



JUDGES MATTER

Judicial Service Commission interviews

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Gauteng Division of the High Court

Interview of Adv. M B Mahalelo

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CJ M. Mogoeng: Good afternoon, Ms Mahalelo.

Adv. Mahalelo: Good afternoon Chief Justice and the Commissioners.

CM J. Mogoeng: Are you well?

Adv. M. Mahalelo: I'm well, thank you.

CM J. Mogoeng: For how many years were you a prosecutor?

Adv. M. Mahalelo: Chief Justice, I was a prosecutor for three years.

CM J. Mogoeng: Okay. And for how many did you serve as a magistrate?

Adv. M. Mahalelo: I served as a magistrate in the District Court for 11 years.

CM J. Mogoeng: And Regional?

Adv. M. Mahalelo: 14 years.

CM J. Mogoeng: And in all, for how many months did you act in a High Court?

Adv. M. Mahalelo: I have acted in the High Court for 16 months.

CM J. Mogoeng: And you are ready?

Adv. M. Mahalelo: I am ready, CJ.

CM J. Mogoeng: Thank you. Judge President.

JP Mlambo: Thank you CJ. Ms Mahalelo, good afternoon.

Adv. M. Mahalelo: Good afternoon JP Mlambo.

JP Mlambo: You have a spreadsheet that tells me you've acted for 67 weeks.

Adv. M. Mahalelo: Yes JP Mlambo.

JP Mlambo: Right. And you've done quite a lot. I see you've chalked [inaudible 1:33] about 15 weeks in the appeals.

Adv. M. Mahalelo: Yes.

JP Mlambo: And 8 weeks in the oppose motion.

Adv. M. Mahalelo: Yes.

JP Mlambo: Have you done work in Pretoria?

Adv. M. Mahalelo: I have done work in Pretoria.

JP Mlambo: How did you find it compared to Johannesburg?

Adv. M. Mahalelo: Well, I can say to JP Mlambo and the Commission that I found Pretoria to be a little bit relaxed than Joburg. However, I have learnt a lot in Pretoria. Not that I'm saying I didn't learn in Joburg but the environment is very conducive for one to learn more.

JP Mlambo: But am I also correct that the load is actually a lot more in Pretoria than in Johannesburg?

Adv. M. Mahalelo: Well -

JP Mlambo: That was not your experience?

Adv. M. Mahalelo: I found the load in Johannesburg to be more.

JP Mlambo: I see. You've done quite a number of stints in the criminal trial courts. You remember?

Adv. M. Mahalelo: Yes, JP.

JP Mlambo: And you remember the discussion me and you had after your last criminal stint in 2013?

Adv. M. Mahalelo: I do.

JP Mlambo: Right. And is that what led to you starting to do a lot more work in the civil sections?

Adv. M. Mahalelo: That is correct, JP.

JP Mlambo: Right. I think, just to be fair to you, in your position as a magistrate it's only when your court was given jurisdiction to hear civil matters that you started hearing civil matters. Am I correct?

Adv. M. Mahalelo: That is correct. However, I also heard civil matters in the District Court.

JP Mlambo: Yes. Now in terms of your acting stints. You've had one week in the oppose motion, no, in the Urgent Court. Am I correct?

Adv. M. Mahalelo: You are correct, JP.

JP Mlambo: Was this Joburg or Pretoria?

Adv. M. Mahalelo: It was Joburg.

JP Mlambo: How did you find it?

Adv. M. Mahalelo: Well, the Urgent Court, JP, is a daunting court. However, with a thorough preparation and with the lunch seminars that you have introduced in Joburg I found them to be very helpful and once one has prepared, has read the files and once one has considered the rules pertaining to urgency, one is able to manage the Urgent Court.

JP Mlambo: Okay. And based on this amount of acting you've done do you feel you are ready to be appointed?

Adv. M. Mahalelo: I feel I am ready, JP Mlambo.

JP Mlambo: Did you at any stage during your acting stints in the matters that you've handled deal with anything constitutional?

Adv. M. Mahalelo: Well, JP I have not. However, I believe that the Constitution is the supreme law of the land. Every judicial officer who sits on the bench applies the Constitution every day.

JP Mlambo: Thank you, Ms Mahalelo. Thank you CJ.

CM J. Mogoeng: Thank you Judge President. MEC [inaudible 04:46] Premier, I know that could be dangerous.

JP Mlambo: It is, it is. And career limiting as well, Chief Justice but very profound prediction of course. No further questions from my side CJ. Thank you.

CM J. Mogoeng: Thank you, MEC, Commissioner Nyambi.

COMM. A. Nyambi: Thank you, CJ. Afternoon.

Adv. M. Mahalelo: Good afternoon, Commissioner Nyambi.

COMM. A. Nyambi: If you can take us through and share with us your understanding of judicial accountability.

Adv. M. Mahalelo: Judicial accountability talks to the fact that judges are accountable to the Constitution and to the public through their judgements. They are expected to give well-reasoned judgements, which adheres to the values enshrined in the Constitution.

COMM. A. Nyambi: What do you regard as your weakness?

Adv. M. Mahalelo: Commissioner Nyambi, I get irritated if the work is not done the way that I would love it to be done.

COMM. A. Nyambi: Thank you, CJ.

CM J. Mogoeng: Thank you, Commissioner Nyambi. Commissioner Nsomi.

COMM. A. Nsomi: Thanks, CJ. There is an organisation ma'am that says it doesn't support you. I think it's called the NBCSA, because you have many reserved judgements. Is that true? Do you have a lot of reserved judgments?

Adv. M. Mahalelo: I do not have any reserved judgements.

COMM. A. Nsomi: So that comment is -

Adv. M. Mahalelo: It is defective.

COMM. A. Nsomi: It's defective. Ma'am, Mlambo JP asked you about your involvement in constitutional matters. I just want to look in recent times and tell us about the recent Constitutional Court decision. Did you like – did you regard as ground breaking and outstanding and how does that judgement in as far as you are concerned, enhances jurisprudential development in our country?

Adv. M. Mahalelo: The latest Constitutional Court decision, which I regard as ground breaking is the matter that dealt with the fact that the land owner or the person who has just bought property is not expected to pay for rates and taxes, which were owing by the previous owner. As far as I'm concerned, that has been something that has been an issue for some time. And it has at least resolved the issue around that topic.

COMM. A. Nsomi: Thank you. When you appeared before us in April, there was an issue about the handbag if I'm not mistaken and the sunglasses. Has that issue been resolved somehow? When you look back on that issue are there any lessons that were learnt? That's my last question, CJ. Thank you.

Adv. M. Mahalelo: The issue has been resolved.

COMM. A. Nsomi: How was it resolved, ma'am?

Adv. M. Mahalelo: Subsequent to the interview, I requested JP Mlambo to intervene so that the matter should be resolved and I believe he did.

CM J. Mogoeng: Commissioner Malema.

COMM. J. Malema: Thank you CJ. I just want to ask you very few, simple questions. Are you a gender activist or a feminist?

Adv. M. Mahalelo: I am none of the two.

COMM. J. Malema: How do you, what is your view about 50/50 in the judicial representation?

Adv. M. Mahalelo: Well, I am of the view that there has to be 50/50 representation in the judiciary.

COMM. J. Malema: Why?

Adv. M. Mahalelo: That will give gender and gender representation, instil confidence and trust in the judiciary.

COMM. J. Malema: What should happen to judges who don't speak indigenous languages?

Adv. M. Mahalelo: They should do something about that. They should try, start to try to learn those languages because it is very important that all the languages be given equal standing.

COMM. J. Malema: Will it be offensive for the Chief Justice or the Justice Department to start introducing subjects to that effect?

Adv. M. Mahalelo: It will not be offensive at all.

COMM. J. Malema: What's your take on the judges being involved in community issues?

Adv. M. Mahalelo: Well, I for one, as you can see on my questionnaire and my CV, I have been involved in community outreach programmes, educating and enlightening members of the community about their human rights. My view is that, I know that judges speak through their judgements but it is not always the case. It is not everybody who reads the judgements. Now if I want to put a voice across and people do not read judgements, I believe that it is better to get engaged with the community and put that voice across.

COMM. J. Malema: So would it not be wrong for the Koleji Tribal [inaudible 11:33] Authority to invite a judge to come and sit during their Goro [inaudible 11:41] to listen to how they deal with issues and thereafter engage in some sort of a workshop on how they can deal with these issues much better and including giving everybody a fair hearing?

Adv. M. Mahalelo: That will be absolutely wrong.

COMM. J. Malema: How is it wrong?

Adv. M. Mahalelo: A judge getting involved in issues to that extent and even discussing as to how best whatever issues can be resolved, that is not correct because such a matter may appear before him or her at a later stage.

COMM. J. Malema: No. no. Not on a specific issue. You just sit observing. You don't comment, nothing. You are observing and looking at how they handle issues. And then once they are done, on a separate day you organise with them and train them on how best they can improve on handling issues which will result in giving the villagers a fair hearing and treatment?

Adv. M. Mahalelo: As long as it is issues which you are not going to be called upon to adjudicate at a later stage, I do not see anything wrong with that.

COMM. J. Malema: Can judges comment on the current political, socio-economic issues like land which is in the hands of the, those who colonised us such as the transformation of the economy. Such as the abuse of women and all that and how best society can handle those issues. Is it acceptable for judges to, you know, give such lectures or comment about such issues even when they're not before them?

Adv. M. Mahalelo: In my view – I am going to answer this question in this fashion. As long as such issues are not going to be adjudicated by this judge at a later stage there is nothing wrong in a judge getting involved, as long as you are not going to be called upon to adjudicate on a specific issue relating to what you said at a later stage.

COMM. J. Malema: Is a debate of land for instance, in this country and the Chief Justice makes comments about it in one of the lectures and later on the matter is taken to the High Court. I mean not – to the Constitutional Court because Chief Justice made general comments about it. Not a specific case. General comments on how we can speed up the issue. How it can be resolved calmly without any violence and rowdiness. And then later on there is a specific issue with facts which are unrelated to what he was talking about. Will we be in a better position to ask him to recuse himself since you said as long as such matters will never come before you, you can talk about them? But you cannot predict the future. You are a judge. You are asked to come and give a lecture and then you will speak to those issues. Later on they'll come to you. It's not like you're commenting on a specific issue. You are making a contribution in a national discourse. So how would you reconcile the two?

Adv. M. Mahalelo: With the scenario that Commissioner Malema has just given I do not see anything wrong in that.

COMM. J. Malema: Thank you, CJ.

CM J. Mogoeng: Thank you, Commissioner. You are excused ma'am. Oh, Commissioner Fourie.

COMM. Fourie: Sorry, Chief Justice, it's probably mainly a follow up. We spent a lot of time as you are aware during your interview in April regarding the so called handbag incident. On a question you said that it's been resolved and when you are asked how it was resolved you said after the last interview you spoke to the JP and you believe that it was resolved. I need more clarity on that. What happened after the last interview and was it resolved and how was it resolved? And do you believe that it was resolved or was it actually resolved? I think you owe this commission an explanation as far as that is concerned because that last time was certainly quite an elephant in the room.

Adv. M. Mahalelo: Commissioner Fourie, subsequent to the last interview I requested the JP to intervene and resolve the matter as best as he could. Thereafter, I enquired from the JP twice as to what he has done about the matter. He assured me that the matter has been resolved. Thereafter, I met Mr Rashi Tanga [inaudible 17:29]. We greeted one another warmly. I did not get any impression that there was still an issue. I was satisfied that the matter has been resolved.

COMM. Fourie: Sorry. I don't want to belabour the issue but the issue last time was that he alleged that you accused him of theft.

Adv. M. Mahalelo: Yes.

COMM. Fourie: Has he withdrawn that accusation? What has happened? I find it difficult to understand the reference to the fact that it's been resolved unless I know exactly what has been resolved.

Adv. M. Mahalelo: Well, as far as I'm concerned the matter has been resolved. I am not aware if he withdrew [inaudible 18.30] the comment. But as far as I know it has been resolved.

COMM. Fourie: So Chief Justice, in the interest of time I won't take that further but I must place on record that to me it's not a satisfactory answer. I need to have details of what resolving means.

CM J. Mogoeng: Is that a follow up, Commissioner Malema?

COMM. J. Malema: Yes, yes, yes. No, no. We can't leave it like that because during our deliberations it's going to be a big issue and you will not be here.

Adv. M. Mahalelo: Yes.

COMM. J. Malema: So you have a responsibility to help us so that we can help you because we must appoint you but we must be satisfied that issues are dealt with properly. And you will know that you are applying for a position of responsibility whereas [inaudible 19:31] a judge and for sure you know better than me what resolve means so you ought to outline what does resolve mean. You can't say we met, greeted and then that's it. Has he withdrawn? If it has not been brought to your attention that he has withdrawn that's fine. If you had some interactions with him where he says, "Well, I have accepted the explanation or whatever happened and let's leave everything behind us and let's move forward?" If there is no withdrawal, if there is no such an interaction you will agree with me that the matter is still hanging because there's nothing that we can say or produce which suggests that indeed this matter it is buried. So even when we appoint you we must appoint you knowing that there is this hanging matter. It might still come back to us. How do we deal with it?

Adv. M. Mahalelo: Commissioner Malema, the issue that was debated in the last interview was a matter of he said, she said. That is the reason why I requested JP Mlambo to intervene and resolve the matter. As I interacted with the JP and spoke to him about this matter he indicated to me that he had called Mr Rashi Tanga [inaudible 21:04] to his office and sat down with him and resolved the issue. He wanted to know from Mr Rashi Tanga [inaudible 21:15] what prompted him to write such a comment. I engaged with the JP on more than two occasions wanting to know how he has resolved the matter and if he has resolved the matter. He assured me that the matter has been resolved.

CM J. Mogoeng: Commissioner Notyesi?

COMM. Notyesi: It's only one question. Sorry. Now that you are in these interviews today, is there any complaint from Mr Rashi Tanga [Inaudible 21:53] that has been forwarded?

Adv. M. Mahalelo: There is none.

COMM. Notyesi: And if he knew that you are an applicant here and he insists with that complaint surely he would have filed?

Adv. M. Mahalelo: He is absolutely aware that I will be attending these interviews.

COMM. Notyesi: Thank you, Chief Justice.

CM J. Mogoeng: Commissioner Mpofu.

Adv. D. Mpofu: Thanks, Chief Justice. It's also just a follow up. I know, Chief Justice, that the person you are interviewing is the candidate but I would make a request that maybe at this point the JP can also assist us. In other words even if it's just at the level of agreeing or not agreeing that the matter is resolved. We can deal with the detailing during the deliberations.

CM J. Mogoeng: Okay. JP has the matter been resolved? Yes or no? That's the request.

JP Mlambo: It has been resolved, CJ.

CM J. Mogoeng: It has been?

JP Mlambo: Yes.

CM J. Mogoeng: Thank you, Ms Mahalelo. You're excused. Thanks.

Adv. M. Mahalelo: Thank you, Chief Justice and the Commissioners.

COMM. J. Malema: But you look like a judge, you know, [inaudible 22:57].

Female: Thank you, Mr Malema.