

## Judicial Services Commission interviews

8 October 2015, afternoon session

### KwaZulu-Natal Division of the High Court Deputy Judge President vacancy

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#### Interview of Judge K Pillay

Chief Justice Mogoeng Mogoeng: Ms Pillay, you were judicial officer before you became a High Court Judge, were you not?

Judge K Pillay: Yes, Chief Justice.

Mogoeng: For how long were you in the Regional Court?

Pillay: from 1993 to 2004.

Mogoeng: So you've been a Judge for over ten years.

Pillay: Over eleven years, yes, not including acting stints.

Mogoeng: Why do you think you are the only woman who applied?

Pillay: It has been a trend that men apply for this position. I can only speak for myself: I was initially reluctant to apply, but I was encouraged by the Commission for Gender Equality and the International Association of Women Judges (IAWJ), as well as your own comments last year that women should stop bemoaning a lack of gender transformation if they do not put up their hand. More importantly though, on reflection I became satisfied that I have the necessary skills and experience to put my name forward.

Mogoeng: Gender representation is a challenge throughout the world. Some have suggested that it is an ongoing problem in this country because the Judicial Services Commission (JSC) doesn't care. Others lay the blame at the feet of the Judiciary. What is your view?

Pillay: As far as the JSC is concerned, I have been encouraged by recent appointments so I can't agree with that perception.

Mogoeng: What can be done?

Pillay: Women should be encouraged to apply for leadership positions. We become used to being treated as the underdog.

Mogoeng: I have noticed that at the level of the Bar, at the level of the attorney's profession, women come and go, because they simply don't get the work necessary to sustain their practice.

Pillay: I deal with women advocates and attorneys on a daily basis and I hear the same complaint. A change needs to happen at the societal level. Women also have other considerations. They are family oriented, for instance.

Mogoeng: Even state departments, parastatals and individual leaders often overlook women and black lawyers.

Pillay: They need to be encouraged to give work to women. Some years ago, the Judge-President gave me the task of encouraging black women in the judiciary to apply for the Kwazulu-Natal Bench. Many indicated that they couldn't afford the time commitment, as they had young families to support, and others preferred to continue running lucrative practices. Women as a group are reluctant to apply to join the Bench.

Mogoeng: Nevertheless, the perception persists that it is the fault of the JSC and the judiciary, who are overlooking people who are ready and waiting. What can be done to help the nation realise that we have a collective responsibility to empower women and black people through the work we give them?

Pillay: Women need to be encouraged to apply for acting positions. They need to be capacitated and mentored, to create a technically competent pool of women. Organisations like the South African Women Lawyers Association (SAWLA) and the IAWJ have an important role to play.

Judge-President Achmat Jappie: Judge Pillay, you've never taken a leading role in the administration of the Court, is that correct?

Pillay: Yes, I've never acted in the position of a Judge-President or senior Judge.

Jappie: But you have taken a leading role as far as women's organisations are concerned.

Pillay: Yes, I acted as head of office at a very demanding time, running a busy court. I was president of the IAWJ for two years, being involved with the administration of that organisation.

Jappie: You're also largely in charge of managing disputes arising from the Hague Convention regarding child trafficking.

Pillay: Yes, I was appointed during Judge Tshabalala's tenure as the liaison judge for Hague Convention matters. It has been going well, and since the new visa regulations have come into force, the number of abductions has decreased.

Jappie: You put your name forward rather late. In fact you told me you were applying only the day before nominations closed. Why?

Pillay: I was only nominated that very week, and it was the Chief Justice's address that Saturday, along with my own reflection and introspection, that convinced me that I was ready.

Jappie: Why are women on the Kwazulu-Natal Bench reluctant to put themselves forward for leadership positions?

Pillay: I don't know. Perhaps they were waiting for me to make the first move. Some of them encouraged me, so perhaps they were using me as a role model to see what happens. But I cannot really speak for them.

Jappie: Is there anything about the Kwazulu-Natal Bench in particular that would discourage women from making themselves available?

Pillay: Not that I know of.

Jappie: What is your perception of the workload of the Kwazulu-Natal Bench?

Pillay: It is huge. We are minimally exceeding the performance target in civil matters, but when it comes to criminal matters we are not nearly productive enough and there are serious delays. There are reasons though: a racketeering case that I am involved in has multiple accused and two languages. Interpreters are not always available, and Sotho interpreters are particularly difficult to find. The roster system according to which judges rotate on a monthly basis inhibits the continuity of trials. There is also a work ethic problem, and pretrial conferences are not being properly utilised.

Jappie: The completion rate is also a problem. What is your suggestion?

Pillay: If every judge adhered to the norms and standards, there would be no problem. Failure to comply should have some consequences.

Jappie: What consequences do you suggest?

Pillay: Failure to comply should be reported to the JSC.

Jappie: You are one of the members of the committee that recommends people for acting stints. What can be done from this position to attract suitable acting Judges?

Pillay: We have suggested to the JSC that their recommendations address the provisions of Section 174(2) of the Constitution.

Jappie: A couple of years ago we had a mentoring programme, which you participated in. What was your experience of it?

Pillay: Several people who were on that programme have been appointed judges. It was a good and intensive programme, and I think it had the desired result.

Mogoeng: Do you speak isiZulu?

Pillay: I am trying to learn.

**Kwazulu-Natal MEC for Agriculture and Rural Development, Mr Vusumuzi Cyril Xaba:** In August 2014, the media reported that a quarter of Judges missed the March deadline to declare their financial interests. What are your views on Judges declaring financial interests?

Pillay: It is the law, Judges are obliged to comply.

Xaba: Why do you think it is important?

Pillay: It is important because Judges hold a powerful position in society. We need to know that Judges are independent. If they have sources of income that might impinge on that judicial independence, then it should be declared.

Minister of Justice Mr Michael Masutha: Regarding the transformation of the judiciary, because of a litigant's prerogative to choose their legal representation, when it comes to the crunch, seniority, experience and reputation tend to take precedence over transformation imperatives. What is your reaction to that?

Pillay: That is a very real problem. If you look at briefing patterns, you see that even people from previously disadvantage backgrounds still engage the services of those from historically advantaged groups. The only way to deal with that is to ensure that organisations deal with it in their briefings.

Masutha: I have indicated that where I, in my official capacity, am the sole litigant in a matter, I will only be represented by black female Counsel at all times unless a suitably qualified black female Counsel is unavailable. Do you think such a rigid stance could be seen as excessive, and as reverse discrimination?

Pillay: Some situations call for desperate measures, and this is one of those.

Masutha: There is a perception that the judiciary has the ultimate prerogative to determine the boundaries of the separation of powers of the three arms of state, and that this puts the judiciary in a position of unfair advantage, which calls upon the judiciary to exercise even greater caution in determining where the boundaries should be drawn. Do you agree?

Pillay: I'm not sure that the judiciary does have the last laugh. It does what it is mandated to do, that is to interpret legislation, mindful of its limitations. As long as its actions are within the law and within the Constitution, then they are justified.

Masutha: If the Constitutional Court has to adjudicate a dispute over whether a certain matter falls within the purview of judicial scrutiny, is there any other branch of state that would be entitled to dispute its verdict?

Pillay: No, the verdict of the Constitutional Court is final.

Deputy Judge-President Maya: Chief Justice, I have known Judge Pillay for a very long time. Judge Pillay, you acted at the Supreme Court of Appeal (SCA) in 2010. How long was your stint?

Pillay: It was for two terms.

Maya: That court is notorious for the pressures it exerts on Judges. How did you find the experience?

Pillay: It was extremely challenging.

Maya: Did you enjoy it though?

Pillay: I did, although there were moments when I didn't. At the end of the day I'm grateful for having been exposed to it, it had a beneficial effect on my training.

Maya: Did you get the opportunity to write any judgements while you were there?

Pillay: Yes, I wrote three.

Maya: Did any of your colleagues disagree with them?

Pillay: No.

Maya: One of them, *Scoin Trading (Pty) Ltd v Bernstein*, has become a leading authority on that legal point.

Mogoeng: Why have you never applied for a post in the SCA?

Pillay: At the time, my daughter was finishing matric and starting university, and I felt that she needed me more than my ambition.

Mr PB Mabunda: Chief Justice, I know Judge Pillay, she took us for the judicial skills training through the Law Society of South Africa. Judge Pillay, I have a question about the racial demographics in the Kwazulu-Natal division, especially with regard to leadership. Would the appointment of a black African to the position presently under consideration not send a positive message to the people of the Province?

Pillay: Addressing the prerogative of racial transformation will always send a positive message. But as the Chief Justice has pointed out before, it is not only about the colour of one's skin. Something more is required. Kwazulu-Natal has had African males in leadership positions in the past, but has never had a female in a leadership position. This is especially pertinent given that the population of the Province is 60 percent female. We also tend to overlook people with disabilities in transformation debates.

Mr N Singh MP: You've made certain disclosures about your health, and seen the comments of different organisations on this point?

Pillay: Yes.

Singh: The Black Lawyers Association (BLA) has expressed concern about your health with regard to the workload of a Deputy Judge-President. How do you respond to that?

Pillay: I haven't seen that comment, but it has never been a problem. I think the Judge-President will attest to the fact that I have hardly ever taken sick leave, even as a regional magistrate.

Singh: You mentioned Judge Mokgohloa earlier. How long has she been at the Bench?

Pillay: Since 2008. We have an excellent relationship.

Senior Counsel Advocate Michael Hellens: Leadership is not a question of mere appointment; it's a question of natural pull of personality and many other factors, such as being looked up to by your peers. Do those who you would lead look up to you as a natural leader?

Pillay: I imagine they would. I've had no problems with my colleagues. The IAWJ described me as an excellent leader.

Hellens: Have you had any leadership roles in the Kwazulu-Natal Bench, such a Senior Judge in the Civil Court or allocation of matters to judges?

Pillay: Yes, I have.

Professor Nthlana: If you are appointed, how would you deal with resistance to change, as a woman in leadership?

Pillay: Do you mean from male colleagues?

Nthlana: I mean generally, from both men and women.

Pillay: I have not been told that anyone is resistant to gender transformation.

Senior Counsel Advocate Lindiwe Nkosi-Thomas: The Commission has been told about administrative challenges facing the Kwazulu-Natal division, such as chronic lateness in delivering judgements and infrastructure issues. If you were appointed, how would you address these issues?

Pillay: I would encourage judges to comply with the norms and standards, and I'd want to know if there were any problems. Infrastructure is a serious problem. I would have to sit down with the Judge-President and map the way forward. In many cases it is out of our hands, but there should be repercussions for service providers who fail to deliver their services competently. We have no mechanism in place.

Ms T Didiza MP: In your personal details on your CV you say you have completed three courses toward your LLM, and only your mini-dissertation is outstanding. Is that correct?

Pillay: Yes.

Didiza: You also say that you have been an external examiner for LLM examinations.

Pillay: Yes, for the University of Kwazulu-Natal.

Didiza: They allow that you can be an examiner even though you don't have an LLM yourself?

Pillay: They do. I think it is because of my experience in the judiciary.

Didiza: I have looked at the work you've done in promoting women's representation in leadership. What exactly do women bring to leadership positions?

Pillay: Women bring their own world views that are different from those of men. This enriches the organisation concerned.

Didiza: How would you deal with a perception that you had not brought that world view to bear on a case of, for example, sexual abuse or inheritance, that might be particularly pertinent for a woman?

Pillay: On numerous occasions, I've called for some form of diversity training for judicial officers. If this happens, all judicial officers, male and female, will be more alive to their own subliminal prejudices and be able to deal with them in their own judgements.

Mogoeng: Judge Pillay, what is it you are burning with a desire to achieve as Deputy Judge President?

Pillay: I would like to see a judiciary that is optimally efficient, that judgements are delivered expeditiously, that our infrastructure challenges are addressed, and that the lower courts become more effective. They have the tools, such as the Justice Review Project, the alternative dispute resolution mechanism, Section 54 and mediation, but they are not using them productively. This will go a long way to addressing the backlog in the criminal section.

Mogoeng: Do you have definite ideas about how you will achieve this?

Pillay: Training is key. When I was a regional court magistrate, I suggested to the Justice Centre that they should allocate a single attorney to a single court as a way of improving efficiency. Prosecutors are not preparing adequately for their trials.

Ms A Ndoni: You've already indicated that you have no administrative experience in High Court matters. What are your primary administrative strengths?

Pillay: One needs to have a thorough knowledge of the cases one is administrating. I encourage settlement. With regard to opposed applications, one should deal with matters oneself if possible rather than taking a judge out of trial. I have proven people management skills.

Mogoeng: Thank you Judge Pillay, you are excused.

Pillay: Thank you, Commissioners.