

## Judicial Services Commission Interviews

Friday 09 October 2015

Eastern Cape Division of the High Court (Port Elizabeth)

**Chairperson: Chief Justice MogoengMogoeng**

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### Interview of Advocate RWN Brooks SC

Chief Justice Mogoeng: Tell us why you should be the one appointed to this position?

Advocate Brooks SC: I do not know how much to repeat that was expressed in my last interview.

Mogoeng: For the benefit of those who were not here, just briefly, as tersely as you can without leaving out anything of importance.

Brooks: To be a judge was never part of my life plan. But my JP invited me to act in 2012/2013, shortly after I had made application for silk. I acted for half a term in 2013, towards the end. And then I had a bad accident in December 2013, and while I was recuperating I was asked against by the then acting JP to act as a matter of some urgency in early 2014. One thing led to another and I was asked again by our JP. Those involved in my spiritual life suggested to me that maybe I have a calling to be a judge. I have explored that with them and with the passage of time it is my view that there may be some merit in that view. That is a very very broad sketch of the background. The particular position that we are looking at now is quite a difficult one, in that I think Port Elizabeth is one of the most important commercial courts in our division. It is a busy court, it has a large motion court component and a large commercial component, and those are both areas that I have had a fair degree of experience in in my 20 years as an advocate. I have tried in this portfolio to put forward some judgments drawn from that sort of quarter, rather than the judgments I put in previously, just to indicate a familiarity with that side of things. I think one needs to have someone with that kind of experience going into a centre where that forms a large component of the work. That's really the only reason because I am in other respects, to be quite humble about it, as good or as bad as anyone else, in terms of what is required.

Judge President Sangoni: Are you aware of the tradition that if a person has just accepted as silk, he is normally invited to act in the high court?

Brooks: Yes, I am.

Sangoni: So it is not so much that I invited you, but I was answering to that tradition.

Brooks: Yes. The problem was though, you will recall, that the applications were slowed down generally by court processes underway. So we had to wait for the outcome of those applications.

Sangoni: I see looking at your form of page 11 that those are reported cases you were involved in as a judge. Is that 1 to 17?

Brooks: Those are reported cases where I appeared as an advocate.

Sangoni: Do you have reported cases where you are sitting as a judge?

Brooks: To my knowledge no, to my disappointment no.

Sangoni: As far as you know, is there anyone who is opposing you, in terms of objecting to you being appointed or being recommended for appointment?

Brooks: As far as I know, no, there are no actual objections. There are of course justified observations, the fact that I am a white male and would not contribute at that level to transformation.

Sangoni: Do you have a problem with that?

Brooks: I do not have a problem with that because that is a reality when looking at transformation from that perspective. I do believe though on that understanding that I can make a contribution towards transformation in a number of senses. I do not know whether you would have me expand on that?

Sangoni: Briefly.

Brooks: Transformation I think is something that everyone can participate in and in my view it has something to do with how we perceive ourselves and how we perceive others. If that exercise is embarked upon honestly, then it must have impact upon how you handle situations that come before you in court. In court we deal with broken relationships, either at a personal level or at the level of society, whether it is the criminal or civil, you could be in a contractual situation. One is often dealing with broken relationships more than the positive side of life. There is way of handling that which flows directly from an awareness of a need for inner transformation and active transformation in that way. It has to do with, in my personal view as a Christian, I approach my work to try and create a state of grace where there can be an expression of whatever comes out of the case and the evidence placed before you and it's a privilege of a judge to participate in a very small way to the process of reconciliation within society. That for me is part of it. Of course, how one views the marginalised people who have been excluded for whatever reason from a process, that is affected by inner transformation. So I am aware of these issues and in that sense I think I can bring something to the transformation table. Of course there is also the preparedness to participate in any sort of training exercise that might be available for the judiciary to participate in, we have a long road ahead in terms of legal education to enable us to give proper transformation. I did speak of this in my last interview as well and I believe that is a reality we have to live with.

Sangoni: You have been sitting in all the courts the in Eastern Cape, including Mthatha?

Brooks: Yes, I am currently based in Mthatha.

Sangoni: How do you find it?

Brooks: It is court that has inherited some difficulties and some very severe structural challenges, I just slipped that in there, I know that this is not really the right forum for that. The Eastern Cape faces the challenge of bringing together elements together that have been forced apart by our unfortunate history. We have to re-inculcate a sense of belonging and a sense of oneness. Mthatha is a little bit on the fringe of things in that respect. It is a bit far flung. Working with the judges there, a superb crowd of people there, very supportive. The practitioners there are very keen, keen to make a difference, and get things up and running properly again, so on the whole it is a positive experience.

Sangoni: Supposing you were to be taken in, do you find any problems or obstacles that you may encounter acting as a judge?

Brooks: No. I have mentioned the difficulty posed by traveling, but it is not insurmountable. I do drive myself between centres, I cannot drive at night so I have to be quite practical about arrival and departure times, and that sort of thing. But that is the only thing that is worse than it was a few years ago, the rest, I am as I was. So no, I do not have anything that would be a difficulty.

Sangoni: You were injured, or you were injured in one of your eyes, and we may not be the same people as last time, so please explain what happened.

Brooks: I am sorry. I did make reference to the incident in 2013. It was a motor vehicle accident in December 2013. I had facial injuries which resulted in the complete loss of my right eye, so I have a resin prosthesis which obviously does not see. The effect of that is that the brain has to relearn how to estimate distances, because I have no bilateral vision to be able to pinpoint and get a perspective of something, so depth perception is difficult, and that is obviously irreversible. So one learns to judge distances by relative distances of trees, people, seated here. But it does make driving a difficulty, one has to concentrate more than other, and it is more tiring than it should be.

Sangoni: You were not on duty at the time you were injured?

Brooks: No, I was an advocate at that time.

Mogoeng: Are these statistics correct? I notice here that in Port Elizabeth there is one African male, one Indian male, two white males and two white females.

Brooks: That is correct, Judge Dambuza was the third African female, who of course now is in the SCA.

Mogoeng: Is it the vacancy that arose as a result of her appointment and sought to be filled?

Brooks: Yes.

Mogoeng: Do you have any comment on the impact of your appointment on, let me change the question, the appropriateness of your recommending you for appointment in circumstances where you already have two white males, two white females, and only one African and one Indian male?

Brooks: Demographically it would not be reflective at simply a comparative level of the society within the Port Elizabeth, and obviously that is something that the Commission must grapple with. All I can say is that, within the Eastern Cape, one of the benefits that arises from our rather unique circumstances where we have four courts, is that there is a good circulation of judges within a division. So once one ignores the written table of judges that are appointed to a particular headquarters, what one sees in court as a litigant and the experience as a practitioner as a judge, is that there is a regular turnaround and mix up of the judges, and a very good demographic reflection on the bench that one encounters on a daily basis in any particular matter, and that is thanks to the JPs management of the roll.

Mogoeng: How far true is the suggestion by some that there is a general inclination to be appointed to Mthatha, because it is a rural court, everybody wants to be in Grahamstown, Port Elizabeth or Bhisho because it is closer to East London?

Brooks: I think that is a reality. Mthatha is not the easiest environment in which to live in. It is 5 hours from Durban, I say 3 hours from East London, some people say 2. It has a reputation of being a poor area in terms of security. Those I think are reasons that affect what you are describing. Of course it is very personal thing for one applicant to another, and I cannot speak generally for all of them, but I am aware of the trend that you refer to.

MEC Makupula: In your opening statement, you indicate that being a judge was not part of your life, if I got you well. It is just that you have been asked several times to act. I just want to get the turning point, the one that made you feel that now you could take the spiritual calling, what is it?

Brooks: There a couple of factors involved in that. As I indicated, I listed the number of times I acted and of course each one of those came from an invitation to act. I think that in the late second term of 2014, I realised that notwithstanding being a white male, I was able to make a difference, I was able to make a contribution. I was affirmed in that by practitioners and fellow colleagues and members on the bench so that really was for me was the turning point. And of course with the passage of time now I have distanced myself significantly from private practice and I think I would find it very difficult to go back. It is a very different way of living within the legal profession, and something that I enjoy now. So let me clarify, it was never part of the initial plan. At the beginning, while we had the death penalty, I simply would never have been prepared to put my name forward because I had a difficulty with that. The fact that it was never really part of the plan was influenced by the need for transformation, the kind of clogging up of senior practitioners and the much needed plethora of personnel coming in from different branches of the operation that we went through after 1994. There were a number of reasons that meant it was not a definite personal goal of mine. But as I sit here now, it certainly is part of my plan, because I think it something that can be of use, can make a difference, notwithstanding who I am.

MEC Makupula: Just a quick follow up. Part of the responsibilities, if things go well here, you will be supervising people, some of whom this is a calling. The sense I get from you is that the moral dimensions more influenced you, not being associated with the death penalty, which is a fine trait in that context of that time, but now you will be supervising people who will say that this is my call, even if the death sentence was still there, I would have issued it if it was relevant. Now to find that balance in supervising people who should

be, others are more committed to the work, others will be there just doing a job. As I say others will come into the court, hit with a hammer and say the case is postponed. Finding that balance, what would be your comment?

Brooks: That is a difficult one. One has to respect the individual integrity of every judge with whom you are associated and with whom you may sit, but I think as with everything the best way of dealing with any situation is to try and lead by example in all humility and assist with that dynamic in that way, if that is of any assistance.

Advocate Hellens SC: When did you last appear before us?

Brooks: It was your last sessions, when the Grahamstown and Bhisho vacancies were filled by Bloem J and Mbenenge J.

Hellens: Was that April or October last year?

Brooks: April this year.

Hellens: And have you continued to act since then?

Brooks: Yes, I have.

Hellens: So how long have you been away from practice in total now?

Brooks: There was a short half of the first term of 2014, when I was back in practice, and that was just a window period between the 2013 and 2014 encounter.

Hellens: So from the second term 2014, whole of 2014, whole of 2015.

Brooks: From the second term of 2014 to date.

Hellens: How did you feel last time when you were not successful before this commission, couple that with why you continued to act having not been successful?

Brooks: I was encouraged by a generous interview, and the CJ very kindly asked if I would return if was not appointed on that occasion, and I said yes, because for me it is a journey with the dynamics I described. It is not for me to determine a permanent appointment, I am prepared to continue to make myself available. I think that was the attitude that I left with.

Hellens: Obviously there are different candidates on each occasion, and on each occasion there is a new adjudication. But on the last occasion, are you saying that the JSC encouraged you in your faith that you might be successful in becoming a judge?

Brooks: Without wishing to communicate that there was any sense that a legitimate expectation was created, from my side, the experience was a positive one, I cannot speak for the Commission, but that was my experience.

Mogoeng: Thank you Advocate Hellens, Advocate Brooks, you are excused.

Brooks: Thank you very much. I would like to thank the Commission for the courtesy of the interview, and I wish you well in your deliberations.