Judicial Service Commission Interviews
April 2019

Supreme Court of Appeal (Judge)
Interview of Judge TR Govern

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CJ M Mogoeng: Our…

Judge Gorven: And good morning to the other Commissioners if I may.

CJ M Mogoeng: Yes. Our condolences for the loss of your mother on Sunday.

Judge Gorven: Oh, that's very kind of you thank you so much.

CJ M Mogoeng: Yes. I hope it hasn't disturbed you to the point where you'll find it difficult to manage the interview.

Judge Gorven: I'm sure it'll be fine thank you, she was full of years as they say, in the Bible I think. And she just had her ninetieth birthday celebrated with the family, and then she slipped away which was wonderful.

CJ M Mogoeng: Okay. Alright. Are you relaxed I or should I help settle you down?

Judge Gorven: I'm quite happy thank you.

CJ M Mogoeng: You're quite… alright. Okay.

Judge Gorven: Thank you.

CJ M Mogoeng: For how many years have you been a judge of the High Court?

Judge Gorven: Just over ten years I was appointed in 2008 November.

CJ M Mogoeng: Ten years four months?

Judge Gorven: Yes.

CJ M Mogoeng: And for how many terms altogether have you acted in the Supreme Court of Appeal?

Judge Gorven: For nine terms.

CJ M Mogoeng: Tell us about your state of readiness. I know that you have previously appeared before us but, just impress us.

Judge Gorven: Thank you. I think I am ready. I've written judgments over a wide range of matters. Particularly civil matters, and I think I have sufficient experience both from the bar and from the bench to be able to hit the ground running, at the Supreme Court of Appeal. When I've acted there before I've been able to get judgments out fairly expeditiously. I've also been able to assist other people who, have maybe run into too many judgments to write to maybe relieve them a little bit of that load. I believe that I'm ready to make a contribution.

CJ M Mogoeng: Why did you join NADEL? It's an odd question but I ask it deliberately.

Judge Gorven: I can tell you exactly why. I had been involved in the … before that in the YMCA, which was a non-governmental organisation. It had as its leadership a predominantly white paternalistic leadership. Some of us within that were trying to turn it around. It did eventually happen. We formed a joint task group for action against apartheid both inside the NGO, and of course in our society. And one felt that space was not being created for black leadership. And so, when I came to the bar, I looked at Lawyers for Human Rights I saw that they were doing good work, but I saw that they were white led. And I thought I'm not going to be in a white led organisation again. I want to be in a democratic organisation led by black people and lend my services. So that's why I joined NADEL as opposed to Lawyers for Human Rights.

CJ M Mogoeng: So it was partly your rejection of racial discrimination or white supremacy, that caused you to join NADEL. You wanted to be part of the solution?

Judge Gorven: Absolutely.

CJ M Mogoeng: To the challenges that confront the legal profession and by extension donation.

Judge Gorven: Absolutely and I wanted to render a service with the transformation project, and I saw NADEL as being a fantastic vehicle of opportunity to do that and I'm very grateful that they accepted me.

CJ M Mogoeng: Is it a fair statement to make or an overstatement, to say that you can therefore discern, you can pick up incidents of disrespect, arrogance, racial discrimination, if there are any, in the environment within which you find yourself?

Judge Gorven: I believe I'm sensitised to it I'm obviously not as sensitised as someone against whom discrimination on that level has been practiced. But I do believe I'm sensitised to it yes.

CJ M Mogoeng: Over the nine terms that you've acted at the SCA did you pick up any such incidents?

Judge Gorven: There were situations where on a social level, people congregated together, largely based on a racial demographic. There were sometimes expressions made to me by black members that they felt that they'd been somewhat belittled, within situations. I think by and large with some exceptions, there was an attempt, I think to make the court something which fitted in with our constitution and our constitutional project.

CJ M Mogoeng: Whether on the basis of race or seniority. Did you pick up some discriminatory practices that relate to, how work was done? How colleagues related to one another, sitting in court, deliberating over judgments or exchanging judgments, or even in relation to concurrences or non-concurrences? Did you pick up something work-related, that is unacceptable…influenced by any of these dynamics during your acting stints there?

Judge Gorven: I think if one analysed for example, people to whom judgments were allocated, I think that some of the senior people did reserve judgments to themselves which they thought might be matters which, where they could make an impact. There were those sorts of dynamics. I never got a sense within conferences that people's views weren't being taken seriously. I, everybody, in every conference I've been a part of, has been asked for their views, and people have listened carefully and attentively to them.

CJ M Mogoeng: And you've never come across a situation where some colleagues are for a term not even allocated a single judgment to write or judgments that they had been allocated are taken from them, given to others or there is a dissent that they were never warned about in advance?

Judge Gorven: In the judgments in which I was involved. I don't believe there were any, certainly dissents where there was no warning. It's a frequent occurrence in the court that when a judgment is circulated people will comment on it and attempt to suggest improvements it's happened to me it's happened to everybody else, and that's a good thing of course because we want the court to bring out good judgments. But there have been occasions I think where the senior presiding person felt that the person writing the judgment perhaps was floundering and wanted to expedite the process. Presumably.

CJ M Mogoeng: I'm focusing only on abnormalities. Either no comment or comment that is really not designed to help you get it right. And without any meaningful effort to help you get it right. There is then another judgment or comments that are discourteous. That are not collegial. Its things that could discourage a colleague who's trying to find his or her feet on the ground, that I'm alluding to. Have you picked up those, developments?

Judge Gorven: I know that some colleagues did feel a bit discouraged by some of those processes. In the judgments in which I was involved. I can think of one such situation. But for the rest. Mostly I think people try to make an attempt at assisting. And I know that the presiding people on many occasions in fact called more conferences than normal, so that we could deliberate together and together achieve something of which we would be proud as a panel.

CJ M Mogoeng: What challenges have you seen some of the acting colleagues' experience? Particularly those who have not had the kind of background, extensive practice up to senior council level that you have had…and ja. Maybe I should leave it at that. There will be a follow-up question if necessary.

Judge Gorven: Sorry I didn't quite get the gist of that Chief Justice?

CJ M Mogoeng: Because you've practiced as an advocate for a long time and even rose to the level of senior council.

Judge Gorven: Yes.

CJ M Mogoeng: You probably found it much easier as a High Court judge acting in the SCA, to manage the challenges that pertain to judgment writing. But not necessarily so, with people who have not had as extensive experience as you have had in their practice of the law. Now what kind of challenge is this, did these others experience and how do you think they could be helped through? They are, they could be helped to adjust at a SCA level, while acting?

Judge Gorven: Well I've got to say that I've never found writing any judgment easy.

CJ M Mogoeng: But it’s a question of degree.

Judge Gorven: Yes, I hear what you're saying. In many judgments where I have encountered new areas of the law, it's required massive effort and massive study and revisiting again and again and bouncing ideas off colleagues as well. And that would be amplified obviously by people who haven't had my experience. In other words, it would make the yards a lot harder for them to run than for me to run I recognize that. Hopefully, and I did experience this. There is … a willingness to bounce ideas off colleagues. And to extend one another's learning and I've certainly, wherever I've been I've attempted to make myself available to do that, where I'm able to, obviously because it doesn't mean that I had experience that I'm versed in all the areas of the law that everybody else is versed in. But where I've been able to I’ve wanted to try and make that sort of contribution.

CJ M Mogoeng: President Maya.

Commissioner Maya: Thank you Chief Justice. Good morning Judge Gorven.

Judge Gorven: Good morning President Maya.

Commissioner Maya: Condolences from me as well.

Judge Gorven: Thank you very much.

Commissioner Maya: As the Chief Justice pointed out, you have been interviewed by this body a few times already, so I don't really have questions for you. Your prowess as a judge, your collegiality and your ready willingness to assist colleagues especially junior colleagues is on record. I'm going to ask you a question which in my view should be no issue at all. But it was put to the previous candidates it relates to your age. And I preface this question with this comment that I have recently observed … retired justices Mpathi, Nugent, and Mmogoro in critical commissions of inquiry and they are considerably older than you and they did or well the country thought they did a sterling job. Do you think, you turn sixty-five in about two weeks?

Judge Gorven: Correct. Nineteen days’ time.

Commissioner Maya: Yes should that…and you’re competing against…it’s only one of your competitors who's older than you. You’re competing against younger colleagues. Should your age disadvantage you at all?

Judge Gorven: Thank you for the question. I don't believe so in fact I think it should advantage me. For a couple of reasons. It means that I've had experience on the bench, I also have five years and nineteen days before I have to retire. In which I want to make a significant contribution, to that court, and to our law. And the development of that law, and the mentoring and bringing forward of both advocates and judges where I can. I believe I'm well suited to do that, that's the first part of the answer. The second part of the answer is my mother died at the age of ninety, my father is ninety six and a half…

Commissioner Maya: Oh.

Judge Gorven: And until he was ninety-five, he was running a very complicated set of accounts. I don't think the Gorvan brain fades very quickly. [laughter]

Commissioner Maya: Thank you Chief Justice.

CJ M Mogoeng: On a lighter note does your father still drive himself?

Judge Gorven: No. Fortunately.

CJ M Mogoeng: Fortunate.

Judge Gorven: He started, he only stopped that about a year and a half ago as well.

CJ M Mogoeng: I was going to caution because the Queen's husband knocked off somebody recently driving himself.

Judge Gorven: We're very grateful he stopped.

CJ M Mogoeng: Commissioner Nyambi.

Commissioner Nyambi: Thank you C J. Morning Judge.

Judge Gorven: Good morning jus.

Commissioner Nyambi: As indicated in your C V that you are a lay preacher besides being a judge, in the St. Matthews Anglican Church. Is that right?

Judge Gorven: That's correct.

Commissioner Nyambi: What is your view of the impact of the emergence of miracle-working churches on the role of law in the country? [laughter]

Judge Gorven: Now I think that's a serious question in fact. And I don't want to knock … any churches. But where church leadership sets itself

up, as God. And sets itself up in a power relationship over other people, that is exceptionally dangerous. The way I see our constitution, is that, we start from the position where every citizen has equal power, and none have power over the other. Except where the constitution accords that power, for necessary and significant social purposes in our democracy. And that is why the powers of the legislature and the executive and the judiciary, are circumscribed. So that nobody can assert power over others, without there being a good, valid democratic basis for it. And where any church, whether it's the new churches or anyone else, crosses that line, it becomes dangerous to our situation in our democracy.

Commissioner Nyambi: Thank you my last question, as President has indicated that you have interviewed in the past. Any other thing that you think you might have missed out in the past that you have to seriously consider this time around?

Judge Gorven: Well…I think what I would like to say and I'm sure the commission is very alert to this, is that the five positions which are being filled now amount to, I did a quick calculation. Ninety-three years of experience as judges on the bench. Between those five people together they have served for ninety-three years. That's a lot of experience, to lose in a court in one go. Twenty percent of the court is being replaced. And that I would like to suggest, might well be a good reason why I can make a significant contribution at this time.

Commissioner Nyambi: Thank you C J. Thank you President Maya.

Commissioner Maya: Commissioner Mpofu.

Commissioner Mpofu: Is it, I'm covered thank you President. I just wanted to pass my condolences as well.

Judge Gorven: Thank you very much.

Commissioner Mpofu: I lost my mother in the last six months so I can feel your pain ja.

Judge Gorven: Thank you so much and my condolences to you.

Commissioner Mpofu: Thank you but my question was about the age which has been covered, thank you.

Judge Gorven: Thank you.

Commissioner Maya: Commissioner Norman.

Commissioner Norman: Thank you President good morning Judge.

Judge Gorven: Good morning Commissioner Norman.

Commissioner Norman: Good morning, thank you. In that judgment that you've referred the commission to the *State versus Mathe* judgment.

Judge Gorven: Yes.

Commissioner Norman: This is a fiancé murdering his … in fact a guy murdering his fiancé.

Judge Gorven: Yes.

Commissioner Norman: And then the father of the deceased had made, in fact had indicated that look I'm, I want to pursue compensation. Or this, I want compensation for my loss. And then the probation officers had also suggested in their report that … the mo-, the father should get fifty thousand paid in instalments. And you rejected that in your judgment you don't deal with it you didn't award that. But the question that I want to pose to you is, what were the reasons for you to reject that proposition? Because your answer then is going to inform my next question to you.

Judge Gorven: The difficulty in awarding compensation in circumstances where there's gonna be a term of imprisonment is, how to, how a person might be able to fulfil that obligation.

Commissioner Norman: Yes. Oh thank you then that ties up with my next question because my next question is the look…when I looked at section 300 in section 297 of the Criminal Procedure Act. It doesn't seem to me that if you're going to be imposing a term of imprisonment there is room for you to consider compensation at all.

Judge Gorven: That's correct.

Commissioner Norman: Yes.

Judge Gorven: That's the reason it didn't…

Commissioner Norman: Because you have to weigh your options and…

Judge Gorven: And it was undoubtedly a matter which deserved imprisonment.

Commissioner Norman: Yes. And again do you think it would have been appropriate supposing that you had felt differently at the time, and supposing that you felt that the sections that I've referred to, would permit you to impose compensation? Would you think that it would have been appropriate, fifty thousand for loss of life?

Judge Gorven: How can you compensate someone for loss of life? Of course, in the civil law one has to show that compensation is in order to deal with a financial loss.

Commissioner Norman: Yes.

Judge Gorven: You don't need to do that in this situation obviously.

Commissioner Norman: Yes.

Judge Gorven: But a fifty thousand Rand of compensation, if the person had been able to pay even in a deferred basis, I think it would be appropriate. Certainly, to consider it. Along with all the other factors one would need to consider.

Commissioner Norman: Thank you and then lastly. You've acted as President Maya has indicated several times at the SCA. What is the unique contribution that you bring, you wish to bring, you, when you act? You contribute to the system. You show your hand in everything that you are doing. What is it that this time round, if you become permanent, you wish to bring to the Supreme Court of Appeal?

Judge Gorven: I think first and foremost, I would like to bring my humanity. My humanity as regards the court itself, my colleagues, the staff, the persons who appear before me and the litigants. Because I think that's ultimately what our constitution is suggesting should be brought to bear in any situation, by a judicial officer. That people are treated as human beings, with rights, and are given a fair, full audience. And where one can in fact make a contribution to other people, one should do so.

CJ M Mogoeng: Thank you Commissioner Norman. Commissioner Notyesi.

Commissioner Notyesi: Thank you Chief Justice. I also add to what has already been said, my condolences.

Judge Gorven: Thank you so much.

CJ M Mogoeng: Sorry Commissioner just bring the mike closer to you and on the side that your ma-, your head turns to when you speak.

Commissioner Notyesi: Thank you Chief Justice.

CJ M Mogoeng: Ja. Maybe more towards his side so that as you lean over…

Commissioner Notyesi: All right. I note from your CV that you joined NADEL way back in 1988. You were already part of that structure.

Judge Gorven: Yes.

Commissioner Notyesi: Surely at that stage, there were a few white people who definitely identified themselves with those organisations that championed human rights. What were your convictions at the time in relation to the law, the role of the law and the apartheid?

Judge Gorven: My convictions were that the law should be used insofar it was able to be used under that system, to bring about democracy and transformation, and the rule of law and justice. My convictions were, that a specific legal contribution could be made and should be made in the practice of one's law.

Commissioner Notyesi: During that time, a lot of activists were arrested it was shortly during…it was shortly after the state of emergency and when there was still height of apartheid. Any contribution personally that you have made in terms of representing some of the activists in court? And what whatever contribution that you have made in the pursuit of the struggle?

Judge Gorven: And we'd had just…

Commissioner Notyesi: And how it helped you today as a judge…that contribution.

Judge Gorven: We'd also had that, the seven-day war in the valley in the Edendale Valley at the time, it was a very very tense period. I spent a lot of the first number of years of my practice at the Plessy's laan Magistrate's Court, defending people on trumped-up charges relating to homemade firearms which the police were planting in activist's gardens. And in defending those activists who'd been charged by the police with acts which the police thought were against the state interests as they were at the time. We also ran clinics for free legal advice and legal service. And I also made myself available with NADEL and other NADEL members to act as a magistrate in the Magistrate's Court at the time. But I spent a lot of the early days of my practice defending activists in that area and particularly in areas of conflict.

CJ M Mogoeng: Thank you so much Commissioner Notyesi. You're excused sir.

Judge Gorven: Thank you very much.

CJ M Mogoeng: Thank you.