



JUDGES MATTER

Judicial Service Commission Interviews

6 October 2016, Morning session

Gauteng Division of the High Court

Interview of Mr M L Twala

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Chief Justice Mogoeng: Good morning Mr Twala.

Mr Twala: Good morning Chief Justice

Mogoeng: You have been an attorney for 35 years, am I right?

Twala: 30 years.

Mogoeng: Is it 30? It shows 35 years here, from 1983.

Twala: I was a candidate attorney from 1983 to 1986.

Mogoeng: So you were not a member of the Law Society of the Northern Cape Province from 1983 as reflected, because it says 1983 to date? From what year were you a member? You became an attorney in 1986, and that was when you joined the law society. It couldn't have been earlier. Or do candidate attorneys join?

Twala: I take it that I was a member since 1983 because I paid the candidate attorney's registration fee as a candidate attorney.

Mogoeng: I thought it was only attorneys that were members. Tell us about your practice as an attorney, how it unfolded and how it has prepared you for the position which you have applied for?

Twala: I was admitted in 1986 as an attorney. I have been an attorney for 30 years. In the 30 years of my practice, I have done criminal law, foreclosure, and third party cases. Eight years after being admitted as an attorney, I decided to do conveyancing. In 1994, I was admitted as a conveyancer.

Mogoeng: It was very difficult to qualify as a conveyance in those days, was it not?

Twala: Yes it was.

Mogoeng: How did you manage?

Twala: I went to Wersksmans that offered an afternoon course in conveyancing. I attended the course and also attended another course with the Law Society of South Africa. I wrote the exams and passed.

Mogoeng: After how many attempts?

Twala: Unfortunately, I passed on the second attempt. From there I proceeded to do the Notary Public Examination in 2009, which came by chance because at the time, I was doing work for the National Empowerment Fund and I was given notarial work. I had to employ a notary to execute the work, but I was having problems with the notary, so I decided to do the work myself.

Mogoeng: This seems to be another difficult area: was it challenging, and how did you manage?

Twala: It was much easier, since I was now busy with conveyancing, they are interrelated so I managed to pass that one at the first attempt.

Mogoeng: And did you get work in that line?

Twala: Yes, I did get work, notarial work. As I said, I was doing work for the National Empowerment Fund, registering notarial bonds. As for the conveyancing work, I'm doing work for the banks, ABSA and Standard Bank. I'm on the panel of Gauteng Department of Human Settlement.

Mogoeng: And appearances in court, how often have you been appearing in court over the years?

Twala: In the beginning I used to appear in court a lot for criminal and civil matters. With the increase of work in my firm, I have had to employ more people, but they work strictly under my supervision. I do appear for pre-trials and unopposed motion courts.

Judge President Mlambo: Mine is just to help you tell the JSC what you've done as an acting judge. You said in your application that you've acted for 53 weeks. My spreadsheet says its 54 weeks. I want to settle with my spreadsheet, because I'm the one who gives you the work. You did 14 weeks in the unopposed motion courts; other candidates have stated that it's a difficult court to sit in. What is your view?

Twala: Yes, it is a difficult court in the sense that if you do not read your files before, you stand a chance of being taken for a ride by counsel. It's best for you to read your files. I had an instance in the unopposed motion court where a counsel stood up and called a matter, because when they call their matters, they call them by numbers. He said by agreement the matter should be removed from the roll, and I removed it from the roll. 30 minutes after, another counsel came and called the same matter and I told him I had removed the matter from the roll by agreement. He disagreed and said he was the applicant, standing for the opposition. He asked for who called the matter and I didn't know which counsel called the matter. I had to recall my decision and listen to his case. Those were some of the problems in the unopposed motion court. One could be taken for a ride if one is not careful, because of the volume of work.

Mlambo: I am sure you will agree with me that when you sit as a black judge in an unopposed court, it's a bit of a contradiction because the prevailing view is that black people do not know what happens in those courts.

Twala: Well, you will experience that with some counsels that think you don't know what you're doing.

Mlambo: A lot of them take chances, and come with empty brief covers.

Twala: Yes.

Mlambo: And they move for an order and you say no, your papers are not in order, and they're surprised when you say that?

Twala: And immediately, you ask that the matter be removed from the roll.

Mlambo: But you are able to do that because you know what is entailed in that court and you've done your preparation?

Twala: That is correct.

Mlambo: You've also sat in the urgent court; was it the one in Pretoria or Johannesburg?

Twala: I have sat in both courts.

Mlambo: I remember in the first interview you had, we dealt with a matter that was brought before you in the urgent court involving six silks. How was your reaction to the matter, with such high level of representation, since you're just an acting judge?

Twala: If you have read your matters and you know the issues in the matter, it doesn't matter who appears before you, as long as you can address the issues. I did not know those counsels, and I requested that they should introduce themselves so that I could know who was addressing me. They found it very difficult to accept that because they were silks and they expected everybody to know them.

Mlambo: But you ran your court and dealt with the matter?

Twala: Yes, I dealt with the matter.

Mlambo: And there have been no comebacks about how you dealt with the matter?

Twala: I've never heard anything thereafter.

Mlambo: Now I noticed in your spreadsheet of judgments that there is one judgment you mentioned that involved a constitutional law issue - the judgment in the *MEC for Human Settlements and Local Government versus Madulamoho Housing Association*. Is that your judgment?

Twala: Yes.

Mlambo: You handed down the judgment within a month of hearing the matter, just under a month. Is that correct?

Twala: Yes.

Mlambo: What were the issues there?

Twala: The issue there was that Madulamoho had evicted people from their flats. The MEC was not joined in the initial proceedings. After the eviction order, the MEC came on urgent basis, requesting to be given an opportunity to find accommodation or to see how many of those people would need accommodation after they had been evicted.

Mlambo: And you wrote your judgment?

Twala: Then I wrote my judgment, because the opposition was that the MEC was not party to this action.

Mlambo: I note that you've also written a judgment on customary law, a consummation of a customary law marriage - *Madala Philemon Mkabe versus Minister of Home Affairs and Others*.

Twala: Yes.

Mlambo: Right. You wrote that judgment also within a month of having heard it?

Twala: Yes.

Mlambo: And I think it is the trend that I've seen in your lists that shows you don't sit on your judgments. Is it a work ethic or principle that you subscribe to in terms of handing down judgments?

Twala: JP, what I try to do with judgments is that after each day I've heard a matter, I go home and summarize what happened in court on that day. I've found that to be helpful quite a lot because later on, when I sit down to work, I just struggle with the structure but I have all the information the way I want it. At times I cannot sleep when I know I have a judgment outstanding, my conscience does not allow me to just leave it there. I make time to write that judgment.

Mlambo: Mr Twala you are a township boy, if you don't mind me saying that. You were born in Katlehong, you grew up under trying circumstances, you established yourself, you established a firm, and you've acted as a judge. What message would be sent to other township boys when they see you?

Twala: It would be a message of confidence in the judiciary, and a message of confidence in education, that if you are educated you can do certain things and achieve this far. If you're going to look at the guy next door who is running a spaza shop or a shebeen and make him your role model, you'll get to a certain level. But if you go to school and study under those trying circumstances, you will achieve more.

MEC Lesufi: I am also a township boy from Tembisa. On this issue of the human settlements, the case that JP was relating to, I thought you said you declared your interest that you're on the database of attorneys of the department of human settlement. Was this not a conflict of interest?

Twala: No, it was not a conflict of interest. The issue here was whether the MEC had a right to join the proceedings, and my decision was that the MEC had a right to join the proceedings because it derives its executive power from the Constitution to provide houses for people. My relationship with the Department of Human Settlements is solely for transfer of RDP houses.

Lesufi: But you do work for them?

Twala: I do.

Lesufi: And here is a case in front of you that is coming from the department that you do work for, regardless of the MEC. The MEC is just the head, administratively. You do

work for the department and therefore, this can be perceived as a conflict of interest? I'm not saying it is, I'm just asking.

Twala: I did not see it that way.

Lesufi: I am quite aware, and I'm sorry if you see this personal, that Gauteng has problems with people who drink and drive, and I know you have gone through some difficulties in your life on this matter. Do you think you would treat any matter that is related to drinking and driving fairly, and not be conflicted?

Twala: I was convicted of driving under the influence, I think I paid my dues for that. I stopped 26 years ago, and I have learned a lot in the period. Presently, my firm is engaged with work from the RAF. From defending the RAF, I've seen what alcohol does in the accidents that occur. I don't think my conviction would affect me when I'm supposed to preside on a matter that involves alcohol.

Lesufi: What is a burial syndicate? Is it a syndicate of dead people?

Twala: It's a syndicate of people to look after each other in case of death of members of one's family.

Minister Masutha: As indicated earlier on being involved in the area of human settlements, what is your take on the evolving jurisprudence around protection of the specific area of the Bill of Rights - the right to housing, to paraphrase? Do you think in our jurisprudence, we have made significant progress in promoting that right? Do you think we still have gaps? Where are we with South African law in relation to this area of the constitution in particular?

Twala: Honourable Minister, I think the government is trying its best to provide housing in terms of the Constitution. The problems that we encounter as conveyancers is when the government allocates land or the municipalities allocate land, and build RDP houses from that land without any proclamation. Then it becomes difficult to deliver title deeds to those people, because one will be sitting on the problem of proclamation, and a coordination of the departments involved – the land affairs, the municipalities – to issue those certificates so that one can open the townships and deliver the transfers to the relevant beneficiaries.

Masutha: Any other challenges that you have encountered, which continue to bedevil the effort of promoting this constitutional right that you have encountered, from a legal point of view?

Twala: I think that is the only difficult I have come across with regard to delivery of houses.

Masutha: Now, let's take it out of government for a moment and talk of the private sector and the role of financing institutions and foreclosures. From a consumer protection point of view, we have reached a stage where even those that are able to

provide for themselves accommodation, whether through their own means, and yet along the way, they find themselves having to lose their asset because of all manner of challenges in the mainstream system. Do you find the system adequately protective of the rights of those that have already acquired physical assets by whichever means, especially among the middle to lower income group?

Twala: I don't think so, Minister. I think the banks don't want to come to the party. In my view, there is no reason for the bank to foreclose on a person who is in arrears of three months. Even if this is in arrears of more than three months, I think the banks can still accommodate this person by extending the period. I had a matter before me where this person bought a property in 2006 for R200 000 plus.

Mogoeng: Is it a case?

Twala: Yes, it's a case.

Mogoeng: It's not finalized?

Twala: No, it's done. It's finalized. For the past ten years, he has been paying a bond, but because of the interest variations, his repayments have increased. He continued to pay the initial amount he was paying whilst the difference keeps accumulating. Now, the arrears was such a figure that the bank decides to foreclose. My view is that the bank should not foreclose in such a situation because if this man cannot extend himself for the extra R300/R400, because in the past 18 months, he kept paying these installments; he didn't change. Why can't the bank then extend it to accommodate the difference?

Masutha: Just to put things in context, I think me and you will agree that the courts have done quite a lot over the last 20 years, through the development of jurisprudence in this area, to come to the avail of those who are vulnerable. As a judge, and given the experience that you have in this field, do you believe you would be able to take matters any further, or do you believe that where our jurisprudence is at now, there's nothing more that can be done to advance or protect this right?

Twala: I believe there is room for improvement, if the banks can allow the extension of the contracts. If a man has paid for ten years out of 20, why can't they give him an extra two years to cover the difference?

Masutha: Thank you very much, Chief Justice. I'll be keen to interact beyond the bounds of this process.

Commissioner Mampuru: What is your take on racial and gender transformation? According to the report that we have, you have got 76 permanent judges in the High Court: 39 are African, of which 27 are male and 12 are women; three are coloureds – two males and one female; five Indians – three males and two females; 29 whites – 20 males and a female.

I understand you are more proficient in five languages if I'm correct: English, Zulu, Sotho, Xhosa and Afrikaans. How many have you tried to learn so far? Thank you.

Twala: I didn't get the last question.

Mampuru: In terms of language proficiency, I understand you can speak Zulu, Xhosa, Sesotho, Afrikaans and English. Of these, how many more have you tried to speak, like Venda, Tsonga maybe, as an example? Thank you.

Twala: To be honest, I haven't tried to speak Venda, Tsonga, though I can hear here and there.

Mampuru: What might be the problem?

Twala: I can't say there's a problem. It's just that I was not exposed to it.

Mampuru: You don't have an interest in learning Venda or Tsonga?

Twala: I'd love to speak Tsonga. My wife is Shangaan, but I can't speak it.

Mampuru: There's a problem, he has a problem. You have a teacher in the house but still, you undermine that.

Twala: Maybe she's a bad teacher.

Mampuru: In that way, you are undermining her capacity as a teacher, because you said 'maybe she is a bad teacher'.

Twala: I'm saying that because I've been married to her for 30 years, but she never bothered to teach me Tsonga.

Mampuru: You don't even bother; you're not even challenged –

Twala: She didn't bother, not me. I'm interested in learning the language, but she's not helping me.

Mampuru: I'll take it further with you outside.

Mogoeng: On a lighter note Ntate Twala, I've heard one of the commissioners say you're exactly like Adam; you're blaming it all on Eve.

Twala: Commissioner, your first question was about gender and race. I don't have a problem with our previously disadvantaged people coming on the bench. In fact, I would encourage that our sisters should come to the bench. I would request the JP to continue with the legal training for people who are on the sidebar to be judges, so that they can come to the bench.

Mampuru: I hear most of the candidates blame their JP's. Don't you also have a responsibility to identify a potential in assisting to see that the JP carries out his mandate?

Twala: I do have that obligation to identify, but it ends there, to identify. The calling remains with the JP. What I'm saying is with regard to training, if the JP can make that available so that people can attend, be trained, and when they are invited to act, the sitting judges should open their doors to assist, because the landing for the first time on the bench is not an easy one.

Mogoeng: Are you aware that there is such training available for the aspiring judges and even judges who have just been newly appointed?

Twala: Yes, I do.

Mogoeng: And they are not keen to attend?

Twala: I don't know how they advertise it to invite people to come and attend.

Mogoeng: Through the JP.

Twala: I suppose it's the JP.

Commissioner Malema MP: What is your take on your performance in the last interview? In your previous interview, how do you grade yourself? You think you did well?

Twala: I think I did well. What can I say? It was not easy. It was my first time to come to an interview. The last time I had an interview was when I was doing my oral exam as an attorney. From there on, I never had any interviews. So it was my first interview, after almost 30 years when I was here the last time.

Malema: I'm asking because I want to check if you might have identified a weakness in the previous interview, and perhaps you worked on that weakness, and come back to share with us that 'I think in the previous one I didn't do well here and there, I've since improved on that level, and that's why I came back for the second time'.

Twala: As I said, I'm not used to the interviews; let me put it that way. My nerves got the better of me in the first interview.

Malema: Well, I think I still don't understand why we didn't appoint you in the first interview, and I'll ask the JP because this one next to me can't help me, because you were supposed to be appointed in the first interview. Thank you.

Twala: Thank you Mr Malema. You still have a chance to appoint me today.

Commissioner Schmidt MP: In your questionnaire, you were asked to provide cases in which you've appeared, not more than ten, you regard as being the most significant and why. It's on page 7. You provided five, but they all seem to indicate your involvement with the municipal council involved, in other words, if you look at 'a' on page 7 -

Twala: Just give me a chance to get there. Yes -

Schmidt: If you look at page 7, the Federation for Sustainable Development; on the next page in page 8, you appeared for the Gert Sibande district municipality.

Twala: Yes.

Schmidt: b: you appeared for the Mogale City Local Municipality in the delegation of power to appoint a municipal manager.

Twala: Yes.

Schmidt: c: you appeared for the Mogale City local municipality, 'd' once again, and 'e' on behalf of the Dipaleseng local municipality.

Twala: Yes.

Schmidt: So in all five cases, you're of the view that they had impact or some form of significance. Are you known as the attorney appearing for local councils? Do you have a contract with SALGA to appear on behalf of councils? It just sits uneasy that in all five cases, you appeared on behalf of the council and those are the only ones you prefer to citing as being of significance.

Twala: Well, what happens is this. My firm recently is doing a lot of work for municipalities. As you can see, it's not only one municipality; it's different municipalities. So that is how I got into these cases. I'm on the panel of the City of Johannesburg; I'm on the panel of Mogale City; I'm on the panel of the West Rand district municipality; I'm on the panel of Dipaleseng municipality.

Schmidt: I understand. The reason why I'm asking is on the basis of your questionnaire, you've indicated that you have a wide ranging field of experience, from personal injury to divorce to marital issues to debt collection. But those were the only five you preferred to cite?

Twala: Well, I referred to these because to me, they are cases of substance. Personal injury, my firm is doing about eight matters a week in the High Court, and most of them are matters where when you get to court, the parties settle. It's very few personal injury matters that go on trial, very personal injury matters that go up to the SC[A]. Individual

clients who are involved in litigation, very few of them go beyond the High Court because they can't afford. It's only these big clients that can go the whole distance.

Commissioner Singh MP: I remember the interview last year as well. I think, just to follow on Commissioner Malema, one of the things you were asked by the DCJ last year and exactly on this day, 6th of October, is what wish list did you have for the judiciary, what would you see change in the judiciary; and at that time your answer was nothing. Have you reflected on those questions and can you provide us an answer today?

Twala: My answer was not 'nothing'. My answer was I had not given it a thought at the time. Today, I think if I am appointed, I would like to see the legal training continue, I'd like to see that acting judges coming for the first time have direct mentorship, not like what we had, so that they can have a soft landing. It's easy to say in an open place like this 'you can come to me, my door is open', and when I walk into your door, I'm talking to somebody through a glass. But if it can be arranged that you get a judge who would mentor you, take you through bit by bit; it's not easy to sit alone for the first time to start writing a judgment; you need somebody to guide you along those lines.

Singh: So that is the change you've thought about. And you're quite correct, your answer to the question was 'I haven't thought of any change'; that was last year. But you seem to have applied your mind and you've given us an answer now. We received a letter from the law society of Northern Provinces dated 27th September 2016, which was about a week ago, with regard to your audit report which was received but not approved. Can you tell us why it was not approved, and has there been any progress or any change in this last week?

Twala: I'm surprised that you don't have the letter of the 28th, the following day.

Singh: We do not, because the secretariat did not provide us with that letter. I'm reading from what I have before me, but you can give us the answer.

Twala: What happened, my auditor issued a certificate to the law society and mentioned that in December, the trust account was overdrawn by I think R346 but he did not qualify the certificate, and the law society's problem was, if you say the trust account was overdrawn by R346, why don't you qualify? And the response from the auditor was 'I did not qualify the certificate because it was not Twala's issue having put his hand in the till; it's the bank charges which the bank returned to the trust account instead of the business account'. Having given that information to the law society, they issued a letter on the 28th saying that "the law society hereby confirms that the above applicant's audit report is now being received and approved".

Singh: Thank you for that information. Like I said, we didn't have that information before us and I had to ask that question. Lastly, you disclosed that you're a member of CC Zibuse Transport.

Twala: Yes.

Singh: And you told us you carry steel and things like that. In response to a question, you said that you would resign and get your wife to take over. Your wife hasn't taught you Tsonga; have you been teaching her the ropes about the transport business since then?

Twala: Yes, since October last year, she has been more involved in the business. I can sleep peacefully that she's doing a good job on the business.

Mogoeng: I'm sure you've familiarized yourself with the judicial code of conduct before you finalized that arrangement to check whether it permits or doesn't permit if appointed?

Twala: Yes, I will do that.

Mogoeng: Thank you very much. You're excused.