

**Judicial Service Commission Interviews: Day 3**

**7 October 2015, Morning session**

**Free State High Court**

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**Interview of Adv Fischer P U Fischer:**

**Deputy Chief Justice (DCJ) Dikgang Moseneke:** Adv Fischer, your names resemble the names of the Judge President of the Free State who was the father of Abraham Fischer. Is it a coincidence or is there any connection?

Adv Fischer: It's not a coincidence. I'm a family member, and he happens to be my late uncle. That's the connection.

Moseneke: And you are aware of the Judge President of the Free State who had exactly the same names as yours?

Fischer: Yes. With due respect, his initials are the same as mine, but his first name was Percy and my name is Peter. I think my mum had a problem with the name 'Percy', and switched it over to 'Peter'.

Moseneke: Where were you born?

Fischer: Johannesburg. I stayed there with my parents in Messina, that is now called Musina. We moved to Bloemfontein when I was about six years of age.

Moseneke: And where did you receive your primary schooling?

Fischer: At Grey College; as well as my secondary school education.

Moseneke: And that's the famous Grey College in the Free State, in Bloemfontein?

Fischer: Yes, it's still well known. But I don't think the Rugby team is playing as well as it was in the past, but yes, it's a good school.

Moseneke: What do you remember of your youth that you think was striking?

Fischer: I think two things stand out that I often reminisce on because they were unique to myself and my family. My parents and my grandparents were adamant that we had to get on with our fellow South Africans. I regret that we were never obliged to learn to speak the local black language but we had this crazy idea of being obliged to speak English one week at the dining table, and Afrikaans the next week. They were adamant that we were not meant to be biased against people because of the language they spoke. That, I do recall as standing out as something unique to the way we were brought up.

Moseneke: You were born in 1953. The period between 1953 and 1963 was a very eventful time in the history of our nation; the defiance campaign of 1952, which came just after the program of action of 1949 about the ANC; Sharpeville in 1960; and the formation of the union in 1961. It was quite an eventful time. Do you remember any of those events in your first ten years of living?

Fischer: It was often spoken about, primarily because of the close relationship my father, and one of his brothers who was a medical practitioner that also lived in Bloemfontein, had together with the other brothers which included Bram... we used to go on holidays together and the brothers had this notion of doing things together and discussed things together at the dining room table. It was through this means that we found out about most things.

Moseneke: But did any of these events really catch your attention and affected you in any way? We could even move on to the next ten years when you went up to the age of 20. The period between 1963 and 1973 was a considerable time in the country, when the banning of the African National Congress, the Pan Africanist Congress, the Communist party of South Africa took place and there was a messy flight of people all over the country who formed liberation armies and so on, as well as the rise of the National Party. Did any of these events come to your attention?

Fischer: Yes. As one gets older, one becomes more politically aware. I think one of the issues that was a constant point of discussion around the dining room table was the extent to which my older uncle, Bram was unequivocally committed to some of the things that defied comprehension. I remember some of the other uncles, as well as my father saying that 'you're busy ruining your own career, your own profession, and family interest. That is one of the things I struggled with emulating even till this day, people who are prepared to sacrifice their own personal gain for the well-being of their fellow human beings. Yes, that did strike me as something I've never forgotten, I've always wondered how I could emulate that, but I'm not in the same category as Bram. He was a once-in-a-millennium man, and I've always wondered how I as a simple lawyer could emulate him in my interpersonal relationship with other people. It did eventually impact on my refusal to partake of any of the then prevailing government institutions and structures. I took a standpoint which I still uphold till this day, that I am a South African, seeing my uncle was proudly referred to as Afrikaner. I'm not an Afrikaner, I'm a South African. I'm an African, I have no allegiance to any European country. This is my country.

Moseneke: Very well stated. Then you went to the University of Cape Town (UCT), just about two years after the Sharpeville riots in 1980, where a lot of youth uprising and the formation of the UDF took place. Did any of these have impacts on your life and the way you saw the world? I'm not trying to make you Bram Fischer. I'm talking about the social and political context when you grew up, which is relevant to your appointment as a judge.

Fischer: I've been struggling with that problem of being a white man, growing up in privileged circumstances, and gaining access to institutions and the likes simply because I'm a white man, and it has gotten in the way of my conscience over the years. I've been frustrated by an attempt to actively get involved in improving the lot of my fellow South Africans. At University, I didn't realize the extent of the paranoia my father suffered from because of what had happened to his brother. I do recall him coming home from visits to Pretoria, being devastated by what he experienced there, and hoping and praying and urging me not to walk the same path because he did not want to see me go through the same disastrous treatment that uncle Bram did. I find myself wrestling with the promise to him as well as the realization that this is a country being run by people who themselves had issues and lived by the fears and misunderstandings...

Moseneke: Here's the relevance of this biographical and historical questions I've been asking, and the question is the following. Our Constitution demands from judges absolute fidelity. Our duty therefore is to test whether the judges that we appoint or we recommend to be appointed embrace the kind of society, law, jurisprudence and democratic outcomes that the Constitution anticipates. This leads to the main question which says 'will you be a judge who is faithful, not just to the Republic but to his Constitution and aspirations of his people'?

Fischer: I must admit that I think that a lot of my fellow white South African colleagues tend over the years to have adopted the view that the Constitution is nothing more than the codification of what they have always believed, they embraced and stood for. But I must admit that when one reads the Constitution (that has always been my viewpoint from a young age of 20/21), I've come to realize that there are certain core values that need to be pursued at any cost, such as the dignity of every human being irrespective of their race, colour, creed, racial, or sexual background, and I've come to realize that there are certain core values in chapter 2 of the Constitution which deals with human rights. I focus on two things, which are equality and dignity. I believe those two values can best be pursued, and obviously as a lawyer, I've often wondered how I could and yes, if given the opportunity, I could talk about my views on the law and growth of the law in extent to which I believe the law is there to serve the people and not the other way round. We make the laws because we recognize the need to address huge disparities, inequalities in this country, and I don't think the law always adequately addresses or recognizes the stricter legal nature dealing with the way our common law might develop in future.

Moseneke: What do you understand the rule of law to mean?

Fischer: In a nutshell, I believe that having regard to the separation of powers, the executive and the judiciary, and I'm mindful of the extent to which there's been this ongoing lively debate between the executive and the judiciary, we all need to recognize that the law needs to be obeyed and respected. I think that is one of the core values in the Constitution which is the upholding of the rule of law, irrespective of the extent to which it might embarrass especially those in power. I believe that it impacts more on them, as well as the recognition of the need to accommodate those who don't always understand the law, possibly by virtue of their upbringing, having been given access to institutions.

Moseneke: What is the connection between the rule of law and democracy?

Fischer: Looking at it from a South African context, it's obvious that we need to retain a vibrant democracy in which the right of an individual to differ from his fellow South African is protected, and I think it can best be summarized by the fact that as long as we have democracy, people will recognize that the right of people to differ from each other, and to protect, respect and advance those rights, mindful of the fact that we live in a country with huge disparities and there is this ongoing need to transform the society we live in and I think that transformation is one of the core values that give value to the whole concept of democracy and the rule of law.

Moseneke: But you appreciate that laws are made by the representatives of the people?

Fischer: Yes.

Moseneke: And if the laws are valid, judges are bound by those laws, especially when one wants to be realistic.

Fischer: Yes, absolutely.

Moseneke: So when we talk about the rule of law, we're not talking about something that floats around in a vacuum.

Fischer: Yes.

Moseneke: The connection between the rule of law and democracy is that representatives of the people make laws and if those laws are not challenged nor consistent with the Constitution, judges are duty-bound to uphold those laws; in other words, to uphold the rule of law.

Fischer: Yes.

Moseneke: Because not everybody seems to appreciate that we judges must give effect to the will of the people, and cross that in law.

Fischer: Absolutely. The rule of law is one of those things that a lot of people don't like (\*\*\*) didn't hear him clearly here), but it's one of those things that we have to obey whether we like it or not.

Moseneke: Judge President Molemela.

**Judge President Mohube Molemela, Free State High Court Division:** Thank you DCJ. Good morning Mr Fischer.

Fischer: Good morning Judge President.

JP Molemela: I have had a look at your CV. It's very impressive, I must say. You are a man with vast experience. There's no doubt about that. You have acted several times. Your legal career actually started in 1986. Is that correct?

Fischer: Yes, at the Bloemfontein Bar.

JP Molemela: No, no, before that, at a company of attorneys [name inaudible].

Fischer: Yes, I was an attorney for about five or six years before I came to the Bar in 1986.

JP Molemela: You have various extensive experience indeed. And I see that you have acted several times including in Umtata.

Fischer: Yes. I happened to see the Deputy President, SCA at the table and I did recall that our paths had crossed in Mthatha I think 12 years ago, and I'm honoured to see the President here this morning.

JP Molemela: I see that you have heard a number of cases at the Free State High Court and before I invited you for the last case, you have last acted in 2013. Is that correct?

Fischer: Yes, that is correct.

JP Molemela: In 2013, that was before the implementation of case flow management.

Fischer: Yes, that is so.

JP Molemela: I'm just interested in finding out from you, because that was definitely one thing that was new despite your vast experience. How did you find the robust implementation of case flow management in the division?

Fischer: I think that it served a manifold purpose. Number one, I think, it provided the structure in which the judges knew how to operate and function and what was expected of them, especially bearing in mind that a lot of the judges come from different backgrounds and have not always been exposed to the High Court system, simply because they are not all practicing advocates. But I think as importantly, it creates within the mind of the public at large, the perception that their matters are being attended to. I can recall several years ago when we had a two or three year backlog. I happen to know that I sat on a pre-trial conference which takes place every Monday in the Free State High Court division and they were allocating trials two or three months from date of

conference which is unique, and if that be the case, I can only support that unequivocally. I can only say that I appreciate what you as a President is doing in Free State. I think it deserves appreciation.

JP Molemela: You seem to be in favour of it, which is quite good. But then, maybe the downside of it is that as a judge, you will always have to be available and the other thing is you may have been allocated one particular matter but once you may find that once that matter has collapsed, immediately you have to be available for reallocation. Is that a problem for you?

Fischer: I've thought a lot about what I'm doing here, and what I seek to achieve if people think I'm fit for the job. In a nutshell, having been a lawyer and an advocate for the last 30 odd years, I'm working for my own account, I could possibly be seen as a capitalist who wants to make a lot of money. I've always felt guilty about the fact that I've never been involved in something of a service-oriented nature. Yes, the last acting stint which ended two or three weeks ago, I realize that I was in fact a servant and I quite enjoyed that. I realise that at the end of the day, I'm nothing but a servant of the people, and I'm here to do a job. I get paid a salary and who am I to say it's my day-off because I was allocated a trial and it has to be postponed or delayed and I'm going to take a long weekend? I'm a civil servant, I get paid a salary, I'm a servant to serve the people, especially those who cannot afford to be there because of the financial burden.

JP Molemela: You were quite busy in the last stint [inaudible].

Fischer: I enjoyed that. It's a challenge, and maybe with the wealth of experience one picks up overtime, you start enjoying looking at ways and means of developing the law. I'm mindful of ongoing debates about the law of contract, Ubuntu, and mala fides. It's something that fascinates me, because I believe that it's particular to this country where we have such a disparity. It's all good and well if everybody is on the same level of education, but we have hundreds of thousands and millions of people who don't have access to our courts of law, and when they are there, they're simply treated as if they are part of the low standards. I thought maybe it's something that I could do as a servant of the people, because that's what I am as a judge. Thank you.

JP Molemela: Now that you have made yourself available for appointment as a judge, do you think that congeniality is important; things like going into the tea room, taking tea with your colleagues, attending functions where colleagues have been invited and so on?

DCJ Moseneke: Adv Fischer, let me just draw your attention. I think you should try to keep your answers short and to the point. The JP is very precise in her questions. I urge you for the sake of time, to get straight to the answer.

Fischer: I'm sorry. The answer is absolutely yes. I think it's imperative. We are part of a bigger body, that is the High Court, Free State, and yes, I think congeniality is very important.

JP Molemela: Adv Fischer, the colleagues speak highly of you. I've already made reference to your vast experience, but one of the constitutional imperative is to address transformation. You know the provisions of section 174?

Fischer: Yes.

JP Molemela: Also, do you know probably that there is no proper racial and gender representation in the division?

Fischer: Yes.

JP Molemela: Also, do you know probably that your peers, in the Free State Society of Advocates, has recommended four other candidates. In all, he has recommended the appointment of five out of seven candidates. So you are one out of five that is being recommended.

Fischer: I wasn't aware of that.

Molemela: Alright. That is the position. Now, some of those candidates that have been recommended are black and female.

Fischer: Yes.

JP Molemela: And I would like to find out from you, will it upset you if you were not to be appointed, notwithstanding your vast experience, in order to advance racial and gender transformation which is also key, given the fact that those other candidates have also been regarded as competent for the position?

Fischer: Yes, I would understand that. I would like to believe that as a white male, I can add value to the transformation process, but I would understand if that was the decision. Common sense dictates that there is this inequality, both racial, and more so, from a gender point of view. I've thought hard and long about transformation. I've asked myself what exactly transformation means and regarding the context of this country, there's always potential. Ultimately, the ultimate goal of transformation is unity and reconciliation, and I thought I could still add value. But I would understand if that was the decision. I'm part of this system and I accept that unequivocally.

JP Molemela: Thank you. Thank you DCJ.

**Mr Ace Magashule, Premier of the Free State:** I'm covered in a way. The Judge spoke on the question around the rule of law and the issue of separation of powers that is prevailing seriously in Gauteng. What is your understanding of the role of the judiciary, legislature and the executive? Can you strike a balance?

Fischer: I think they are obliged to strike a balance, because ultimately we're all part of the same bigger body and we need to collaborate with each other and to respect each other. Ironically, I find those as part of the core values in the Constitution. One needs to respect and protect the dignity of individuals and the bodies which they serve. Ultimately, it's not about ourselves as individuals, it's about the growth of this country, and I'll like to believe that the executive, judiciary and parliament for that matter should respect this and realize that we need to take hands and go forward into the future because there's so much potential here. It's not about self-interest or self-gain; it's all about working together towards a common goal and I see that as essential to developing this country, whilst maintaining respect for each other.

**Minister M Masutha, Minister of Justice and Correctional Services:** Good morning.

Fischer: Good morning Minister.

Minister Masutha: I'm going to ask you questions around one issue, and that revolves around a judgment which I find of jurisprudential significance that was mentioned here. *Matiso and Others v Minister of Defence 2005*. Was that judgment delivered by yourself?

Fischer: No, it could. It does ring a bell.

Minister Masutha: It is quoted under you.

Fischer: Yes, I think it was judgment delivered in the Transkei in Umtata.

Minister Masutha: I'll tell you why I find it interesting within the context of post-1994 scenario. There have been instances where concerns were raised about the executive failing to honour court orders, and the issue of the rule of law and upholding thereof. I may just indicate to you that I have had situations where my officials had to run around to get matters sorted out, otherwise it turned out that an order was not honoured by some officials in my office without any deliberate intention on my part. But be that as it may, the reason why I'm bringing up this one is because my reading of the rationale behind the judgment seems to be that you ruled that a common law principle of contempt for failure to satisfy a judgment did not apply to the State and therefore, a State could not be called before a court for contempt for failing to satisfy a judgment. I just want to get a sense. Unfortunately, I haven't had the opportunity to study the full judgment but I just wanted to understand how you arrived at that decision, if could recall.

Fischer: I must concede that I haven't read this judgment for the last several years, but if my memory serves me correctly, there was a statutory technical problem relating to the manner in which judgment could be executed against the State and I came up with I thought was a reasonable suggestion, namely that in an attempt to obviate the problem, a special fund be established. In other words, that execution against the State should be as effective as if it's against an individual, simply by virtue of the fact that a fund is made available which parties can resort to in an attempt to execute their judgments which might overcome all sorts of administrative problems, bearing in mind that we're dealing with a vast organ against which judgment has been taken. Things have developed since then, but at that stage, I was simply trying to suggest an expedient way out of the problem, having regard to the common law situation which prevailed.

Minister Masutha: I must say that the reason I find it interesting is that there is a serious contestation relating to the extent to whether the judiciary in some instances, may wittingly or unwittingly indulge in some degree of overreach and that therefore, matters of this nature will always present themselves as pushing the boundary one way or the other, around the question of separation.

Fischer: Yes, it does.

Minister Masutha: Is there a way that you think tensions of this nature, though they may be healthy because they put our democratic dispensation to some regard, trigger a lot of conversations between the various components or branches of State. How best do you believe matters of this nature could be dealt with? Should it just be a simple thing of courts ruling and having their way, the ordinary way of courts ultimately having the authority to resolve disputes under the Constitution or do you believe there are other ways in which matters of this nature that can create tension between the branches can be dealt with?

Fischer: I'm mindful of the fact that the State like any other corporate body or any other individual, is involved in relationships with parties and these relationships turn sour and results in litigation, and litigation results in orders. But my personal experience both as counsel and as acting Judge has been that everybody is very excited about the fact that a particular branch of government, whether local or provincial, especially within the Free State, is arriving in the court, and I'm dealing with this huge corporation. Very often, I'm not aware of what is happening further down the ladder, as it were. Judgment creditors have been frustrated because they can't get any joy. The court realizes that having regard to the elements of contempt, the court can't take real steps against the individual because he simply is not involved in this. I've often wondered how one could resolve this, and I've thought that it can simply be resolved by having structures within local and provincial government who will deal with this within each particular office. And I'm mindful of the fact that very often we have the parties saying that they didn't receive the summons or the court order, it lies there in the basket with other 10 000 documents, and I realize that these things do happen in life. It's not like Mr A suing Mrs B or vice versa. So, I thought that maybe it's not something that the judiciary can resolve, as it can be resolved from a government management case flow type of thing.

DCJ Moseneke: And that might be the answer? It's not something that the Judiciary can resolve? Isn't it so?

Masutha: Maybe, to conclude the point, I might as well indicate DCJ, speaking for myself, I've issued a directive to both departments that nobody should ignore a judge without it being brought to my attention. But I think the point is made quite correctly by yourself, that in reality, these situations do happen and circumstances may arise.

Fischer: Yes.

Masutha: Thank you very much for response. Thank you DCJ.

**Commissioner T Didiza, Member of the National Assembly:** In your answer to Judge President on how you would feel should you not be considered if another candidate got appointed based on the issues of transformation or gender and race, I have your answer, but I wanted to, not to pursue the line of questioning, but to have an understanding from you: why do you think gender equity matters in the case of the transformation of the judiciary? What will the numbers add? What will women bring in this sphere, or maybe we should just allow the status to remain?

Fischer: It's ironic that myself and two other female candidates who were in the holding room minutes before I was called, touched upon this issue, and we mentioned that William Shakespeare said a couple of years ago that "Hell hath no fury like a woman scorned" and the retort was that sometimes women are more level-headed and inclined to be emotionally less agitated than men. I have as a human being, come a long way and I believe that that is what life is all about, it's a growth process, and may I never stop growing until the day I die. One of the things that has always amused me first as a lawyer, then as a young advocate involved often in matrimonial matters, is the amount of ego and testosterone that floats around my fellow male South Africans. I've often thought that women bring a balancing, soothing, placating atmosphere to that reality. I don't want to offend any of my fellow male South Africans around the table, but that's my experience. There's a lot of misogyny and narcissism and as a male, we hold first place as far as that is concerned. I believe that women can add value to improving the quality in the way people approach problems. I do believe in this country that we're not defending black and white, wrong and right, and women bring a soft motherly approach to the whole question, which involves recognizing the fact that often people will appear in front of you as accused or defendants or witnesses simply need more compassion and understanding. I think women are ideally suited for that, and I would like to believe that in the process, I've grown to accept that unequivocally.

Didiza: But do you appreciate that there's a systemic challenge of patriarchy in our society that needs to be dealt with? So, it's not just about bringing a balanced approach, and calming you fellow men, but it's a diversity that women bring and a different perspective.

Fischer: Yes, I accept that. I'm mindful of the fact that my Judge President has that as one of her primary objectives. I respect that. In fact, I spoke to her about that before I sent in the whole bundle of nomination documents. So, I'm mindful of that and of course, I respect that. We're all human beings at the end of the day.

Didiza: The last question relates to the question of access to justice, given our history which you have espoused in your documents and in your articulation. Do you think that there's more that needs to be done to ensure that those who are still underprivileged do have access to justice and if so, what are those things that you think from the judiciary, needs to be done to ensure that there is access for all?

Fischer: It's a very difficult and extremely challenging problem we have because of the inequalities in this country, and I've thought long and hard about it. There is no quick answer. Just the other day, I was speaking to a colleague who was telling me about the litigants who were simply unable to articulate the evidence, notwithstanding the fact that pretrial consultations had shown that they had a good case, and I thought to myself how does one obviate this? That is from a management point of view. From a financial point of view, it's always

made me uncomfortable. We come from one of the poorer areas of the country, but I'm mindful of what my colleagues in other areas are capable of charging. I've often wondered; how does an individual get access to that? I've often wondered that maybe the solution is to employ the same approach that they have in the medical profession, where one is obliged to do a period of service before one takes up your own personal career as an advocate, spend three or four years, doing pro amico or pro deo work as an advocate, to simply to broaden the base of access. One can read the papers and watch the news, there are lots of unhappy people out there. How do we address their needs and demands? I think this morning on the news, there was an article about access to justice, and policing, and crime fighting, and I realized that there are lots of unhappy people out there. I think we need to make everybody believe that they can have access to these courts. Maybe one should cut fees, or introduce a compulsory contribution towards a legal aid like a medical aid so that everybody knows that whenever they are in trouble, they can have access to competent, adequate legal representation.

**Prof Nomthandazo Ntlama:** My question is very specific to the Constitution. You defined yourself earlier on as a South African and not Afrikaner.

Fischer: Yes.

Prof Ntlama: My question is related to Section 8(3) of the Bill of Rights, Section 39 (2) and Section 211, of which Section 8(3) requires application of common law to the exclusion customary law. I'm saying to the exclusion because customary law is not included in such an entity, whereas in Section 39(2), customary law is included in the development, and in Section 211, the courts are required to apply customary law. With your background, how would you ensure the application, interpretation and the development of customary law, that its principles are developed within the framework of the Constitution in its own context?

Fischer: That is a challenge, and I'm mindful of the brewing problem right now involving somebody from the Eastern Cape and the debate as to whether the individual should be subjected to common law as opposed to customary law in his conviction of criminal act. But once again, I think at all times I would never lose sight of the fact I've got to respect the dignity of each individual. Although I will like to believe that everyone thinks and believes like me, I've got to accept that I've been given access to privileged upbringing.

Moseneke: Adv Fischer, the question was your views on how to apply customary law. Can you just provide us with a tight answer?

Fischer: Obviously, it becomes a problem when you've got two parties to the *lis*, and one of them is seeking to enforce their rights in terms of the common law and the other party is seeking to enforce his rights in terms of the customary law. To the extent that the High Court is able to steer the solution of the problem in a constitutional direction, I'd like to believe that one could do that, but I'm mindful of the fact that the Constitutional Court can always address these problems and seek to develop the law. But, it doesn't absolve myself as a sitting judge of addressing these issues, and one would have to because at the end of the day, everybody acts on the strength of how he perceives his or her rights to be, and one has to recognize those. Obviously, one has to uphold the rule of law to the extent that one can develop the acceptance and acknowledgment and advancement of customary law, one has to do...

Moseneke: The answer is simply being the Constitution, makes it plain that customary law is part of the law and courts are obliged to apply it. And you as a judge, if you are appointed, will have to do it. That's the answer, isn't it?

Fischer: Yes.

Moseneke: It can't go much beyond that. Professor, is that not the obvious answer?

Prof Ntlama: It is, but I'm not happy. With the limitation of customary law itself, it's the people who are subject to it. What is your view on that?

Moseneke: I don't follow the question, Professor. I'm sorry. What is the candidate's view on what?

Prof Ntlama: On the limitation of customary law to the people who are subject to it.

Moseneke: What is the limitation of customary law?

Prof Ntlama: I'm asking, what is his view on the limitation of customary law to the people who practise it.

Moseneke: I follow.

Fischer: That's a difficult question. Sitting here and having never dealt with problems like that, my comment will be that depending on who is before me as a sitting judge, and mindful of how they perceive their rights and the way that they interact with each other, of course one recognizes that until one realizes that it now clashes with the common law to the extent that it needs to be upheld ...in terms of the Constitution. But once again, I believe that it is something that needs to be developed. The law can't remain static, the law has to develop as the people develop, and I believe in development. It's part of the whole transformation process, and one can't ignore the fact that there are hundreds of thousands if not several millions of people in this country who adhere strongly to and believe emphatically in their interpersonal customary relationships, and one can't ignore that. To that extent, one has to respect that it is part of the dignitas of that person as a human being.

**Commissioner CP Fourie:** Just for the sake of completeness, I recall that you did appear before the JSC previously. Is my recollection correct?

Fischer: That is correct.

Fourie: We've unfortunately not been provided with a transcript of that interview. It might not be available, but can you recall when that was?

Fischer: I think it was in 2011, subject to correction, but I think it was in 2011.

**Hon Nyambi:** I'll just quickly ask one question; if you can share with us your understanding of judicial accountability.

Fischer: I think the individual judge, the bench has an obligation and a duty. It's accountable not only to the Constitution but as importantly, if not most importantly, to the individuals who appear before it, and may be never ever succumb to her own individual idiosyncrasies but always try to be objective in accepting that we are servants of the system, servants of the Constitution, and servants of the people. I can't take it further than that.

**Hon J Malema, Member of the National Assembly:** I'm not sure if the question has been answered. How do we get the judiciary to be accountable, because you can't be law unto yourself and think that you're untouchable? How do we get the judges and the entire judiciary accountable; what is your understanding of the judicial accountability? We need to leave here knowing what is your view on judicial accountability, how do we hold them accountable?

Fischer: I don't think judges are above the law. Judges are just simple citizens of this country, and I think that to the extent that they are in breach of their own codes of conduct, in breach of the law, they should be held



accountable as soon as possible, because I believe that justice delayed is justice denied, and that goes to judges as well.

Malema: How do we hold them accountable?

Fischer: I think that there are various branches, or possibly this very commission I'm appearing in front of, that could possibly best address that problem. But I would like to believe that when a member of the public has a problem with the judge, and the complaint is made, and there's a prima facie reason to believe that it's a valid complaint, it should be addressed as soon as possible by possibly a branch of this precious commission. I'm not too sure who that is or what it constitutes.

Malema: You want to be a judge, you don't know who holds judges accountable. Is that what you're saying?

Fischer: No. I'm saying that I believe that the Judicial Service Commission does have a committee dealing with the conduct of judges, and I would like to believe that the best way to satisfy aggrieved individuals who lay complaints is to have them address the alleged misconduct of judges or errant behavior of judges as soon as possible, otherwise, there's a belief that their own wrongdoings are overlooked and possibly swept under the carpet. And I don't believe that they should be given special treatment.

Moseneke: We have been at it for quite some time and a lot of words have flown. Adv Fischer, this is an opportunity now to make the closing remarks if you want to. You can tell us whatever is a residual submission of why we should recommend you to the President to be appointed the judge of the High Court of South Africa, Free State division.

Fischer: First of all, I would like to say thank you for being invited to this interview. It was most unexpected. I'm looking for a home for the beliefs and values that I hold dear to my heart. I've been overshadowed a thousand times by the involvement of my late uncle Bram in the liberation of this country. I could never emulate him, he's a man in a million. But I'm also a man, I also have my views, and I do believe that though be it at a later stage, I can add value to the whole transformation process. I believe that I can add value to what my Judge President aims for, and I believe that as a man who is growing in my spiritual life, that ultimately, we're all just brothers and sisters, and I would like to advance that.

Moseneke: Thank you ever so much. You made yourself available and came in to converse with us. You will certainly hear by the course of today, the outcome of this interview.