



JUDGES MATTER

Judicial Service Commission interviews

07 April 2017.

Labour Court

Interview of Adv R G Beaton SC

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Adv R. Beaton: ... yes and I then worked at, what is now the National Director of Public Prosecutions, but was then the Attorney General for a year and I then resigned and went to the Bar.

CJ M. Mogoeng: And for how many years have you been at the Bar?

Adv R. Beaton: 28.

CJ M. Mogoeng: For how many years a Junior and for how many years a Senior?

Adv R. Beaton: Six as a silk and 22 as a Junior. The 22 years were not consecutive. It was interrupted at the end of the 80's by a five-year period during which I worked for mining houses, primarily looking after labour relations and industrial relations matters.

CJ M. Mogoeng: What percentage of your practice has been in the Labour Law field?

Adv R. Beaton: Since 1993, 95 percent.

CJ M. Mogoeng: And for how long, all in all have you acted in the Labour Court?

Adv R. Beaton: Three weeks.

CJ M. Mogoeng: Tell us why you consider yourself to be suitably qualified for the position of Labour Court Judge?

Adv R. Beaton: I meet the requirements set in Section 153 of the Labour Relations Act which is, I need to be an admitted Legal Practitioner and to have knowledge and expertise and experience in Labour Law and that I have, not only from the point of view of a Legal Practitioner, but I was, if you'll excuse almost the pun, at the coal face when I worked for the mining house.

CJ M. Mogoeng: Yes. Thank you. Let me just, before we move on, just welcome Acting Judge President Tlaetsi, who's the Acting Judge President for the Labour Court and the Labour Appeal Court and Mr Njalinjali, who represents NEDLAC. You're welcome, Sir. Hey JP?

JP P. Tlaetsi: Thank you, Chief Justice. Morning, Mr Beaton. Mr Commissioner. In the three weeks in which you acted in the Labour Court, that was during recess, all those times?

Adv R. Beaton: Yes, it was a pro bono appointment.

JP P. Tlaetsi: On the pro bono programme?

Adv R. Beaton: Yes.

JP P. Tlaletsi: Yes. So, for three weeks, how many days would you have sat in Court, hearing cases?

Adv R. Beaton: Two in each week.

JP P. Tlaletsi: Two in each week, which would give us six days?

Adv R. Beaton: Yes.

JP P. Tlaletsi: Okay and the kind of work that we do during that period, is it opposed motion?

Adv R. Beaton: Yes.

JP P. Tlaletsi: That was opposed motion.

Adv R. Beaton: Yes.

JP P. Tlaletsi: And then on your questionnaire, at Paragraph 2, you have referred to an article that you wrote in 1989?

Adv R. Beaton: That's correct

JP P. Tlaletsi: Yes. What is the significance of that article? What's important about it that you would want to share with us?

Adv R. Beaton: At that stage there was no Section 33A of the Labour Relations Act which allows the enforcement of collective agreements and this article addressed that. It has of course in the light of statutory developments become quite irrelevant at the moment, but at the time that was why I wrote that article.

JP P. Tlaletsi: I see and then also you have attached a ruling on a disciplinary inquiry?

Adv R. Beaton: Yes.

JP P. Tlaletsi: Yes, you have. What is the significance of the ruling?

Adv R. Beaton: First of all, the ex-Judge, who chaired it himself said that the offence of which I was found guilty was not a serious one and he would have only in the normal course have imposed a warning for it. He described it as an error of judgement. The sting in that disciplinary finding is that he disbelieved me, because I didn't know... [intervention]

JP P. Tlaletsi: I'm referring to the one on... [intervention]

Adv R. Beaton: Oh, I beg your pardon.

JP P. Tlaletsi: ... the matter of RMD Kwik Forum and T (indistinct) [0:04:20].

Adv R. Beaton: Yes, that was – my apologies.

JP P. Tlaletsi: Yes.

Adv R. Beaton: I was briefed to chair a disciplinary hearing against an MD and one of the charges was a conflict of interest and it was necessary to expand upon exactly what is a conflict and how much disclosure need there be in order for the charge of a conflict to evaporate and this ruling addressed that point.

JP P. Tlaletsi: Okay and then just for information purposes, the demographics at the Labour Court at the moment are as follows, because I've seen in one of the packages there seems to be a mistake, I think, whereby the GCD, you've got four women at the moment. You've got four white males and then you've got two black males. You've got one coloured woman and one African woman. Out of these women you've got two white women. Do you have any comment regarding your appointment?

Adv R. Beaton: I would suggest that demographic representation at the Labour Court in any event plays less of a compelling role than it does at the High Court, because of the provisions in the Labour Relations Act to which I've just referred, which I would submit are the primary considerations that you should take into account. It seems to me as though this Commission itself holds that view, because three of those white males to whom you've referred were appointed in one sitting on recommendation of this Commission.

JP P. Tlaetsi: And then in your package also you made the disclosure, which was a finding by the Disciplinary Committee of your professional body.

Adv R. Beaton: Yes.

JP P. Tlaetsi: Yes. It seems the proceedings were completed last year.

Adv R. Beaton: Yes.

JP P. Tlaetsi: Yes. And the sanction that was imposed, is it still in operation?

Adv R. Beaton: It was a suspended sanction and the suspension period is still operational, yes.

JP P. Tlaetsi: So technically, would you say you are still serving a suspended sanction or how does it operate?

Adv R. Beaton: Well, the period of suspension is still operative.

JP P. Tlaetsi: It is still operative. That is all, Chief Justice, I thank you.

JP P. Tlaetsi: Thank you.

CJ M. Mogoeng: Thank you, Acting Judge President. Commissioners, for the sake of the new Commissioners, when it comes to the Labour Court and the Labour Appeal Court, we have the Judge President of those Courts or his Designate or

Deputy in this case representing the Court, but we also have a representative of NEDLAC, in this case, Mr Njalinjali, who then represents NEDLAC obviously, but he puts questions – he's allowed to put questions to all the Candidates, although he does not have the right to vote. So, I just thought I must let you know. Over to you, Mr Njalinjali.

Mr Njalinjali: No questions at this stage, Sir.

CJ M. Mogoeng: Thank you. Thank you very much. Commissioner Norman?

Ms T. Norman: Thank you, Chief Justice. Good morning, Mr Beaton.

Adv R. Beaton: Morning, Madam Commissioner.

Ms T. Norman: Ja, I just want to understand, if your sentence then is still operational, as it is, why would you think that this Commission should appoint you or consider you as a Judge?

Adv R. Beaton: The sanction has been imposed. The Disciplinary Hearings are complete and of course, if you were to appoint me, it would take me out of the cadre of the professional body, which has imposed it, but that's my answer, because the professional proceedings and the disciplinary hearing is complete.

Ms T. Norman: Now, let's just go back to the finding. Am I correct that that disciplinary hearing was headed by a Judge, by a referred Judge? Am I correct?

Adv R. Beaton: Yes.

Ms T. Norman: And if you go to page 106 of the pack, Feedback from Law Bodies...

Adv R. Beaton: Yes.

Ms T. Norman: Do you see that? (Indistinct) [0:09:23].

Adv R. Beaton: I'm afraid I wasn't given that. Are you talking about my Bar or the GCB?

Ms T. Norman: No, no, could you have a look at this pack? There is a pack in front of you.

Adv R. Beaton: Oh, I see. Sorry, if you could just tell me where the pagination is.

Ms T. Norman: Yes, there's a pack in front of you which says, "Book 1 of 1".

Adv R. Beaton: I have it.

Ms T. Norman: "April 2017 Feedback from Law Bodies".

Adv R. Beaton: Yes.

Ms T. Norman: And the GCD has commented on you and that – if you turn to page 106.

Adv R. Beaton: Hold on. Sorry, the document I have doesn't seem to be paginated.

Ms T. Norman: Is it? Okay, can I please ask the Secretary to just make... [intervention]

Adv R. Beaton: Top right?

Ms T. Norman: Yes.

Adv R. Beaton: I'm afraid I can't find it.

Ms T. Norman: Okay, we'll find it for you.

Adv R. Beaton: I have it.

Ms T. Norman: You have it now?

Adv R. Beaton: Yes.

Ms T. Norman: Thank you very much. Could you please turn to page 106?

Adv R. Beaton: I have it.

Ms T. Norman: You have it there? Could you just look, the very last paragraph, before the 22, before the number 22?

Adv R. Beaton: Yes, I've seen it.

Ms T. Norman: Yes, that Committee that disciplined you found your behaviour to be scandalous, because you denied under oath that you had interviewed an Acting Judge in chambers.

Adv R. Beaton: Yes.

Ms T. Norman: Now, are you suggesting that as far as you're concerned that's not something that should be held against you, if you are appointed as a Judge? That qualifies you to serve as a Judge?

Adv R. Beaton: I was – first of all, no, I don't suggest that it shouldn't be taken into account. What I do suggest is that if you read the complete finding, you will see that the actual conduct was found by the Judge not to be serious, but this portion to which you're alluding was found to be serious.

Ms T. Norman: Yes.

Adv R. Beaton: Now, I today still aver that I did not interview the Judge. I know a lot better than that, but I have the finding that I have to deal with. It's the problem – I would ask you to take into account – it's the problem that someone who is accused, who just denies something, faces and I faced that problem. I was not prepared,

falsely to admit that I had done it. I'm aware of the fact that these findings are and that we have not appealed them. I have not appealed them to the GCD. I was advised by two senior counsellor colleagues of mine that for the sake of the Bar and in order to put it to bed and because of the penalty that was imposed, I should not so appeal. I would ask you to then take into account the totality of the findings and the fact that this is one incident over a period of some 28 years that has taken place.

Ms T. Norman: Now, could you tell me, who signed your Certificate of Good Standing?

Adv R. Beaton: A member of the Bar Council.

Ms T. Norman: But, is that how it's done?

Adv R. Beaton: Yes.

Ms T. Norman: With the Pretoria Bar?

Adv R. Beaton: Yes.

Ms T. Norman: Does the Chairman of the Bar know that you have a Certificate of Good Standing that comes out of that Bar?

Adv R. Beaton: Yes.

Ms T. Norman: Now, I've never had a situation where a person who has a sentence hanging over his head would get a certificate of good standing, because it means that that person is actually saying to this Commission that yes, this man has been convicted, has been found guilty, this man has a sentence hanging over his head, but we still feel that he must be a Judge.

Adv R. Beaton: That certificate, at the end pertinently says there are no pending Disciplinary Hearings against me. I disclosed this in this application and my Bar in

fact commented on it. So, it was known to the Bar when they commented on my application.

Ms T. Norman: But then your Bar, in that certificate, doesn't say that there's a sentence that is still pending that you are serving.

Adv R. Beaton: No.

Ms T. Norman: Thank you. Thank you, Chief Justice.

CJ M. Mogoeng: But doesn't that certificate have a fact of saying, you are so clean, this Body should have nothing to worry about, as far as you are concerned?

Adv R. Beaton: Yes.

CJ M. Mogoeng: Is that a correct reflection of the position?

Adv R. Beaton: I would...

CJ M. Mogoeng: Now, reflect on that now as a potential Judge, judging that situation. Is it a correct and appropriate reflection of the position?

Adv R. Beaton: I would suggest yes, if you read it with the Bar's - my Bar's comments on my application, which was submitted to the GCD, which I assume are here.

CJ M. Mogoeng: Commissioner Msomi? Is that a follow-up, JP?

Mr S. Msomi: Yes, it's a follow-up from me.

CJ M. Mogoeng: Yes.

Mr S. Msomi: Thanks, Chief Justice. I would like you to put yourself in the shoes of the broader South African populous. You are found guilty in 2016 of what appears to

have been a serious offence, if the comments that Commissioner Norman read through – the Judicial Service Commission, a Body that is entrusted to interview and recommend Judges' appointments makes a recommendation that you be appointed. How would the broader South African populous look at this particular Body, appointing a man who faces – who's got a sentence basically over him, who hasn't completed that sentence, where serious remarks of this nature were made, gets elevated to be a Judge? How do you think an ordinary South African will view this Body?

Adv R. Beaton: Okay... [intervention]

CJ M. Mogoeng: And the Judiciary.

Adv R. Beaton: My first comment is that it's not the offence of which I was convicted, which the Judge himself says was not a serious one, but I take your point that it's these comments and my answer to your question is that the broader South Africa will accept that people make mistakes and that there are processes, which get followed and in this one I've been tried and sentenced and it's in the past and there is no probability or no indication of any possibility of something happening in the future. I accept that what I've just said does not cover the fact that the period of suspension is still operative.

Mr S. Msomi: Just a follow-up question on that, don't you think it's too soon a period that you are availing yourself. Don't you think as a valued judgment, perhaps there should be some kind of a cooling off period between the time you're sentenced? You serve your sentence, you show some kind of rehabilitation and then you raise your hand later and say I've paid my price, I've cooled off for two years or so, I'm now ready. It's a valued judgment. Don't you think a reasonable person in your shoes would be expected to do that?

Adv R. Beaton: Sorry, my reaction to that is that this offence took place in January 2015, so there has been a period of more than two years during which there'd been no disciplinary actions against me, other than this one. So, I attempted to expedite the hearing, but with the Bar's proceedings they only got round to actually doing

anything in June last year. So, given the period that has lapsed since the offence was committed, I would suggest that I have met a period of reflection and rehabilitation.

Mr S. Msomi: But as a Lawyer you know that a sentence comes into effect when it is handed down, which was only in July 2016.

Adv R. Beaton: I accept that.

Mr S. Msomi: And a mere eight months later you get elevated to the bench, when there's still a cloud hanging over your head as it were.

Adv R. Beaton: I would submit that that cloud is greatly evaporated, given the amount of time since the offence was committed.

Mr S. Msomi: (Indistinct) [0:18:59] Chief Justice (indistinct) [0:19:01].

CJ M. Mogoeng: (Indistinct) [0:19:02] Judge President Kgomo?

Mr Kgomo: Advocate Beaton, you are a Senior Counsel and in this Commission I have over the years, in circumstances maybe slightly different, with a cloud hanging over them suggested to them and even sometimes implored them, withdraw now, you're only harming your own chances in the future, because more questions are going to follow and for me, having looked at what has come and I'm speaking only for myself, you must remember, although I represent the Judge President, you're harming your chances even further and for me, to persist in continuing it shows that for me, you lack judgement. Wouldn't you consider at this point in time to withdraw?

Adv R. Beaton: If I could...

Mr Kgomo: I don't want to name names, but there are at least five who have – I've pleaded with them. Some accepted, some didn't, and they have been harmed.

Adv R. Beaton: This is not a light issue for me. I seriously considered this aspect. I discussed it with Colleagues at my Bar and if you read my Bar's comment on it, they accept that it is an unfortunate incident, but no one at our Bar suggested that it disqualified me and that I should withdraw the application because of it and if you read the whole judgment, you'll see that what actually sparked this was a complaint that I laid, but I hear what you say, Judge President. I wasn't approached by anybody before and given my Bar's approach to it, I've come this far. I might as well go further and there's another factor, if I might mention it and I hear what both of you say about taking time to reflect. I am – you will see from my application, I'm 60. Given the provisions of the Judges Remuneration Act my – I've reached my sell by date.

Mr Kgomo: It's your call. Thank you, CJ. I have no further questions.

CJ M. Mogoeng: Thank you, JP. Commissioner Schmidt?

Mr H. Schmidt: Thank you, Mr Beaton. You will appreciate the integrity of the Judges first and foremost?

Adv R. Beaton: Yes.

Mr H. Schmidt: As I understand you have made yourself guilty of unbecoming conduct by the Pretoria Society of Advocates. Am I correct? From what I understand here it says: "Contravention of Rule 4(10) Guilty of conduct unbecoming and disgraceful." Is that correct?

Adv R. Beaton: Yes.

Mr H. Schmidt: That's one thing. Admitting it or denying it is another thing, because if I understand correctly you are still denying that the incident took place.

Adv R. Beaton: Yes, I've...

Mr H. Schmidt: Yes, but can I – which brings me to the following problem, because on the face of it, then not only do you put into dispute the integrity of another Acting Judge, but also of a lady – I don't know who she is.

Adv R. Beaton: She was a Registrar.

Mr H. Schmidt: Registrar, yes.

Adv R. Beaton: ... of the Judge – of the Acting Judge.

Mr H. Schmidt: So, it's an ongoing problem – one which has not been resolved by the mere fact that you have decided not to appeal. You're on... [intervention]

Adv R. Beaton: May I react to that?

Mr H. Schmidt: Sure.

Adv R. Beaton: That Judge – that Acting Judge and I have made peace.

Mr H. Schmidt: That may be so, but the point is there is still a dispute as to whether the incident took place and it... [intervention]

Adv R. Beaton: Look, I accept the plight. If I may interrupt you... [intervention]

CJ M. Mogoeng: Please Mr Beaton, let the Commissioner put a question to you. He will allow you to answer fully.

Mr H. Schmidt: It's the – I don't want to put it too dramatic terms, but it's your integrity which I am questioning about that is either you accept that it took place and you say sorry, I've done it, it's over or you say, I'm not accepting it and I'm clearing it and we await the outcome of the appeal, but you can't have your cake and eat it.

Adv R. Beaton: I accept that.

Mr H. Schmidt: And that's why I have a problem with what you're saying, because you seem to say well, let's accept it took place. I'm willing to say it took place, but in the meantime, I'm not willing to accept that it did in fact take place.

Adv R. Beaton: There's a finding against me, which I've not appealed, and I accept that finding stands.

Mr H. Schmidt: But then when I ask you whether it did take place, you say no.

Adv R. Beaton: I would be untrue to myself if I admitted that, because as far – in my heart of hearts I know it didn't. There's a finding against me, I've not appealed it and I accept that.

Mr H. Schmidt: Mr Beaton, I am – I'm sorry to say this, but I can't believe that we're having a discussion with a Senior Counsel of the Bar, having that kind of argument, with due respect.

Adv R. Beaton: Look, for purposes of this Commission, it took place, there's a finding against me and I accept that. I do.

CJ M. Mogoeng: What do you mean for purposes of this Commission? For what purposes has it not taken place?

Adv R. Beaton: My own heart and head. In my own heart and head, I would, and I don't want to belabour this, I would never do such a thing, but there's the finding against me and I accept that, and I accept that you can work on that finding against me.

CJ M. Mogoeng: Commissioner Didiza?

Ms T. Didiza: Thank you very much, CJ. Commissioner – I'm sorry, Advocate, good morning.

Adv R. Beaton: Morning.

Ms T. Didiza: You are saying in your heart and head it didn't happen. If that's the case, didn't you feel it was necessary to appeal the sentence if you did not really agree with it?

Adv R. Beaton: Yes. I was – I've answered that. I went to two Senior Colleagues who said that for the sake of the Bar and because of the sentence that was imposed, don't appeal it, because it will just carry on this tension that there is, and I accepted that advice.

Ms T. Didiza: But don't you – didn't you think that you know, the blot of the sentence and it not being appealed raises issues of integrity on your part?

Adv R. Beaton: Yes.

Ms T. Didiza: You didn't think that was necessary to deal with, because looking at and what is difficult, you are saying you've come this far and therefore we must examine you, even though we know what the sentence is and one of the Commissioners asked, what do you think of the South African citizens, how will they take this, because if that's the case, why should people be asked to serve the sentence to the end if, when it comes to Judicial Services, they can actually – you know, Judicial Officers, they can continue their life, regardless of whatever sentence may be there and it must be accepted that there's nothing wrong about it.

Adv R. Beaton: I was unaware that a suspended sentence would preclude me from being seriously considered. If that is the case, I know that this Commission does not consider persons against whom there are outstanding disciplinary actions until those have been completed. If that includes the suspended sentence which I did not know it did, I would be willing to accept that.

CJ M. Mogoeng: I think the problem relates to what that sentence is about, what does it relate to, dishonourable and disgraceful conduct. Can you imagine a dishonourable and disgraceful Judge? That's serious. This is a profession of honour.

Adv R. Beaton: Mr Chief Justice, I've dealt with that. I've answered that. Whether my answer is good enough, I don't know.

CJ M. Mogoeng: Yes, thank you. Commissioner Masuku?

Adv T. Masuku: It's a very serious concern. Thank you, Chief Justice. It's a very serious concern, Advocate Beaton that you have not really accepted and honoured that, in as far as the finding is concerned, in other words you don't recognise this as binding on your conscience.

Adv R. Beaton: That is correct. I recognise it as binding in my professional standing and for all other purposes, but in my own head I still don't – in my conscience, as you said, I don't.

Adv T. Masuku: That's a very frightening display of – I must say a very concerning sense of what it means to be a Senior Counsel and a Member of the Bar that you come from a professional Body that has found you guilty of conduct unbecoming and disgraceful, you come to a JSC Commission, you are asking to be considered for Judgeship, you don't appeal the judgement of the professional Body and Council and then you want this Body to consider you to be a fit and proper person to be a Judge. That's just an unimpressive way of analysing your own personal circumstances, with respect.

CJ M. Mogoeng: I accept what you say, but I cannot...

Adv T. Masuku: Sorry, sorry, I don't understand. If you accept what I say, why are you here?

Adv R. Beaton: Because for two reasons. In my own mind this didn't happen, but I accept that's irrelevant for current purposes, forget there's a finding...

Adv T. Masuku: Give us something that is relevant.

Adv R. Beaton: I accept that this happened. It's passed. It's two years since the offence was committed. I haven't done anything in that period. My own professional Body said this wasn't serious enough to discourage me from coming here. That is why I'm here. I've given you my personal circumstances as to why I'm here.

Adv T. Masuku: Okay, thanks. Thank you, Sir. Thanks, Mr Beaton. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Masuku. Advocate Beaton, thank you very much. You're excused.

Adv R. Beaton: Thank you.