



# JUDGES MATTER

## Judicial Service Commission interviews

05 October 2017.

### Western Cape Division of the High Court

#### Interview of Mr M K Parker

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**Chief Justice Mogoeng:** Good afternoon, Mr Parker.

**Mr M K Parker:** Good afternoon, Chief Justice.

**Mogoeng:** Are you well?

**Parker:** I am fine, thank you, Chief Justice.

**Mogoeng:** Are you relaxed?

**Parker:** Relatively

**Mogoeng:** A little bit, relatively?. Okay. For how many years have you practiced law?

**Parker:** Chief Justice I started my articles in 1977 and have been in law ever since, it is about 40 years.

**Mogoeng:** And for how many months have you acted as a judge?

**Parker:** In the High Court in the Western Cape I have acted unbroken since October last year, so it would be four terms going into next term, and I also acted in 2005 in the Eastern Cape for one term.

**Mogoeng:** How long does it ordinarily take you to deliver a reserved judgment?

**Parker:** Chief Justice, I have looked at my judgments in the last year, I have not delivered a single judgment longer than two months after the matter was heard.

**Mogoeng:** Both civil and criminal trials?

**Parker:** Both, Chief Justice.

**Judge President Hlophe:** I am going to disclose upfront that I know you, we have known each other for a while and we have had a cordial relationship and last year – sorry, last term we shared the floor and we used to have coffee together.

**Parker:** Indeed, sir.

**Hlophe:** So for what it is worth I must disclose that. Mr Parker I am going to ask you a couple of questions. Let me put it to you there is racism on the bench, there is racism in the profession and there is racism in South Africa and obviously it varies from province to province. Were you to be recommended for appointment to the bench, how can you assist, as a permanent judge, assist the leadership of the Judiciary to eradicate racism and particularly in the context of skewed briefing patterns?

**Parker:** Chief Justice, JP, thank you. I firstly recognise the fact that racism be still very much a plague and on all the levels that you just mentioned. If I were to be recommended and become a judge, I will, wherever I identify racism being practised I will definitely confront it, I will deal with it and if I cannot deal with it effectively on my own I will certainly bring it to the attention of management. With regard to skewed briefing patterns, I think we can only make a concerted effort to identify more people who were previously disadvantaged and who were not briefed or didn't enjoy a fair slice of the cake, that they be brought into the system.

**Hlophe:** While we are - excuse me, whilst we are talking about skewed briefing patterns, isn't that a form of racism in the first place?

**Parker:** Indeed sir, I recognise and I agree that it is so.

**Hlophe:** Right. Mr Parker you have acted for a reasonably long time, both in the Eastern Cape and the Western Cape. Do you believe pre-trials, inter alia, are an effective tool of case flow management because, I am asking you because more and more, we are expected to do more and more with less and less resources?

**Parker:** In fact I am of the view that pre-trials are essential, it is one way, effective way of addressing the court rolls to manage cases and to effectively reduce the case flow. I am only exposed to what happens in the Western Cape and I have seen it working extremely well there, where a judge is seized with a file and sees it through to the point that it becomes trial-ready, and I have been a practitioner for all my life or most of my life, and I know for practitioners it is easy to manipulate

the system. I don't confess that I have ever manipulated the system, but I know it is easy to do so and I recognise the fact that in some instances practitioners run the trial and directly or indirectly affect how the trial drags itself out. But with effective pre-trials and trial management, I think the Judicial Officer is in control of that process.

**Hlophe:** Right. By looking at your CV one gets the impression that you are strong in the context of criminal law. Would you say is that correct, number one? And number two, would you say your expertise is confined to criminal law or does it extend to other areas of the law?

**Parker:** JP. Thank you. JP it's stronger I would say. I did practice criminal law for the early part in my career for about 20-odd years. Thereafter I diversified and did less and less criminal work. I have done a fair amount of labour work, a fair amount, not nearly enough constitutional work and administrative law. My practice was unfortunately not the type that attracted much of that kind of work. I must also say that in the last year that I have been at the High Court I have been exposed to literally all sorts of different types of legal matters and to the extent that I was not on top of things, I have quickly had to go and refresh my memory and learn. So I think I am fairly covered in my 38-odd years of active practice, I think I have come across most areas and aspects of the law, either as a practitioner or an instructing attorney or appearing in the High Court myself since the attorneys were allowed to appear and also since I have been sitting on the bench. So I think I have come across most aspects, there obviously will be aspects that I haven't dealt with, but I don't think my expertise is slanted too heavily on criminal work. In the Western Cape in the last year since I have been there, I have done three criminal trials, for the rest I have been in the civil pool and at the expense of sounding self-centred I did not experience insurmountable problems, JP.

**Commissioner Stewart:** The comments from the General Bar Council have at paragraph 15, a comment on your temperament, which I think it's fair to ask you to comment on. They mention, they say the candidate's judgments can be somewhat intemperate and then they go onto quote *S v Ngwenya*, and they quote you saying, "The cherry on the cake, as it were, was his absolutely unbelievable evidence and if the accused would take the trouble of listening to his own version he would be struck by the inherent improbabilities therein". What is your comment on the Bar Council's comment on your temperament?

**Parker:** Thank you ma'am, I have noted that comment and if I must be brutally frank with the benefit of hindsight, maybe I could have used better words or other words which were not as strong as those. I remember the matter very clearly. It was indeed a very brutal murder where the deceased lady was treated very, very badly, and the accused had a very flippant attitude, even when they got into the witness box. But if I must be brutally frank and as I say with the benefit of

hindsight it's probably a fair comment, that I could have used better terminology to express the same word. But legal language is such that it is often loaded and the circumstances of a particular case I think often determine how one expresses one's self.

**Commissioner Nkosi - Thomas:** The GCB, if I may take you to the feedback received by this Commission from the GCB, they had the following to say, at paragraph 4.8, about your experience. I just want to test it for you, if you would agree with what they say there. The say there at paragraph 4.8, "In the circumstances the candidate's knowledge of the law, while substantially focussed on criminal law, is more varied than that." Is that fair?

**Parker:** That what I was trying to explain when Chief, JP asked me the question.

**President Maya:** One of the judgments to which you refer in your questionnaire is the matter of the Department of Correctional Services against POPCRU. Are you with me?

**Parker:** I am listening, sorry, I couldn't see you earlier that is why I didn't acknowledge you.

**Maya:** You have commented here that despite the SCA's ruling in favour of the relevant correctional officers, they are still battling today, four years after judgment was delivered, to get their justice. And I take special interest in this matter because I delivered the judgment, and the minister of the relevant department is here to hear what you have to say. What is going on?

**Parker:** Ma'am, if I understand your question to mean what is happening today?

**Maya:** Yes, I just want to understand if the court order has not been complied with, four years after -

**Parker:** I regret to say that it has not fully been given effect to. We have been through various stages, we have had to, as you would know, go up to the Supreme Court of Appeal, the Supreme Court of Appeal then gave that judgment. We had to prepare further papers to threaten the department, to reinstate them. There was a reluctance to reinstate them. They were then reinstated, then the next battle was to get the department to pay them their back pay. We again had to prepare fresh papers, and on the doorstep of the court they came with a settlement and paid, I'd say 85% of what is due to them. The dilemma for the litigants is now whether they should continue with this battle for the other 15% and put their lives on hold. What the department has done is it that they have paid them that 85 or 90% of what is due to them, but it refuses to promote them. So those unfortunate correctional officers are still locked in battle.

**Minister Masutha:** If I am allowed, I will make sure personally that I follow-up the details of this matter.

**Parker:** I would appreciate it, I feel very strongly about that matter and those particular litigants.

**Commissioner Schmidt:** Shortly, or in short rather, I see that you've been a member of the ANC for eight years?

**Parker:** That was right in the beginning, when the ANC was unabanned.

**Schmidt:** So 1994 to about 2002?

**Parker:** That would roughly be correct.

**Mogoeng:** Thank you Commissioner Schmidt. You are excused, sir.

**Parker:** Thank you very much Chief Justice and the Commissioner. Thank you for the opportunity.