

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 MPN Mbongwe

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

Mr MPN Mbongwe: I have acquired sufficient legal knowledge, and with this knowledge I will be able to make a positive contribution to society.

Moseneke: You have a successful legal practice. Why would you want to move to the Bench now?

Mbongwe: I'm at the right stage in my life.

Moseneke: Seventy percent of your practice could be described as personal injury cases and motor vehicle damage claims. In other words, it is what is normally called a third-party practice, is this correct?

Mbongwe: Yes. I now also handle cases of medical negligence.

Moseneke: Have you seen the comments on your candidacy, in particular those from the GCB?

Mbongwe: I have.

Moseneke: Can you comment on them?

Mbongwe: I found that some of them were based on misunderstandings. For example, the context in which I said "not dead yet" was misrepresented. I did not say it with reference to a child, but with reference to a mother with stage five cancer, whose ex-husband had brought an application for a variation of the custody order.

Moseneke: The GCB comments also relate to the allegedly narrow scope of your work and to doubts about your temperament and conduct toward counsel and litigants.

Mbongwe: On the first matter, this is not true. I've written more than forty judgements in matters of commercial law, of which only two were overturned on appeal. On the second matter, I go to court to serve the public. I never intend to intimidate or ignore them.

Mlambo: You have acted as a Judge for a total of 62 weeks. This included five weeks in the Urgent Court and sixteen weeks in the Opposed Motion Court. You've also acted in the Criminal Trial

Court. The only courts you have acted in are the Special Civil Trials Court and the Third Court. This is extensive exposure to the almost all the working areas of the court. Has it been sufficient to prepare you for a permanent appointment?

Mbongwe: It has. No area would intimidate me.

Mlambo: Regarding the GCB comments on your temperament, we receive a lot of correspondence from dissatisfied litigants complaining about the demeanour of judges. This is the context of those comments.

Mbongwe: I understand.

Mlambo: I encouraged you to apply for permanent appointment, did I not?

Mbongwe: Yes

Hellens: You have disputed the comments of the GCB and the Johannesburg Bar. However, I'd like to read an excerpt and let you tell us what you would think of a judge described like this (**excerpt shortened**): "the appellant's legal representative was [frequently] hampered in her presentation of the appellant's case. On numerous occasions, the legal representative was denied the opportunity to deal with critical issues. The legal representative was precluded from eliciting evidence from the appellant on important matters, which manifested a fundamental misconception on the part of the learned Judge about what constitutes hearsay evidence. Even more disconcerting were numerous unwarranted interruptions of the legal representative's cross-examinations, some of which showed discourtesy and cynicism of the witnesses involved."

Mbongwe: The case in question is Naidoo vs the Minister of Police. Though this is not an excuse, it must be borne in mind that this was the first civil case that I handled as an acting judge. I allowed my nerves to take over. The criticism is fair, but I have now presided over many civil matters. That case was an eye-opener for me, and I have learnt from it. My conduct has improved since then.

Hellens: You will agree that it is very unusual for the Supreme Court of Appeal to comment adversely about a Judge's *conduct*, as opposed to their judgement. The agreement between the comments of the Supreme Court just last Friday with the comments of the GCB and Johannesburg Bar is also surely not a coincidence.

Mbongwe: All the comments pertain to the same case, Naidoo vs the Minister of Police.

Mabunda: Can you confirm that Naidoo vs the Minister of Police was your first civil trial?

Mbongwe: Yes, it was.

Mabunda: You allowed nerves to take over, and you have learnt from it, and have subsequently written over forty civil judgements, of which five were appealed?

Mbongwe: That is correct.

Mabunda: Do you take to heart the criticisms you have received?

Mbongwe: Yes, I do.

Deputy Judge-President Maya: Following up on Advocate Hellens' comments, as you know I was one of the Judges who sat in the Naidoo matter, and we were all horrified when we heard the report. We got the impression that the trial judge was an arrogant bully. But I am satisfied with your explanation.

Dr M Motshekga MP: I would just like to comment that you were entitled to a period of learning.

Moseneke: Judges are required to be temperate, humble, and good listeners.

Nkosi-Thomas: I would just like to understand the time frames involved. Judgement in the Naidoo matter was handed down on 2 October 2015. When was the matter before you?

Mbongwe: October 2014.

Nkosi-Thomas: Has this been enough time to reconsider your conduct, to improve on your temperament?

Mbongwe: Yes, I believe so.

Moseneke: Do you have any final comments?

Mbongwe: I have acquired and used knowledge, and my judgements have been widely quoted. I have made original judgements. I have what it takes, I take the work seriously, and I have a lot to offer the nation.