



JUDGES MATTER

**Judicial Service Commission interviews
07 April 2017.**

**Labour Court
Interview of Mr G N Moshwana**

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[length of audio] (19:23)
2017 JSC Interviews/Mr G N Moshwana

Mr G. Moshwana: I am well. Thank you.

CJ M. Mogoeng: Yes. Tell me, where is home?

Mr G. Moshwana: Home is Limpopo, in the area called Burgersfort, Praktiseer.

CJ M. Mogoeng: Yes, now what degrees do you have?

Mr G. Moshwana: I've got a BProc.

CJ M. Mogoeng: Maybe you should include the diplomas as well.

Mr G. Moshwana: I will. I've got a BProc from the University of Limpopo, but it was Turfloop then and I've got an LLB from Wits and I've got LLM from RAU and I've got a higher diploma.

CJ M. Mogoeng: Was it still RAU then?

Mr G. Moshwana: It was still RAU and oh, by the way now... [intervention]

CJ M. Mogoeng: Randse Universiteit.

Mr G. Moshwana: Indeed it was and I've higher diploma in Labour Law, also obtained from RAU, but now UJ and I've got a diploma in Corporate Law, also from UJ, but at the time it was still RAU.

CJ M. Mogoeng: Now, in your own words just tell us, what do you believe has prepared you for the position you have applied for.

Mr G. Moshwana: I believe, Chief Justice, firstly the studies that one had been involved in up to the point of having a Master's Degree in Labour Law and the fact that I had acted in the Labour Court for almost 10 years and that I believe had prepared myself – had prepared me rather for the position of being a Judge.

CJ M. Mogoeng: And for how long have you practised law?

Mr G. Moshwana: I've been in practice for the past 22 years, if I'm not mistaken, from 1995 when I was admitted as an attorney.

CJ M. Mogoeng: Yes and did your practice expand to appearance in the Labour Court or not?

Mr G. Moshwana: Yes, I have appeared in the Labour Court a couple of times, in the Labour Appeal Court, as well as the High Court. The only court that I have not made an appearance was the Apex Court, which is the Constitutional Court, but other courts I have made an appearance.

CJ M. Mogoeng: Personally or with Counsel?

Mr G. Moshwana: Personally.

CJ M. Mogoeng: Yes.

Mr G. Moshwana: Yes.

CJ M. Mogoeng: And are you able to produce judgments within the period you consider reasonable and if so, what is a reasonable period? What is your idea of a reasonable period?

Mr G. Moshwana: Okay, my idea of a reasonable period is about between three weeks and four weeks. That will be ideal and also depending on the complexity of the matter, but ideally it will be not more than a month.

CJ M. Mogoeng: Yes. I see that you are a branch member of the ANC. What's going to become of that membership should you be recommended for appointment?

Mr G. Moshwana: Ja, actually what happened is I had put it in my application. I was a branch member in 2002 and when I started acting, then I actually forgo that membership. It was in Midrand and I relocated to Hartbees.

CJ M. Mogoeng: It reminds us of certain things, but that's not where we are.

Mr G. Moshwana: Yes, so as a result I have not been involved...

CJ M. Mogoeng: You haven't renewed?

Mr G. Moshwana: I haven't renewed membership ever since. I think it had lapsed a long time ago when I started acting.

CJ M. Mogoeng: Yes and have you – I forgot to – I didn't quite get the answer, have you generally been able to deliver your judgments within what you considered to be the ideal turnaround time?

Mr G. Moshwana: Indeed. I know that there's been – I've been acting for 10 years, as I said, but I don't recall very well... [intervention]

CJ M. Mogoeng: Not continuously though?

Mr G. Moshwana: Not continuously, but I've always been in Court for a term, so I have been, unless if I get reminded of some matter that I have delayed the judgment, but I have been consistent.

CJ M. Mogoeng: Have you reached... [intervention]

Mr G. Moshwana: - to my knowledge.

CJ M. Mogoeng: Have you reached a point where you are now comfortable whenever you serve as a High Court – a Labour Court Judge? No anxiety, no concern.

Mr G. Moshwana: I believe so, because I have consistently called back to assist in that Court and I didn't have any difficulty to be honest.

CJ M. Mogoeng: Acting Judge President Tlaetsi, over to you.

JP P. Tlaetsi: Thank you Chief Justice and good morning, Mr Moshwana.

Mr G. Moshwana: Morning DJP.

JP P. Tlaetsi: Just to take you through your acting stint in the Labour Court, from the records that I could lay my hands on it started in 2007 wherein you acted for the first and the third term.

Mr G. Moshwana: Indeed.

JP P. Tlaletsi: And then in 2008 you acted for the first and the fourth term, full terms?

Mr G. Moshwana: That is, in so far as I can recollect as well.

JP P. Tlaletsi: And in 2009, first and fourth term.

Mr G. Moshwana: Yes, That's correct.

JP P. Tlaletsi: 2010, first and second term?

Mr G. Moshwana: Yes, I recall.

JP P. Tlaletsi: 2011 you did not give us more of your time, you only took the third term.

Mr G. Moshwana: Yes, yes, it could be correct (indistinct) [0:06:36] memory.

JP P. Tlaletsi: 2012, only the second term?

Mr G. Moshwana: Yes.

JP P. Tlaletsi: And then 2013, you did your stint 20th January to the 25th of March.

Mr G. Moshwana: Yes.

JP P. Tlaletsi: And in that period you did four weeks of Motion Court, three weeks of trial and you did the Urgent Court.

Mr G. Moshwana: Indeed, that accords with my recollection.

JP P. Tlaletsi: And the same year, 7th April to the 11th of May you did two weeks of Motion Court, two weeks of trial and one week of Urgent Court?

Mr G. Moshwana: Indeed.

JP P. Tlaletsi: And in 2016 from the 19th April to the 24th of June you did four weeks of Motion Court, both Johannesburg and Port Elizabeth?

Mr G. Moshwana: Indeed, that's according to my recollection.

JP P. Tlaletsi: And then you were doing – you did five weeks of Trial Court?

Mr G. Moshwana: That's my recollection.

JP P. Tlaletsi: And thereafter Urgent Court, you did one week?

Mr G. Moshwana: Indeed DJP.

JP P. Tlaletsi: We were fortunate to have you this year 2017 30th January to the 31st March, you did five weeks of Motion Court.

Mr G. Moshwana: Indeed.

JP P. Tlaletsi: And two weeks of Trial.

Mr G. Moshwana: Yes.

JP P. Tlaletsi: And two weeks of Urgent Court.

Mr G. Moshwana: Unfortunately I felt I was being tested, but anyway yes.

JP P. Tlaletsi: Just one thing that I want to clear with you is, on the issue of the average period within which you deliver your judgment, a (indistinct) [0:08:11] by the DCV at page 146.

Mr G. Moshwana: Do I have access to the documents or...?

JP P. Tlaletsi: It will be the document, "Feedback from Law Bodies".

Mr G. Moshwana: Oh, okay. At what – oh, under my name.

JP P. Tlaletsi: Under your name and then you go to page 145.

Mr G. Moshwana: It doesn't look like – oh, okay. Thank you, DJP.

JP P. Tlaletsi: Under page 145, "The Candidate's ability to produce judgments promptly". They say, "Ordinarily you produce your written judgments within a week after a conclusion of a hearing".

Mr G. Moshwana: Indeed.

JP P. Tlaletsi: If you have delayed, at 146 they say, "The Candidate has taken slightly longer than the average of one week, but has still produced judgements promptly having regard to all circumstances".

Mr G. Moshwana: Indeed, that I can confirm.

JP P. Tlaletsi: And then something to cover with you, only on disclosure...

Mr G. Moshwana: Yes.

JP P. Tlaletsi: - at paragraph 19 of the questionnaire...

Mr G. Moshwana: Where do I find it?

JP P. Tlaletsi: Your questionnaire that you completed.

Mr G. Moshwana: Yes, I'm trying to find it. Maybe I can be assisted. It could be – oh yes, page 19. Oh yes.

JP P. Tlaletsi: Yes, there is a disclosure that you make there that some five years into the partnership there was some problem with the Law Society in which they issued an application to have your name struck off the roll. However, the Court issued a suspension in which you were suspended for three years.

Mr G. Moshwana: Yes.

JP P. Tlaletsi: When did this happen if you can say five years into the practice?

Mr G. Moshwana: Yes, I'm again out of memory. I'm looking at about 99 ... 2000.

JP P. Tlaletsi: 2000. Ever since you've never had anything to do with the Law Society, in this manner?

Mr G. Moshwana: In this manner, no.

JP P. Tlaletsi: And the clearance certificate indicates there's nothing pending against you.

Mr G. Moshwana: Indeed.

JP P. Tlaletsi: - from the Law Society.

Mr G. Moshwana: Indeed.

JP P. Tlaletsi: And then I see that in your form you do not really disclose the number of judgements that you've written that have been reported. Do you have anything to share with the Commission on that?

Mr G. Moshwana: Yes, I have. This morning I just went to SAFLII and tried to draw some of the judgements that has my name. I'm looking at what I have printed. It's in the region of about 77 reported judgements.

JP P. Tlaletsi: 77?

Mr G. Moshwana: Yes.

JP P. Tlalets: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you Acting Judge President. Mr Njalinjali?

Mr Njalinjali: Thank you and good afternoon. I just want – good morning, I just want to check, what takes you so long to be interested to this position that you have applied? You have been acting for 10 years of course, in different breaks. You've written about judgements that you have done. Why now, if I may – want to ask?

Mr G. Moshwana: Look Commissioner, as I had indicated to the Chief Justice, I feel at this point in time that I am ready to be able to assist and actually deal with the deliverance of justice in the country and in the previous years of course, views were held that I was ready, but I didn't feel that I am ready at the time, but now I believe that I am ready. That is the reason why I took me so long.

Mr Njalinjali: I thought you said you have made a lot of money as an Advocate, now you can come and (indistinct) [0:12:32].

CJ M. Mogoeng: He didn't say he was not financially ready.

Mr G. Moshwana: Yes, indeed. Perhaps I should have said that.

CJ M. Mogoeng: Have you finished, Mr Njalinjali?

Mr Njalinjali: Yes.

CJ M. Mogoeng: Thank you. Acting President Maya?

Ms M. Maya: Good morning, Mr Moshwana.

Mr G. Moshwana: Good morning, Acting President.

Ms M. Maya: I just want to ask you about one aspect raised in the comments submitted to the CFC by the Professional Bodies and this one is on (indistinct) [0:13:08] I think and they have actually asked us to raise this with you.

Mr G. Moshwana: Yes.

Ms M. Maya: Some years ago you had an incident with the Law Society. You faced a striking off application and can you just tell us about that incident and what the circumstances were?

Mr G. Moshwana: All right, thank you Acting President. As I have indicated to the DJP of the Labour Court, at that time and this is purely out of memory is I was five years into partnership practice and at the time we had probably a lot of energy. We thought we could have a number of practices. We had a number of branches. Now, it so happened that we – at the time we didn't comply with certain requirements for accounting, raising fee journals and so on, until the Law Society, at that time they had a unit that they had put in place which had the surprise visits to practices and I'm talking years 98, 99 and then they picked up that there were no fee journals that were done on a trimester. So, as a result the gentleman called by the name of Vincent Farez I think at the time was then appointed to conduct some investigation and produced a report, which report suggested that some disciplinary steps should be taken against us for not complying with the fee journals and accounting procedures and indeed there was that disciplinary hearing to which, if my memory serves me well, we pleaded guilty, because there were indications that certain records were not kept timeously and we attributed that at the time to the three branch offices. We had an office in Pretoria and we had an office in Tzaneen and we had an office – if not four actually, yes and in Bronkhorstspuit and we also had an office in Burgersfort. So, there were many matters that we were dealing with. It then turned out that what had happened is that when a matter is completed a partner who has been responsible for the office in Burgersfort would raise a fee out of the same matter and because there were no proper recordings, another partner would raise a fee, but at the end it turned out that it was just an accounting issue and then the Law Society decided to take it to Council – I mean the Disciplinary Committee

rather, took it to Council, then Council decided at the time that it is appropriate to take – to bring an application to actually strike us off the Roll of Attorneys, but given the circumstances that I have explained the Judges who heard the application found it appropriate that and it was – if I recall, again out of memory, the matter came to Court some three or five years later, after the incident and at that time the situation that led us to that particular position had been resolved in a sense and all of those facts were presented to the Judges who were hearing the application and they refused to grant the strike off that was sought by the Law Society and it ended up with a suspension that was suspended. So and I think primarily because there was no Fidelity Fund that had to pay any funds, I think that was the consideration that – I'm just out of recollection of the incident. So that in brief were the circumstances.

Ms M. Maya: Thank you. Thank you very much.

CJ M. Mogoeng: Let me just get something clear. I don't want to sit with the impression that with a lack of appreciation as to whether you accept that you've done something wrong or you don't wholeheartedly accept that there's something wrong that you had done. What is your position? Did you do something wrong or was there some unfairness in the manner in which the issue was handled? What is your position?

Mr G. Moshwana: Chief Justice, as I have pointed out, when the matter came before the Disciplinary Body the plea that was tendered out of my recollection was that of guilty, because indeed there were records that were not kept in accordance with the accounting requirements at the time. So, indeed that to me was an indication that we did something wrong by not complying with the internal accounting record keeping. So, to this day that is still my position.

CJ M. Mogoeng: You are not seeking to water it down or explain it in some way? You accept it without – you accept it unreservedly?

Mr G. Moshwana: Unreservedly.

CJ M. Mogoeng: - that wrongdoing on your part?

Mr G. Moshwana: Indeed, at the time yes, even to this day.

CJ M. Mogoeng: Okay. All right, okay. Yes, thank you very much, Mr Moshwana, you're excused.

Mr G. Moshwana: Oh, thank you.

CJ M. Mogoeng: Was that too soon?

Mr G. Moshwana: I'll rather leave before I (indistinct) [0:19:53].