I was a very new acting judge at the time, I was just wondering how do you handle a situation like that? Are you able to stand your ground? What do you do in those circumstances?

Chesiwe: Quite a difficult one, because as an acting judge they are your seniors, they guide you, but in principle when there is something you do not agree with and I believe that if you are professionals both of you and matured legal people there should not be a problem. I recently had one where I did not agree with my senior judge, she is going to write something else and I am going to write something else, but we took it quite well. It is one of those things, which is not an easy thing to do, because it is one of my senior judges who is also quite strict as well, but we agreed and she said no Sharon you go write your part and I will write my part. Also if a person is humble, you do not do it with arrogance it will not be a problem. You are able to talk to each other about it and not coming across as I know better than you. That kind of attitude should not be there, if you are able to look at it and you talk about it and discuss it, it should not be a problem.

Gcabashe: You say you find that you are coping very well as an acting judge and I just want to share with you that I do not cope, I manage, but I do not cope. It is a very difficult job, especially if you are married and I see you are and you have children. So what is your coping mechanism? I find I take work home over weekends, I work on public holidays, because I do not want reserved judgements when I leave the court.

Chesiwe: For me it is your organisational skills, your management skills, your time management. If you put all these things together it is easy to manage. My last born daughter is in grade 12, she is in hostel, so during the day no one is at home, my husband is at work. So when they are at work and I am all by myself I write a judgement or two and let it go. When I am on circuit, whilst a trial is running, at night

at the hotel where you are staying you will be quickly writing another judgement, because the trial is running. It is all about motivation, energy, motivate yourself, run with it and keep on going. Especially, if you are healthy it makes it even better, you run with the full energy that you have.

Gcabashe: I take my hat off to you.

Commissioner Notyesi: I just want to follow up on the questions Judge Mlambo posed on you. When you were asked about your opposed matters, the answer you gave is that those cases will be settled, those were personal injury claims and all that.

Chesiwe: Yes, some will be settled the day of the trial. Some will be postponed. Sometimes they may be settling, because they are trying to minimise their legal fees, because it has been dragging on too long.

Notyesi: Can you distinguish between opposed applications and trials, because what you are telling us about would relate to trials.

Chesiwe: When there is a matter allocated to me that is a trial and it is an opposed trial, then it runs into a trial where the parties come to court and the witnesses.

Notyesi: I am talking specifically about opposed applications. Have you presided over opposed applications?

Chesiwe: Yes, I have presided over opposed applications.

Notyesi: Do you have any judgment which you have written in relation to those opposed applications?

Chesiwe: With regard to judgments of opposed, I only have one which I recently wrote, but it was an opposed trial, it was not an opposed judgement.

Notyesi: The one you have attached.

Chesiwe: No, I have not attached it, because I wrote it while I was in recess and by the time I sent my CV, I did the trial after I sent my CV.

Notyesi: Another problem I have is that in your application you tell us that Ms Chesiwe is a suitably qualified and experienced advocate, offering 15 years' experience. Were you admitted as an advocate or an attorney?

Chesiwe: No, I was admitted as an attorney.

Notyesi: But why do you say that you are an advocate?

Chesiwe: Because while I was at the Family Advocate's Office, I worked as an advocate, but I was not admitted as an advocate, I was admitted as an attorney.

Notyesi: Yes, but as a legal practitioner you know that a person is admitted either as an attorney or as an advocate. It could be that you become designated as an advocate in that office.

Chesiwe: That is what they do, they designate you to that level, but you are still not an advocate.

Notyesi: Lastly, in relation to your practical experience as an attorney, I understand that you were admitted as an attorney on the 9th of June, 2006. Immediately after 2006, what did you do?

Chesiwe: I continued working in private practice, in the law firm that I was articling at.

Notyesi: For how long?

Chesiwe: I worked there at that law firm, not adding my article years because articles was 2 years, I worked there for plus minus three years, then I left.

Notyesi: You left and joined the family advocate?

Chesiwe: Yes.

Notyesi: And in the family advocate, for how long did you remain?

Chesiwe: I remained there for 8 years.

Notyesi: Right, after you came from the family advocate you were appointed as an acting magistrate?

Chesiwe: No, while I was at private practice I was appointed as an acting magistrate. Then I went back to private practice, the same practice, because they allowed me to go.

Notyesi: The reason why I am asking, you can disagree with me, is that I want to suggest that did not have much time for practice. You still need more exposure and experience in practice, so that you understand these things, because I have difficulty with you having presided in only one opposed motion court application.

Chesiwe: Should I respond to that? Like I said it is difficult, because you do the cases you are allocated to. If the Judge President gives me one case or two cases, I do the task I have been allocated to.

Molemela: A follow up to the question that was asked by Advocate Gcabashe, regarding whether you can stand your ground when you have a disagreement with a senior judge that you are sitting with in an appeal. Is it correct that there was an appeal where the two of us sat together, and we could not agree, and it has since been referred to be heard by three judges?

Chesiwe: That is correctly so, I forgot that one, because I was thinking of the other judge, but correctly so there is one where you and me could not agree, so it had to be sent to someone else. So I am able to stand my ground if need be.

Molemela: The last one pertains to opposed motions that you have done. Opposed motions are those cases that we do on Thursdays, not the trials, how many opposed motion cases have you presided over, not the trials?

Chesiwe: I have had a lot of opposed motions which I have presided over, your rule 43's, many others matters which came on Thursdays.

Molemela: Is it correct that in our Division, when you are not in the criminal court, then every Thursday you will be on the opposed motion roll?

Chesiwe: Yes, it is correct so.

Mogoeng: Thank you Ms Chesiwe, you are excused.