



# JUDGES MATTER

**Judicial Services Commission interviews  
2 October 2018**

**Gauteng Division of the High Court  
Interview of Adv E F Dippenaar**

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Adv E. F. Dippenaar: Good morning, Chief Justice. Good morning, Commissioner.

CJ M. Mogoeng: Are you well?

Adv E. F. Dippenaar: I'm well, thank you. Are you well?

CJ M. Mogoeng: I'm very well, thank you. You kicked off your career as an attorney. Is that correct?

Adv E. F. Dippenaar: I did, Chief Justice.

CJ M. Mogoeng: And you were an attorney, serving as an associate for a little under two years?

Adv E. F. Dippenaar: Indeed so, Chief Justice.

CJ M. Mogoeng: And then you moved on to become an advocate?

Adv E. F. Dippenaar: Yes.

CJ M. Mogoeng: And you were a junior for about 17 years? Is it?

Adv E. F. Dippenaar: That's correct. I took silk in November 2009.

CJ M. Mogoeng: And have been a silk for about nine years? A little under nine years, I think?

Adv E. F. Dippenaar: Indeed, Sir.

CJ M. Mogoeng: Yes. Now, your area of speciality has always been commercial law?

Adv E. F. Dippenaar: It has developed at the Bar – my early years at the Bar I – I still did a lot of *pro deo* work – criminal work, matrimonial work and it then progressed from there into a commercial practice.

CJ M. Mogoeng: For how long did you do criminal work?

Adv E. F. Dippenaar: I would imagine my first two, three, four years at the Bar.

CJ M. Mogoeng: And that includes divorce and general silk work?

Adv E. F. Dippenaar: Yes, it's noting judgments, unopposed motion work.

CJ M. Mogoeng: Yes and when did your practice begin to grow?

Adv E. F. Dippenaar: It started growing towards I would say end of 1999 – 2000. I managed to be involved in a few junior brief matters, which afforded me the opportunity to get involved in more commercial work and it started growing from there.

CJ M. Mogoeng: Did the fact that you majored in banking law as standing in good stead or was it a struggle before you could begin to get quality work from that end?

Adv E. F. Dippenaar: It was – I was lucky in that one of my class mates was an attorney, so we – he started – after I'd survived a few years at the Bar, he started giving me certain commercial work. It was small banking work matters, motion work matters, a lot of Magistrate Court matters, so I spent a lot of my early years in the Magistrate Court.

CJ M. Mogoeng: And when did your commercial law practice become really big?

Adv E. F. Dippenaar: Really big – it became stronger towards I'd say the mid 2000's and onwards.

CJ M. Mogoeng: Yes. And if you add up all your acting stints, how long would you say you have acted for?

Adv E. F. Dippenaar: If I recall correctly, it's 33 weeks, Chief Justice.

CJ M. Mogoeng: 33 weeks. Any serious challenges that you encountered?

Adv E. F. Dippenaar: The first Motion – my first acting stint in 2010, I was in the Opposed Motion Court and I think we had – I had about 22 matters that week. It was still in the old system, where matters got enrolled on the Thursday for the Tuesday and I

ended up reserving a large number, I think it was about seven or eight judgments, because there was simply no time to deal with them properly and that then resulted in me being very over cautious in delivering those judgments and it took me six months. I only delivered them in that December of that year.

CJ M. Mogoeng: All of them?

Adv E. F. Dippenaar: All of them, yes. So, that I think stood out as a challenge for me the first time that I acted.

CJ M. Mogoeng: Yes and what is the longest it has ever taken you to keep a judgment reserved?

Adv E. F. Dippenaar: Those judgments.

CJ M. Mogoeng: Those judgments?

Adv E. F. Dippenaar: Those judgments.

CJ M. Mogoeng: Yes. Very well. JP?

JP Mlambo: Thank you, Chief Justice. Advocate Dippenaar, good morning.

Adv E. F. Dippenaar: Good morning, JP.

JP Mlambo: You told the Chief Justice you've acted for a total of 33 weeks. There's a spreadsheet in front of you. It suggests that you did – five of those weeks were in the Urgent Court?

Adv E. F. Dippenaar: I was.

JP Mlambo: Right. Your practice generally, as an advocate, does it compass Urgent Court work?

Adv E. F. Dippenaar: A lot of it. A lot of my practice. I spend a lot of time in the Urgent Court.

JP Mlambo: And I see you also had two special motions. They are referred to as a Third Court?

Adv E. F. Dippenaar: That's correct, JP. The one week I had two and the other one I had one, which was a matter of longer duration.

JP Mlambo: Do you mind telling the Commission what a Special Motion is?

Adv E. F. Dippenaar: A Special Motion is a matter which is of either greater complexity and greater volume, so it does not get allocated to the normal opposed roll. It gets allocated to a special roll and the Judge then gets the opportunity to deal with that matter – generally with the larger more complex matters.

JP Mlambo: Right, you have not done any criminal trials? Is that correct?

Adv E. F. Dippenaar: I have not.

JP Mlambo: Did you do criminal appeal work?

Adv E. F. Dippenaar: I did criminal appeal work. I think it was in one of my first acting stints.

JP Mlambo: In 2010?

Adv E. F. Dippenaar: In 2010 I did criminal appeal.

JP Mlambo: Alright. Now, in terms of your reserved judgments, the Chief Justice asked you and you gave an answer. The volume of work that you get given when you act in Gauteng, would you say it's easy to get into trouble with reserved judgments?

Adv E. F. Dippenaar: It would be. There's a large volume of opposed work, but if one – I've learned the trick after that is to consistently make sure that you keep on top of the judgments and that you very diligently continue preparing those judgments and finalising them, but there are large volumes with matters.

JP Mlambo: Right. Your speciality is commercial work, but with an emphasis on liquidations and business rescues? Am I correct?

Adv E. F. Dippenaar: That is correct, Judge President.

JP Mlambo: Are you able to tell how much of that work comes to the Gauteng High Court?

Adv E. F. Dippenaar: A lot of it. There's a substantial amount of that work that comes to Gauteng, especially to the Urgent Courts.

JP Mlambo: Right. Chief Justice, I've got no further questions. Thank you.

CJ M. Mogoeng: Thank you, JP. MEC?

Mr J. Nyambi: Thank you, Chief Justice. Good morning, Advocate.

Adv E. F. Dippenaar: Good morning, Commissioner.

Mr J. Nyambi: You declare in your documents that you were found guilty of – by your legal profession of unprofessional or disgraceful conduct? Do you want to take us in confidence why this matter must not be considered when we consider you for this appointment?

Adv E. F. Dippenaar: The matter pertained to a *pro deo* criminal matter, where I had been instructed by the Legal Aid Board in my – I commenced practice in July 1992. The events occurred – I got briefed in the matter in October. The events

occurred in October 2003, where I was reprimanded. The accused in the matter was a Mr Visser and he had confessed his guilt to me in the matter. He had been charged with various counts of robbery with aggravating circumstances. I then requested the Legal Aid Board – I explained to him the constraints within which I would be able to continue representing him. He indicated that he was not happy to continue with my legal representation. I asked the Legal Aid Board for my release. They did not come back to me and about – it was about a week before the matter was to go to trial. The Legal Aid Board had still not come back to me on the matter and I then handed it over to someone else. The accused had then admitted his guilt to my successor, as a result of which he was convicted, because he did not testify at his trial. The complaint was then laid, because of the circumstances that I had not handed over the matter timeously and I was reprimanded for not having handed over the matter timeously.

Mr J. Nyambi: No further questions, Chief Justice. Thank you.

CJ M. Mogoeng: Thank you. Commissioner Cane?

Ms Cane: Good morning, Ms Dippenaar.

Adv E. F. Dippenaar: Good morning, Commissioner.

Ms Cane: At the outset I must disclose to my fellow commissioners that you practiced in the same group of advocates as me and during the course it was – I think – of the first half of last year. I appeared before you in a matter and you gave judgment in favour of my client.

Adv E. F. Dippenaar: Yes.

Ms Cane: My question is, you have a successful practice and have had one for many years. It's a lucrative practice and I would like to understand the reasons for this application and why it is you seek to be a Judge.

Adv E. F. Dippenaar: I have been very happy in my practice, but since I've started acting, which I think I started doing in 2010, I've really started to accept and appreciate the value and the responsibility and the importance, so for me it's on a visible level a need to give back – a need to – having had a good practice, having had a successful practice, it's my opportunity to try and give back by making the skills that I've learned in my practice available for public service and for assisting where I have not previously always had the opportunity to do so.

Ms Cane: There are a number of letters of reference provided by senior members of the Johannesburg Bar in support of your application. I would like to just know, to what extent did you practice with these members of the Johannesburg Bar and do they know you well?

Adv E. F. Dippenaar: I think I have worked – I think I got a letter from Adv Fyne. I worked with him as a junior. He knows me very well. I think I got my first junior brief with him. I've also worked with Adv Subel, who also knows me well. Adv Joubert, I have had him as an opponent on various occasions in matters. I've not

worked with him as a junior. I know him from the days on which I was on the Bar Council as a junior.

Ms Cane: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you. Thank you so much. Commissioner Singh?

Mr Singh: Thank you very much. Good morning Chief Justice, Commissioners. Good morning, Adv Dippenaar.

Adv E. F. Dippenaar: Good morning, Commissioner.

Mr Singh: I just want to follow up on the MEC. On page 28, Annexure "B" he referred to a certain matter, but towards the end of that document, there are three other complaints, which were dismissed, which you referred to. Can you just briefly tell us what was the nature of those complains?

Adv E. F. Dippenaar: I put them in for the sake of transparency. Briefly, the first matter related to an incident where my instructing attorney and my opponent counsel had got involved in a physical altercation outside Court. My attorney had asked me to then lay a complaint with the Bar Council on his behalf, which I did. I had relied on his version of the events as they occurred. The other counsel then laid a complaint against me and the attorney decided not to proceed with the complaints about the physical altercation. That was the first one. The second matter pertained to an insolvency matter, which was very acrimonious, where there were various entities involved. There was – there was acrimonious litigation on the go between one of the creditors, which if I recall was the Industrial Development Corporation and the Director of one of the insolvent companies then said that there was a big conspiracy between the attorney, myself, the IDC, pertaining to the matter. The Bar Council investigated the matter and dismissed that. And the third matter pertained to a matter where I had represented an attorney, firstly in a maintenance inquiry. Years later – a few years later there was an contend application. The attorney in his Answering Affidavit had referred to events which transpired during the maintenance proceedings. The application was argued. It was dismissed. The contend had been brought by his ex-wife. In petition there was an allegation that the contents of that particular paragraph referencing the maintenance inquiry was not correct and that I had also known about that. That was a precursor to the wife. The petition was dismissed. She then instituted action against the attorney and me for damages, being the cost that had been incurred in her unsuccessful applications and the Magistrate then provided an affidavit. He dealt with the maintenance inquiry, which in fact confirmed the veracity of what those allegations were. When that was presented to the attorney – to the applicant's legal representatives, they withdrew the litigation and withdrew the complaint, because there was no merit and no one had misled anybody.

Mr Singh: Notwithstanding the fact that the complaint was dismissed, you are quite satisfied that – in your own mind, that none of these acts bordered on unprofessional conduct?

Adv E. F. Dippenaar: No. There were certainly no merits in any of that.

Mr Singh: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Singh. Commissioner Mpofu?

Mr Mpofu: Thank you. Good morning.

Adv E. F. Dippenaar: Good morning, Commissioner.

Mr Mpofu: We must call you by your first name? I think I must also disclose that I've known you for almost 25 years, since the days of those *pro deos*?

Adv E. F. Dippenaar: Yes.

Mr Mpofu: I just need to ask you two things. One is, one of the considerations that we would take into account in your appointment or otherwise is the gender transformation of the bench. Now, I'd like to know, because I'd like – what I'd really like to know is what do you think your appointment would contribute towards that broader struggle for transformation and in asking that question, I want to ask you what you have done, if anything, at the Bar to assist people who are affected by gender discrimination and as you know the hardest group hit by that is black women, particularly black women advocates. If you've done anything to assist in that broader struggle?

Adv E. F. Dippenaar: To answer the first question first, in terms of gender transformation at the Bar, I think an appointment – my appointment would serve to address a gender equality issue and also a gender representivity issue and also a diversity issue. As to the second question, I have, since I was able to and that was slightly before I took silk and after silk – I tried to have as many female juniors as my practice allowed on various occasions when attorneys may have been reluctant or clients reluctant to spend additional money of the (indistinct) [00:17:30] sacrifices or to reduce fees – my fee rate in order to accommodate women advocates being introduced and I've also on certain occasions paid certain of my juniors out of my own pocket in order to get them involved and I've – especially in the work that I've done with the industrial development corporation which is commercial work, I have focused on having females – black female juniors involved.

CJ M. Mogoeng: Second question?

Mr Mpofu: Thank you. Then a completely different question, you have – you've had the pleasure or rather another consideration is your allegiance to the constitutional values as you know. You've had occasion to deal in that (indistinct) [00:18:28] matter.

Adv E. F. Dippenaar: Yes.

Mr Mpofu: ...with probably one of the most – at least the most complex issues, as far as I'm concerned, in relation to the balance to be struck between freedom of expression, which some sectors of our society regard as kind of you know,

absolute that everything must revolve around freedom of expression and on the other hand the right to human dignity, which some of us feel should be in the South African context elevated to a special place. It is always a difficult balance to be drawn. What is your view on that subject and particularly in the way you had to deal with it in that case?

Adv E. F. Dippenaar: In that matter, firstly I think the question of dignity is of paramount importance. I tried, perhaps just to give a bit of context to the matter, the matter had been brought as a composite Opposed Urgent Application in which relief was sought, which was based on defamation, the constitution, but also on hate speech under (indistinct) [00:19:52] and there was a jurisdictional issue that arose, because the application had initially sought final relief. The application was then – I determined the application on the basis that I was not constituted as an equality Court Judge and therefore the application could not be determined finally. It was necessary that it be referred to a Judge who jointly acted as a High Court Judge – well both, as a High Court Judge and as a Constitutional Court Judge, because there were three SCA cases, which the Constitutional Court had endorsed on that. The question – I also followed the constitutional authorities, which particularised that the right to – that freedom of speech is a right, but it is not an elevated right and I approached the matter from the basis that the right to dignity is the paramount right and that that must then balance against the right of freedom of speech, which is not unbridled, but which must form within parameters, which are going to effect the dignity of an individual.

Mr Mpofo: Thank you, CJ.

CJ M. Mogoeng: Thank you, Commissioner Mpofo. Prof?

Ms N. Thomas: Thank you, CJ. Morning, Adv Dippenaar.

Adv E. F. Dippenaar: Good morning, Commissioner.

Ms N. Thomas: In paragraph 10 of your questionnaire, you made reference to your commitment to transformation, by (indistinct) [00:21:31] of black women and junior counsel, but you have qualified that statement that you are often briefed alone.

Adv E. F. Dippenaar: Yes.

Ms N. Thomas: Then my concern is, you are reverting to black juniors or counsel, because you are always briefed alone and in that process, how many candidates have you produced in your practice?

Adv E. F. Dippenaar: I'm often briefed in certain matters, because I don't – I think a differentiation must be drawn between the amount of briefs and the type of briefs that female silks get and that male silks get. So, it's not a position where I am always in a position to try and get females or get juniors involved. The great majority of my juniors had been females and wherever I've had any measure of influence, in order to try and get juniors involved, I've always chosen female juniors, but it has happened on occasion that I was briefed together with someone in a matter, where that particular junior had to be male. It's difficult. I haven't

counted them, but there's been numerous ones that I can think of over the last years and what I've tried to do is try and train up a particular junior, so I will have the same female junior in a variety of matters. Thank you, Commissioner. If that's efficient?

CJ M. Mogoeng: Commissioner Norman? Oh, you're done, Prof?

Ms N. Thomas: (Indistinct) [00:23:15].

CJ M. Mogoeng: Thank you, Commissioner Norman.

Ms T. Norman: Thank you, Chief Justice. Just as a follow-up to the question that Professor has just asked you, overall, how many juniors would you say – I have a hand full of juniors that I work with from time to time. Are you looking at one junior? Two juniors? How many? Can you give us? How many?

Adv E. F. Dippenaar: Female juniors?

Ms T. Norman: Female juniors, yes.

Adv E. F. Dippenaar: I think about five juniors.

Ms T. Norman: You work with those regularly?

Adv E. F. Dippenaar: Yes.

Ms T. Norman: Thank you.

Adv E. F. Dippenaar: Well, I work with some of them more often than with others, but about five.

Ms T. Norman: Thank you and then there is – that judgment that you've put up with – the Treasure Karoo Action Group judgment.

Adv E. F. Dippenaar: Yes.

Ms T. Norman: You – I just want to understand the basis upon which, although you had dismissed the application, but you had refused to multi-parties with a cost order. What informed that decision?

Adv E. F. Dippenaar: In that matter I followed the bio-watch principle, where the applicants had raised constitutional issues of considerable public importance and that it was in those circumstances not appropriate to reward an adverse cost order in the matter.

Ms T. Norman: And did you make any definite findings on those constitutional issues that you're mentioning?

Adv E. F. Dippenaar: I found that the – there was opposing judgment in the Eastern Cape. The matter is at the moment pending in the Supreme Court of Appeal,

because I dismissed the application, so I've made the finding effectively that the Minister of Mineral resources was not acting ultra vires in promulgating the regulations.

Ms T. Norman: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you so much. Let me just ask this, just to benefit from your experience. Do our Courts finalise commercial matters as speedily as the industry demands that they should or the interest of the industry demands that they should?

Adv E. F. Dippenaar: I think in my experience specifically in the Urgent Courts and alike, they do. The Urgent Courts, by their very nature they do.

CJ M. Mogoeng: Sure.

Adv E. F. Dippenaar: But in terms of trial matters, I think that's where people think that the entire process takes too long and that's why there is a tendency to take certain of these matters on arbitration, because of the delay between the finalisation of the pleading stage and actually acquiring a hearing date, because some of these matters very often don't get completed in two or three days. They'll need a longer type of allocation and that's, I think, where the industry says that it's not quickly enough and because of the volume of work that exists in the divisions, they can't be accommodated necessarily on the roll quickly enough on the normal trial role.

CJ M. Mogoeng: Yes. Now, (Indistinct) [00:26:41] China has introduced financial Courts, E-commerce Courts, Internet Courts, precisely to cater for that sector over and above the arbitration facilities that are available. Is it something that you think should be explored?

Adv E. F. Dippenaar: I think it will be a very valuable tool to explore, to have specific – such specific Commercial Courts and E-commerce Courts introduced in our industry, because that is what the broader commercial industry requires.

CJ M. Mogoeng: Yes.

Adv E. F. Dippenaar: ...and I'm sure that our system can accommodate them and it would be an excellent idea.

CJ M. Mogoeng: Yes. Minister?

Mr Masutha: Thank you, Chief Justice. Actually I was prompted by the question raised related to the finalisation of matters – the delays that it takes for matters. I understand that Gauteng Courts generally are overwhelmed with Court rules relative to judicial resources available. What would you describe the situation? Is it a grave situation? Is it something extraordinary we should be worried about? How long does it take when a person lodges a matter for it to finally be heard? A year? Two years? How 's the roll looking like?

Adv E. F. Dippenaar: I think it's about sort of eight or nine months, perhaps a bit longer at the moment. I think in terms, if there was a specialised Commercial Court that was separate from the normal roll, I'm sure that the time would be speeded up a lot. I think the roll at the moment is full of a lot of the RAF matters, which invariably only settle on the day and often need allocation of Judges, which then takes that particular Judge out of the trial pool, who's available. So, if there are streamed categories of Trial Courts, then I think that would assist in speeding the system a lot, because in the RAF matters in the times that I've acted in Pretoria, very often there are only arguments required on certain limited issues. So, it was possible and on various occasions I and a lot of the other Judges in that Court did two or three of the RAF matters a day, so that roll one can clear up quicker and if you then have a separate roll for commercial matters, then I think that would assist the situation greatly and also make the period a lot shorter. Another thing that one can also look at is case management, specifically in relation to the commercial matters, where you can set shorter periods for the procedures to happen, which would also facilitate the matters being capable and trial ready a lot earlier and if one has a...

Mr Masutha: Can I...? Allow me to interrupt. If you'll allow me, I just want to stick to just the one aspect relating to the category of matters that tend to clog the court rolls, for example in 2002 we established special Commercial Crimes Courts, specifically to deal with your fraud corruption and those kinds of issues – isolate them into a special dispensation, so I just want to understand which other categories of matters may well in line with the thinking of the CJ deserve special focus of that nature. You mentioned Road Accident Fund matters. Which other matters do you think, given the volumes involved and of course, the Special Tribunal under the SIU which is pending re-establishment. But which other matters do you think would actually be help unclog the Court rolls if they were isolated into a separate dispensation?

Adv E. F. Dippenaar: I think straight commercial matters, Minister. If one had just straight commercial matters.

Mr Masutha: General commercial?

Adv E. F. Dippenaar: General commercial matters. If those had a special roll.

Mr Masutha: But isn't that where Civil Courts are general there for?

Adv E. F. Dippenaar: They are, but they tend to at the moment also involve a lot of dialectal matters, so I think if there was a special specific Commercial Court, that would also assist in clearing the rolls. It would also assist in bringing a lot of the work back to the Courts that may be going to arbitrations at the moment.

Mr Masutha: And then just in terms of the size of the establishment of that Court relative to other Courts, I would understand you wouldn't have practised elsewhere, but nonetheless, do you feel the significant pressure on the Judges of that Court, because of the volume of matters relative to the number of Judges that are available?

Adv E. F. Dippenaar: There is. I would imagine that there is a substantial pressure at the moment to deal with the allocations.

Mr Masutha: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you and finally, we hope to introduce mediation for matters like RAF – a pilot project in Gauteng. Hopefully around November, but we're not sure yet. Do you think it will assist in the finalisation of matters?

Adv E. F. Dippenaar: It certainly would, Chief Justice, because one finds in practice in those Courts that parties are really very close to each other and with the process of mediation it would be a very effective tool in specifically clearing that roll.

CJ M. Mogoeng: Yes. Thank you so much. You're excused, Ma'am.

Adv E. F. Dippenaar: Thank you, Chief Justice. Thank you, Commissioner.

