

Judicial Services Commission interviews

5 October 2015, afternoon session

Gauteng High Court

DISCLAIMER: These detailed unofficial transcripts were compiled to the best of the abilities of the monitor. However due to capacity constraints they have not been fully edited. We have therefore made the audio recordings available that were taken during the interviews available. Those wishing to cite or quote from the transcript are encouraged to check accuracy with reference to the audio file.

Mr PLC Maseti

Moseneke: Mr Maseti, why do you want to become a judge?

Mr PLC Maseti: I have gained experience as an acting Judge and through my legal practice. I would like to participate in the maintenance of constitutional values and addressing the court backlog.

Moseneke: Do you have any personal reasons for wanting to become a judge?

Maseti: I am now ready, and I must plough back to my community, having been privileged to study the law.

Moseneke: You are the only director of your firm. What will happen to it if you are appointed a judge?

Maseti: There is a candidate attorney who has been admitted in Grahamstown. He is ready and willing to take over the practice.

Moseneke: You started your legal career before 1994. In which courts and in which countries?

Maseti: I began in the Transkei, assisting a senior magistrate doing civil and criminal work. Then, after gaining an LLB I became a legal advisor to the Transkei Road Transport Corporation. I took the job partly for financial reasons: my wife was at university and as the eldest son I was responsible for an extended family. I've had my own practice since 1994.

Moseneke: Why did you not apply in the Eastern Cape?

Maseti: Another advocate in the Eastern Cape sent her CV to me in my capacity as chairperson of the Black Lawyers' Association (BLA). Seeing that she was also a fit and proper candidate and taking her gender into account, I decided not to apply in the Eastern Cape.

Moseneke: Have you applied in the Eastern Cape before?

Maseti: Yes, I applied in March. I was short-listed but did not come before the commission because one of the other applicants, Advocate Mbenenge, was also a member of the BLA and I did not think it would be proper for me, as BLA chairperson, to compete against a member.

Moseneke: In the papers you submitted you make a disclosure. Would you like to take the Commission into your confidence in this regard?

Maseti: An accused (who later became the complainant against me) was charged with assault with intention to do grievous bodily harm. The accused approached me in my office on the morning of my hearing and gave me R50 without me asking for it. I prosecuted his case without doing any favours, the accused was found guilty and sentenced to two years in prison. The accused then sent a messenger asking for the R50 to be refunded. I gave him the money, and the following day I was arrested on a charge of bribery. I pleaded not guilty but acknowledged the receipt of R50 as a loan. I was found guilty and sentenced to six months in prison, as there was no agreement of loan. This episode was a wake-up call for me. I would like to add that I had been a law student in 1975-6 at the University of Fort Hare. After the upheavals of 1976, I was not allowed to continue his studies despite passing my exams, for reasons which are still unknown to me. Being a university drop-out obliged me to work for a very meagre salary which, combined with my youth, influenced my behaviour. Nevertheless, this does not excuse my actions. This happened thirty-seven years ago, and I am completely and entirely corrected. My character is now above reproach and I deserve to be pardoned. On 7 April 2014 I applied for the expungement of my criminal record. The director-general of the Department of Justice requested a report from East London police. However, they found no record of my crime. It was suggested that I apply for a clearance certificate, which is annexed to the papers I submitted.

Moseneke: Is it accurate that there is no criminal record in your name? Or does it mean there was one, but it has now been expunged?

Maseti: When I applied for expungement, there was nothing to expunge, there was no record.

Moseneke: But your conviction is a matter of fact, is that not correct?

Maseti: Yes.

Moseneke: So what should we accept? That there was an expungement, or that the police records are inaccurate?

Maseti: I would say that there was an expungement. Perhaps the conviction lapsed after ten years had passed, in terms of Section 271 of the Criminal Procedure Act, which would explain the absence from the police record.

Moseneke: The comments from various external legal bodies about your disclosure express concern that your transgression took place in the context of the judicial process. Would you like to respond to these comments?

Maseti: I did not receive the comments from the Johannesburg and Pretoria Bars or the GCB. Some of the other comments I received were actually favourable.

Moseneke: The conclusion states that these favourable remarks are not sufficient to offset the danger to the integrity of the judiciary of appointing a Judge with a conviction for bribery. How do you respond?

Maseti: This conviction is thirty-seven years old. I am a new man. I have since occupied positions of integrity.

Mlambo: Can you tell the Commission when you alerted me to your previous conviction?

Maseti: It was after I had already acted (as a Judge?)

Mlambo: You have acted as a judge for a total of twenty-three weeks?

Maseti: Yes.

Mlambo: Did you do any work in the Third Court in Pretoria?

Maseti: Yes, I did four weeks.

Mlambo: And you did two weeks in the Opposed Motions Court?

Maseti: Yes.

Mlambo: Do you consider yourself up to the task of permanent appointment in the Gauteng Division?

Maseti: Yes. Some of my judgements have appeared in the South African Legal Information Institute (SAFLII).

Mlambo: Of all the candidates who are not members of the Bar, your total acting stint in Gauteng is the lowest, although if you add the weeks in the Eastern Cape, it goes up. You have never acted in the Gauteng Criminal Court?

Maseti: No, only in the Eastern Cape.

Mlambo: And you have never been allocated a special civil trial in Gauteng?

Maseti: No.

Mlambo: Regarding your conviction, your offence was one of dishonesty. How would you compare your offence with those committed in the course of struggle activities, such as those committed by Nelson Mandela and Bram Fischer? Should you be treated as them?

Maseti: My offence does not compare to theirs. There is only one slight consideration to be taken: had I not been excluded from Fort Hare after the 1976 upheavals, I would not have found myself in the position I did.

Moseneke: There was a letter to the secretariat of the Commission dated 15 September 2015, signed by "concerned BLA lawyers," opposing your appointment as a Judge on the grounds that he had not disclosed his previous fraud conviction in his affidavit when he was admitted as an attorney.

Maseti: The BLA supports my application, these anonymous lawyers are pretending to be acting as BLA lawyers, and their comments are not true. I was convicted not of fraud but of bribery, so I could not have disclosed a conviction for fraud.

Gauteng MEC for Education, Panyeza Lesufi: Mr Maseti, in your submission you asked the country

to forgive you. Do you think that society is being unforgiving? Would you end up spending more time defending yourself instead of doing your duties as a Judge?

Maseti: People who know me know my integrity, impartiality and independence.

Lesufi: You indicated that you wanted to “plough back” to your community. If this is the case, why are you applying to the Gauteng High Court, not the Eastern Cape?

Maseti: Gauteng is a part of South Africa. I also have a rich record of charitable activity in the Eastern Cape.

Fourie: I noted your response to the letter from the concerned BLA lawyers. Of course you could not have disclosed a conviction for fraud if you had only been convicted of bribery. But one is required to disclose *any* conviction when applying to be an articled clerk. Did you disclose your bribery conviction?

Maseti: Yes, I did.

Fourie: Do you have those documents with you?

Maseti: No, not with me.

Fourie: And in your affidavit to court for your application for admission as an attorney, did you disclose your bribery conviction?

Maseti: I'm not completely sure. I do agree that I should have disclosed it. I think I should have disclosed it.

Fourie: Are any of those documents accessible?

Maseti: Unfortunately I do not have them, but the case number is available to the Commission. If I did not disclose it, ten years had passed since the offence, so the conviction would have lapsed according to Section 271. I cannot say for certain whether I disclosed it, but I did disclose it when I registered my articles.

Fourie: The comments of the Johannesburg Bar Council indicate that on one occasion you failed to deliver your judgement for several months. After taking control of the matter, the Judge-President handed down a judgement written by you, dated several months prior. Can you explain what happened?

Maseti: My then-secretary failed to have the judgement sent to Pretoria, hence the delay.

Hellens: Would you not have a clear memory of disclosing your bribery conviction? It would have been a painful, humiliating event. Why did you not tell Judge-President Mlambo of your conviction when you were appointed an acting Judge?

Maseti: There is no form you fill in when you become an acting Judge. I did disclose it to the Judge-President of the Eastern Cape.

Hellens: A Judge on the Bench to deal instantaneously with matters, to express himself, and to

articulate different concepts of law. And yet here, you read to us whenever you are faced with a difficult question. It almost seems as if someone else has written your responses and you can't rely on your own ability to express yourself.

Maseti: Everything I have read was written by me.

Senior Council Advocate Semenya: Mr Maseti, the most important question we have to deal with is this: If appointed as a Judge, and a twenty-three year old policeman appeared before you on a charge of bribery, do you really think that the complainant would have no reason to be concerned that you would not be impartial? If they brought an application for your recusal on these grounds, would you submit?

Maseti: I would not recuse myself.

Semenya: Deputy Chief Justice, I rest my case.

Moseneke: Do you have any final comments?

Maseti: I am a fit and proper person to become a judge. I have gained experience as an acting Judge, have experience as a legal practitioner, and I would like to be part of a judiciary that will dispose of the court backlog. My appointment would further the aims of transformation. More black judges are needed, especially in Gauteng.

