

Judicial Service Commission Meeting

Session 1

Chairperson: Justice Dikgang Moseneke, Deputy Chief Justice

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Justice Dikgang Moseneke, Deputy Chief Justice: The law states that in the absence of the Chief Justice, the Deputy Chief Justice is to act in his stead and this explains my presence. The Chief Justice is currently travelling and hopes to be present either on Thursday or Friday morning. I welcome Deputy President of the Supreme Court of Appeal, Judge Mandisa Maya, who is present on behalf of the President of the Supreme Court of Appeal. I also welcome Prof Nomthandazo Ntlama who is a newly appointed full term Commissioner. Also the representative of the Premier of Gauteng, Mr Andrek Lesufi, MEC Education Gauteng. I note apologies from Adv Dumisani Ntzebeza, Mr Julius Malema, Member of the National Assembly, Ms T Mampuru, Member of the National Council of Provinces, Mr D Stock, Member of the National Council of Provinces.

He then asked if the meeting was quorate and receiving assurance that the meeting was, he said the meeting could proceed with business.

Mr M Masutha, Minister of Justice and Correctional Services: If there are apologies from any of the Commissioners appointed by the President, there is a provision in the Constitution which entitles the President to appoint proxies. I understand that Adv Ntzebeza is such a Commissioner and I will have to alert the President of his absence. I had not been made aware and ordinarily I should be, so that I can inform the President.

Justice Moseneke: What is your proposed course of action? Do you propose an adjournment to allow you to inform the President?

Mr Masutha: I will inform the President as soon as possible and it will be up to the President to decide whether he will exercise his power under to Constitution and appoint a proxy for the balance of the sitting. I cannot see that happening now, as he would be required to consult the leaders of the political parties to appoint the proxy and that may be an involved process. I am merely saying that had we known before the meeting, I would have informed the President in good time.

Justice Moseneke: I was informed this morning and such remedial steps as Minister Masutha deems necessary should be taken.

Mr C Fourie, Attorney: I refer to the provisions of section 178(8) of the Constitution which reads “the President and the persons who appoint, nominate or designate the members of the Commission in terms of subsection (1)(c),(e),(f) and (g) may in the same manner appoint, nominate or designate an alternate for each of those members, to serve on the Commission whenever the member is temporarily unable to do so”. On a quick reading of this, it does not appear as if subsection (8) covers the four persons permanently designated by the President, because those appointments are under section 178(1)(j).

Justice Moseneke: Is it your understanding that the alternates are appointed in tandem with permanent delegates?

Mr Fourie: It states that the President may and then it refers to subsections (1)(c),(e),(f) and (g). On a first reading this does not cover subsection (j) that deals with the four persons designated by the President of which Adv Ntzebeza is one. I am looking at it coldly and I would like the Commission to consider it properly.

Justice Moseneke said the hurdle at present is whether the meeting is properly constituted and quorate to do the business required by the statute. Is there anyone who takes a different view on whether we are properly constituted. Receiving no indication to the contrary, the Minister's point is taken, steps will be taken to alert the President and should he call up a particular alternate duly and properly appointed that person would be made known to the Commission.

Ms T Didiza, Member of the National Assembly: In respect of Ms T Modise, Member of the National Council of Provinces, as far as I know her apology was properly tendered and she is attending the Commonwealth Parliamentary Association meeting in London until Friday.

Justice Moseneke: The officials are present to instantly verify whether the apology has reached them and they are nodding their heads vehemently. Ms Didiza knows it as fact that she will not be present and must be recorded as an apology. The second preliminary matter was the order of interviews, but before I get there, is there any other preliminary matter which is not connected to interviews per say. If there is the right time would be when Chief Justice is present. The staff has proposed an order for the interviews and is there any suggestion that the order be changed? The next important matter is the time allocated to interviewees. I have been told anecdotally that the Commissioners have sometimes adjourned at 9pm, 10pm and one day 12am. Shall we promise that the Commissioners will not do that to each other and that we are going to try and stay within the allocated time of 45 minutes per candidate. I have been told that one of the problem has been introductory speeches before questions, but this session is properly suited to questions on which candidates are to express themselves and reserve the speeches for a later time or another forum. If that can be kept in mind and I will respectfully urge you to formulate the question distinctly from expressing view about the candidate.

Mr Masutha alerted Justice Moseneke that at times it was the candidates themselves who meandered in their responses.

Justice Moseneke: Asking people to stop talking is a daily matter in the court where I work. Absent any other preliminary matters, could the first candidate to come forward.