



Judicial Service Commission Interviews

6 April 2022

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Eastern Cape Division of the High Court Interviews

Interview of Mr V Naidu

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15 **Chief Justice Zondo:**

Good afternoon, Mr. Naidu.

Mr. V. Naidu:

Good afternoon, Chief Justice.

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Chief Justice Zondo:

Please switch on your mic.

Mr. V. Naidu:

Thank you. Good afternoon, Chief Justice. Good afternoon, Commissioners.

5 **Chief Justice Zondo:**

How are you this afternoon?

Mr. V. Naidu:

Very well, thank you, Commissioner.

10

Chief Justice Zondo:

Thank you. I've greeted you on behalf of everybody.

Mr. V. Naidu:

15 Thank you.

Chief Justice Zondo:

So, ja. We thank you for availing yourself to be considered for appointment as a judge of the Eastern Cape Division.

20

Mr. V. Naidu:

It's an honor and a privilege to be here, thank you.

Chief Justice Zondo:

25 Thank you. I will ask you certain questions whereafter the, I will allow the Judge President and the Premier and thereafter other commissioners. I will appeal to

commissioners that, as I ask you questions and as the JP asks you questions, if they are going to have any questions they try and formulate their questions crisply so that they are short. And when you answer, I would also appeal to you to try and give crisp answers.

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Mr. V. Naidu:

I'll endeavor to do my best [intervenes]...

Chief Justice Zondo:

10 Is that all right?

Mr. V. Naidu:

...Chief Justice.

15 **Chief Justice Zondo:**

Yes. Okay. Now you hold two degrees and a diploma, is that correct?

Mr. V. Naidu:

That's correct, Chief Justice.

20

Chief Justice Zondo:

It's a BA degree and an LLB degree, is that correct?

Mr. V. Naidu:

25 That is correct.

Chief Justice Zondo:

And the diploma is a diploma in insolvency law and practice. Is that right?

Mr. V. Naidu:

5 Yes, Chief Justice.

Chief Justice Zondo:

And you got your BA from the University of Cape Town and your LLB at the University of Natal.

10

Mr. V. Naidu:

That's correct, Sir.

Chief Justice Zondo:

15 And your diploma you got at the University of Pretoria.

Mr. V. Naidu:

Yes, Chief Justice.

20 **Chief Justice Zondo:**

And respectively they were obtained in 94, 99 and 2005.

Mr. V. Naidu:

Yes.

25

Chief Justice Zondo:

And you did your articles of clerkship from 1999 to 2001, is that right?

Mr. V. Naidu:

5 That's correct so, Chief Justice.

Chief Justice Zondo:

You were admitted as an attorney in 2001.

10 **Mr. V. Naidu:**

Correct.

Chief Justice Zondo:

And you, 2001, is that correct?

15

Mr. V. Naidu:

That is August 2001, Chief Justice.

Chief Justice Zondo:

20 Yes.

Mr. V. Naidu:

Yes.

25 **Chief Justice Zondo:**

And you worked as a professional assistant up to 2006 and thereafter as a director.

Mr. V. Naidu:

That is correct.

5

Chief Justice Zondo:

Yes. Have you been practicing law since then up to now?

Mr. V. Naidu:

10 That is correct so, Chief Justice. I think my calculations is almost 23 years.

Chief Justice Zondo:

Almost 20 years?

15 **Mr. V. Naidu:**

23.

Chief Justice Zondo:

Okay, yes. And your practice, do you do a lot of trials yourself in your practice?

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Mr. V. Naidu:

Chief Justice, I started, I left private practice in April 2010, and I started with Legal Aid South Africa on the 1st of April 2010. So, during my period within private practice I attended to many criminal trials. I did a few civil trials in the Magistrates Court and a few High Court matters. Since my employ with Legal Aid South Africa, I'm involved in quite a bit of civil legal work in the High Court and the Appeal Court in Grahamstown Makhanda.

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Chief Justice Zondo:

So, what is the answer to the question whether you do trials? Is it that you [intervenes]...

5

Mr. V. Naidu:

Correct so.

Chief Justice Zondo:

10 ...you only do it now that you are in the, on the Lega Aid board, but not before or is it when it was before you did criminal trials and not civil trials, but once you were under Legal Aid you did both?

Mr. V. Naidu:

15 To confirm the answer, Chief Justice, I did most criminal work while in private practice, but I did attend to many civil trials in the district and regional court. I did not attend to civil trials in the High Court. Once employed with Legal Aid South Africa I attended to many trials and opposed motion matters in the High Court.

20 **Chief Justice Zondo:**

Yes. And when you do trials, did you do them yourself as such or did you do them with counsel having briefed counsel?

Mr. V. Naidu:

25 No. I did all the trials myself, Chief Justice.

Chief Justice Zondo:

Yes. And in terms of civil trials, the ones that you do, what types of cases do they get, do you get involved in? Is it civil claims against the Minister of Police and other government ministers? What types of branches of law or types of cases are you involved in?

5

Mr. V. Naidu:

No, mostly, it's mostly contractual disputes, Chief Justice, the trials that I have attended to in the High Court. Mostly contractual disputes involving people that qualify for legal aid and obviously plaintiffs. And then if we're talking about 10 opposed matters, more often than not they are, lead to trials, mostly administrative law, yes, it's contractual law also family law disputes as well, Chief Justice.

Chief Justice Zondo:

Is that, is all of that under the Legal Aid South Africa?

15

Mr. V. Naidu:

Correct so, Chief Justice.

Chief Justice Zondo:

20 And you have acted in the High Court as well?

Mr. V. Naidu:

That is indeed correct, Chief Justice, since 2016.

25 **Chief Justice Zondo:**

Yes. And for how long have you acted?

Mr. V. Naidu:

Chief Justice, according to my calculations it's almost eight months in total.

Chief Justice Zondo:

5 Eight months?

Mr. V. Naidu:

Correct so, Chief Justice.

10 **Chief Justice Zondo:**

Over a certain period?

Mr. V. Naidu:

From 2016 until 3rd of December last year.

15

Chief Justice Zondo:

Is that at a stretch, not at a stretch?

Mr. V. Naidu:

20 No, not at this stage.

Chief Justice Zondo:

Periodically, ja.

25 **Mr. V. Naidu:**

It's intermittent every year.

Chief Justice Zondo:

5 Ja. Okay, all right. And when you have had a chance to act in the High Court, have you done both Motion Court and trials as an acting judge?

Mr. V. Naidu:

Yes, Chief Justice, most definitely.

10 **Chief Justice Zondo:**

As an acting judge, have you done criminal trials?

Mr. V. Naidu:

15 Yes, Chief Justice. According to my record, I think I've done, I've handled three criminal trials.

Chief Justice Zondo:

Up to completion?

20 **Mr. V. Naidu:**

Up to completion, Chief Justice.

Chief Justice Zondo:

And civil trials, about how many have you done if you are able to tell us?

25

Mr. V. Naidu:

About five according to my [intervenes]...

Chief Justice Zondo:

About five civil trials?

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Mr. V. Naidu:

Ja, about five civil trials.

Chief Justice Zondo:

10 Yes.

Mr. V. Naidu:

To completion, Chief Justice.

15 **Chief Justice Zondo:**

And Motion Court, how have you found it to be, as an acting judge?

Mr. V. Naidu:

20 I've done Motion Court duty every time I've been asked to act. It is challenging at times with the volume of work, but I found it very fulfilling with the matters that one attends to and the parties that appear before you. And I enjoyed it, Chief Justice.

Chief Justice Zondo:

25 Yes. Have you sat in full bench appeals?

Mr. V. Naidu:

Yes, Chief Justice.

Chief Justice Zondo:

- 5 Yes. Under what circumstances can you interfere with a decision taken in the exercise of a discretion when you are sitting on appeal?

Mr. V. Naidu:

- 10 Well, you have to look at the discretion as applied by the lower court in the matter and see whether the presiding officer applied their mind to the matter and it's only then that you can make a decision as to whether you should interfere, but it's actually as a last resort if the presiding officer really didn't apply their mind to the matter.

15 **Chief Justice Zondo:**

Mmhmm. And under what circumstances can you upset factual findings when you are sitting on appeal, factual findings of the trial court?

Mr. V. Naidu:

- 20 Once again, Chief Justice, if you had to look at the transcribed record of proceedings and you find that the presiding officer in the lower court had materially misdirected themselves with regards to factual findings, then you can make a decision that those factual findings were indeed incorrect and in fact set aside those findings.

25

Chief Justice Zondo:

Mmhmm. Now in terms of the branches of law that have been covered by the types of cases you have done in the High Court when you, as an acting judge, what

can you tell the commissioners? What kind of branches of law have been covered by the experience you have been exposed to as an acting judge?

Mr. V. Naidu:

5 From my recollection, Chief Justice, there's obviously the criminal law aspect. There have been civil trials, contractual, commercial disputes. There's also been certain matters where servitudes were involved in one matter that's been taken on appeal. Most of the time it is applications and opposed motions dealing with, for example, rule 20 exceptions and striking out. So, it covers a wide variety,
10 commercial aspects, contractual law, administrative law, quite a range of civil aspects, Chief Justice.

Chief Justice Zondo:

About how many judgments would you say you have written as an acting judge?

15

Mr. V. Naidu:

Altogether, including criminal and civil?

Chief Justice Zondo:

20 Everything.

Mr. V. Naidu:

Close to 30 if I'm correct.

25 **Chief Justice Zondo:**

Close to 30?

Mr. V. Naidu:

Close to 30.

Chief Justice Zondo:

5 Yes, and those are written judgments?

Mr. V. Naidu:

Correct so, Chief Justice.

10 **Chief Justice Zondo:**

Yes. And some of them come from your motion matter and others, motion matters and others from trials?

Mr. V. Naidu:

15 Yes. It's made up of criminal, criminal trials, opposed motion applications which, then there's civil appeals, criminal appeals, all inclusive, Chief Justice. As well as a review that, if I recall.

Chief Justice Zondo:

20 Yes. I will now allow the Judge President to put questions to you. Judge President.

Judge President Mbenenge:

Thank you, CJ. Good afternoon, Mr. Naidu.

25 **Mr. V. Naidu:**

Afternoon, JP.

Judge President Mbenenge:

In paragraph 6.2.1 of your application form or the questionnaire, you stated that the proportion of your litigation work in criminal law is 0%.

5

Mr. V. Naidu:

At the moment, yes, JP.

Judge President Mbenenge:

10 Yes, but then my question is very simple. Have the acting stints given you sufficient exposure in criminal work?

Mr. V. Naidu:

15 Chief Justice, taken collectively with my experience in private practice where my work was to a large extent criminal work and High Court [intervenes]...

Judge President Mbenenge:

Yes.

20 **Mr. V. Naidu:**

...criminal work where I represented numerous accused in the High Court, one of the trials that I attended to was State versus Clifford and Others which ran for four years. I garnered sufficient experience during that time, as well as I utilize that experience when I attended to criminal trials in, as an acting judge. Case and point is, because I was so au fait with a lot of the practices of accused persons, I was also well aware of the tricks that they would try to play to try and get matters sort of delayed. And I attend to it, I attended to it accordingly [intervenes]...

25

Judge President Mbenenge:

Yes.

Mr. V. Naidu:

5 ...JP.

Judge President Mbenenge:

10 Thank you. Now in their commentary, NADEL expresses reservation regarding the current demographics in the Eastern Cape. That is the entire division. Let me postulate or give you a picture. The last statistics or the last consensus that was conducted was in 2016 and this is the picture relative to the Gqeberha jurisdiction or Gqeberha High Court jurisdictional area. You have in all 1.152 120 million, that is the entire population and then you have black African 60%, colored 24%, Indian/Asian 1.1%, white 14% and other population groups 0.9%. So, the concern is expressed regarding the current demographics in the Eastern Cape. Do you have any comment to proffer on that?

15

Mr. V. Naidu:

20 Chief Justice, yes. You know, I, NADEL's comments are somewhat a bit vague because they're not saying exactly what do they mean by the demographics. Are they saying that there's insufficient female candidates? Are they saying that there's insufficient minority candidates?

Judge President Mbenenge:

25 Yes.

Mr. V. Naidu:

If so, I think I would fall into that category.

Judge President Mbenenge:

Maybe let me help you. Based on the scenario that I postulated or that I referred to, I'm talking about the Gqeberha High Court jurisdictional area. Looking at the composition of the bench in Gqeberha and having regard to the fact that if you look at the entire population in that jurisdictional area, you've got black African 60%, colored 24%, Indian/Asian 1.1%, white 14% and other population groups 0.9%. So, the more opposite question is whether your appointment would speak to a healthy demographic picture in Gqeberha, given the facts that I've narrated or set out.

10 **Mr. V. Naidu:**

Most certainly, Chief Justice. There is no Indian or Asian judges at the Gqeberha High Court. My appointment would make, would most certainly represent the 1% [intervenes]...

15 **Judge President Mbenenge:**

Yes.

Mr. V. Naidu:

...that you mentioned.

20

Judge President Mbenenge:

Compare the colored population and the Indian population, what would you say?

Mr. V. Naidu:

25 Yes. There's certainly a greater colored representation, but, and if we're talking specifically about colored and Indian populations, you know, growing up in Gqeberha I can almost say one can assimilate the both race groups as one because we all grew up together like that. But I understand your question to mean that because there's a greater colored population [intervenes]...

Judge President Mbenenge:

Yes.

5 **Mr. V. Naidu:**

...that necessarily one would want to appoint a colored candidate so to speak. And my response to that would be as follows. I've dedicated myself to my hometown of Gqeberha. Whilst I had many opportunities to go for more lucrative employment elsewhere, I chose to make a difference in my community, in my city and in my
10 province. It would be the greatest privilege and honor if this commission found in my favor to be appointed and to, not just represent a one percenter, but be representative of the people of Gqeberha as a whole.

Judge President Mbenenge:

15 Yes. We've got three Indian judges in the Eastern Cape, one in Mthatha, two in Makhanda. Would you say give that demographic picture against the bigger picture; the appointment of an Indian judge would give rise to a healthy demographic picture?

20 **Mr. V. Naidu:**

Chief Justice, I would agree with you that, I must say that it would because if you, I think if we have a representative person in each of the high courts, then that would represent the city. I mean I'm from Gqeberha, born and raised. The message that it will be sending out to my city is that one of their own has been appointed and I
25 would be representing their best interests.

Judge President Mbenenge:

Yes. Thank you, CJ.

Chief Justice Zondo:

Thank you very much. Premier.

Premier Mabuyane:

- 5 Thank you very much, CJ and good afternoon, Mr. Naidoo. I think I'm covered a lot. Just one question. What do you believe are the challenges facing transformation in the Eastern Cape courts, if any?

Mr. V. Naidu:

- 10 Premier, where do I begin? I've attended, like I said, I grew up in Gqeberha and I've practiced in many of the courts in the Eastern Cape. There is still a great disparity between previously disadvantaged members of the legal fraternity and it's slowly but surely getting right, but the biggest challenges is that there is insufficient representation. If one had regard to my, the letter from NADEL which basically said
15 that they acknowledge that I was member of NADEL, but they were not sure as to why I left NADEL.

- And commissioners would've noted that I'm a huge proponent of social justice and equality. As much as I was honored to have been part of NADEL and what they stood for and the purpose of furthering previously disadvantaged attorneys and
20 advocates, I grew frustrated because one of the main issues that I was a proponent for, was that I felt that the local municipality briefing patterns were very skewed. They had attended to only briefing mainly white firms and very little, if no briefing went to non-white firms. And year in, year out, I would stand on my soapbox and tell NADEL we need to engage with the municipality, we need to sort out the
25 skewed briefing patterns, this is not right. And this was way back in 2013.

- Another issue which I was frustrated about is that I wanted NADEL to engage meaningfully with the banks. Their briefing patterns with regards to briefing firms and advocates and junior counsel mostly went to white firms and white counsel and that frustrated me and angered me in a way, and I felt that I'm not getting
30 anywhere. I may as well just stick to where I can make a change and that is mentoring the candidate attorneys at Legal Aid South Africa and lecturing at the Practical Law School where I could have an influence on up-and-coming attorneys

and advocates and make a meaningful change. So, those are still the issues that are prevalent now, Premier. Thank you.

Premier Mabuyane:

5 Nkosi, CJ. Thank you.

Chief Justice Zondo:

Thank you, Premier. Commissioner Nyambi.

10 **Commissioner Nyambi:**

Afternoon, Mr. Naidu.

Mr. V. Naidu:

Afternoon, Commissioner.

15

Commissioner Nyambi:

I have just one question. If you can share with us two attributes of a good judge, mainly focus on those that you think you possess.

20 **Mr. V. Naidu:**

Passion for justice and time management. The reason I say time management is because the workload of a judge is time consuming and if you don't manage your time adequately and properly it will soon snowball. And once it snowballs, then you're not giving effect to the norms and standards of the three Es I like to call it, 25 efficiency, effectiveness and expedience. If you can manage that, then you are on a good footing to be a judge to handle most workloads.

Commissioner Nyambi:

Thank you. Thank you, CJ.

Chief Justice Zondo:

5 Thank you. I encourage the one question approach which is done voluntarily.
Commissioner Singh.

Commissioner Singh:

10 Thank you very much, Chief Justice. I'll make my question part A and part B. I know
in law you'll have a number of parts. We're politicians, Chief Justice.

Commissioner Nyambi:

Lead by example.

15 **Commissioner Singh:**

No. Good afternoon, Mr. Naidu.

Mr. V. Naidu:

Good afternoon, Commissioner.

20

Commissioner Singh:

Ja. So, the first question is, you're involved in Legal Aid and I see you do a lot of
training and upskilling and teaching younger lawyers [intervenes]...

25 **Mr. V. Naidu:**

Yes.

Commissioner Singh:

...on court procedures etcetera, etcetera. Now have you given any thought that if you are appointed to the bench, how is that area, isn't somebody going to be
5 deprived on that kind of knowledge and passion that you've had to train them?

Mr. V. Naidu:

Ja. I think, Commissioner, I have encouraged many of my colleagues who are
10 attorneys to step up, and for instance I was lecturing alternative dispute resolution
up till last year. And this year I decided to give a colleague of mine, it's a female, an
opportunity lecture. So, I think there are sufficient people that can take up the
cudgels or the reigns in the fight for social justice, Commissioner.

Commissioner Singh:

15 So, you will leave a legacy?

Mr. V. Naidu:

Well, I hope so.

20 **Commissioner Singh:**

The second and last question relates to your view on public broadcast of trials. I
read somewhere that [intervenes]...

Mr. V. Naidu:

25 Yes.

Commissioner Singh:

...there was a legal journalist, I think Mr. Beamish or somebody [intervenes]...

Mr. V. Naidu:

Yes.

5

Commissioner Singh:

...that took exception to you not allowing the broadcasters in that particular, a very famous trial. What – have your views changed and what is your current view?

10 **Mr. V. Naidu:**

Well, I think we need to put it into perspective first. I think Mr. – I was a little disappointed with Mr. Beamish's comments. I was entrusted by the deputy judge president with a very high-profile criminal case which garnered much, you know, media views. And Mr. Beamish found it necessary to email my clerk at the time saying that he wanted intermittent access to forming, basically whenever he wanted. Now I'm a huge proponent that justice must not only be heard to be done but must be seen to be done as well. But judges cannot engage with members of the public.

20 According to SANEF, the South African National Editors Forum, which I hope Mr. Beamish is a member of, they have a guideline directive saying such matters must be done by way of application to the court. Why? Because then you can afford the state as well as the accused person to provide input as to whether they oppose it or not, because you've got to balance the right of freedom of speech which is the media as well as the right of privacy and fair trial. So, Mr. Beamish was advised on numerous occasions by the state prosecutor, you, Mr. Beamish, you need to file a formal substantive application to court because we intended as the state, the state witnesses have objected to being filmed and you need to bring a formal application. Mr. Beamish chose not to comply with that on numerous occasions.

30 Had Mr. Beamish filed an application, I was, would most certainly have reconsidered my decision. The decision that I made was balancing what I had from consultations with the state prosecutor, as well as with counsel for the defense and from the deputy judge president himself. And I looked back at the premier case

which was a forerunning to the Siyoni trial which was the State versus Christopher Panayiotou, and I looked at the order that that judge made, Justice Chetty made, and I drafted my order on the exact same basis that Justice Chetty did. And the order was that filming could take place at the beginning of the trial for reading out
5 of the indictment, opening address by counsel, closing address by counsel and then for judgment and sentence. I would most certainly have reconsidered that order had Mr. Beamish filed a substantive application and which I would've also allowed the state to file opposing papers. I would've considered everything in its entirety.

10 **Commissioner Singh:**

Thank you, Chief Justice. And lastly, you do have an address, I suppose, because in your questionnaire you haven't put an address. Normally, you know, the applicants put an address on their questionnaire. Thank you.

15 **Mr. V. Naidu:**

No, I apologize. I think it's in my curriculum vitae.

Chief Justice Zondo:

20 Okay. Okay, all right. Thank you very much. Let me go to the commissioners on, who are attending virtually. Commissioners attending virtually, is there anyone who wishes to put questions to the candidate?

Commissioner Breytenbach:

No questions, thank you, Chief Justice.

25

Chief Justice Zondo:

Thank you very much, Commissioner Breytenbach.

Commissioner Shabangu-Mndawe:

No question from my side, CJ.

Chief Justice Zondo:

Thank you, Commissioner Shabangu-Mndawe.

5

Commissioner Barnard:

No questions, Chief Justice. Thank you.

Chief Justice Zondo:

10 Thank you. I take it there is no question from anybody attending virtually. I think we have come to the end of this interview. Thank you very much, Mr. Naidu. I just give you three minutes to make certain points that you want to emphasize if there are any to the commissioners. But if you are satisfied that you have been able to say all the important things you wanted to say, that would be fine as well.

15

Mr. V. Naidu:

I think I would regret not having an opportunity to say this, Chief Justice, to the commission.

20 **Chief Justice Zondo:**

Yes.

Mr. V. Naidu:

25 You know, our constitution embraces the opportunity for social justice, as well as equality. There is till now a huge disparity between the haves and the have nots and as long as there's this great disparity, there will not be equality and there won't be freedom and there won't be true justice. I endeavor to pursue social justice and equality for the rest of my life, and I hope that these are the qualities that I will

bring to the bench if the commissioners so feel that I'm worthy of being appointed. And it would be the greatest honor and privilege of my life to serve the members of my community, my city and my province in this capacity. Thank you, Chief Justice.

5 **Chief Justice Zondo:**

Thank you very much, Mr. Naidu. Once again, we thank you for availing yourself.

Mr. V. Naidu:

Thank you.

10

Chief Justice Zondo:

You are now excused.

Mr. V. Naidu:

15 Thank you, Chief Justice.

Chief Justice Zondo:

Thank you.