

Judicial Services Commission interviews

8 October 2015, afternoon session

Kwazulu-Natal High Court

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Interview of Ms SM Marks

Mogoeng: Ms Marks, for how long have you practiced law?

Ms SM Marks: For twenty nine years. I started as a prosecutor, then became a district court magistrate for about five years. I was appointed to the Regional Court bench in 1992, where I have worked ever since, excepting when I have acted in the High Court. My acting stints have been in the criminal and civil components.

Mogoeng: What is the longest period you have kept a judgement reserved?

Marks: Two months.

Jappie: It seems that most of your legal career has been spent in the criminal courts.

Marks: That is correct.

Jappie: Your experience in civil matters comes largely from your acting experience in the High Court, is that correct.

Marks: Yes, although there was a civil bridging course that I attended in 2003, which included four months in the District Civil Court.

Jappie: Have you sat in the Civil Regional Court?

Marks: Yes I have.

Jappie: How would you characterise your experience with civil work. Are you familiar enough with it, or do you need more time?

Marks: I would say I'm familiar with it. My acting stints in the High Court have been invaluable.

Jappie: What would you bring to the Bench if you were appointed?

Marks: I bring a wealth of experience, am hardworking and punctual. My appointment would also advance gender transformation.

Xaba: Ms Marks, you have moved between the Magistrate's Court and the High Court. What advice would you give to magistrates seeking appointment to the Bench?

Marks: I would advise them to seek whatever training and judicial education they can, to work extremely hard, and to get judgements in on time.

Didiza: What do you think is the reason for delays in delivering judgements?

Marks: I can only speak for myself, but if there is some difficult or complex issue, or some research has to be done, this can delay a judgement.

Mogoeng: How many researchers are there in the Kwazulu-Natal High Court?

Marks: I think there are two each in Durban and Pietermaritzburg.

Mogoeng: That is problematic, but we will deal with it.

Semenya: Consider a case where a particular group of people in South Africa has, for time immemorial, practised primogeniture to dictate kingship and it is well known that this group wants to retain their tradition, but the Constitution enjoins you to uphold only that part of custom that is not inconsistent with the Constitution. How would you approach this controversy?

Marks: Where a customary law does not allow a female child to inherit, that goes against the grain of the equality court, and then you have to promote the spirit and purport of the Bill of Rights.

Semenya: Even if the group in question do not feel it offends their dignity? Do we, by stroke of judicial pen, throw their tradition away?

Marks: Perhaps one cannot simply throw away a long-standing tradition.

Mogoeng: Let me make it even more difficult. There's a community whose custom holds that only a woman may rule them, and it is accepted. Suppose one or two members of the community say that, on the basis of the Constitution, this practice must cease, but the remaining majority insist that they want it that way. What would you do, as a judge?

Marks: If you put it that way, the wishes of the majority must be respected, unless it flies in the face of the Constitution.

Mogoeng: It does fly in the face of the Constitution!

Marks: If people's rights are being infringed, they must be protected.

Mogoeng: Even if it is just two people?

Marks: If it is just two, then probably not. But the question is hard to answer in the abstract.

Mogoeng: Thank you Ms Marks, you are excused.