

Judicial Service Commission interviews

8 October 2015, morning session

Chairperson: Chief Justice Mogoeng Mogoeng

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

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Judge MI Madondo Interview

Chief Justice Mogoeng Mogoeng: In your own words tell us why you believe you are ready to be deputy judge president, what has equipped you for this position and what is your vision for leading the division with your judge president.

Judge Madondo: Firstly, I will say that I have sufficient years of experience to take up this position and I remind you of the experience which I gained on the judiciary where I was given the opportunity to act as the senior judge for 10 weeks. During this time I had to discharge duties which are normally discharged by the judge president. I did this without any problems. When it comes to my vision, I would like to create or enhance the access to justice and improve the competency of the bench. In my view the courts should be user friendly, so I'll start by saying, I will propose that there should be a provision of clear marking directions to various courts and service points. There must be information centres which should be staffed by people who are familiar with the language of the courts. There should be a provision to cater for vulnerable groups such as; abused children and women, because you'll find that the person who has been abused does not receive the proper treatment. I have been involved in a number of cases where the banks are foreclosing on people and you'll find that the person is not well represented and something must be done to accommodate that person. People who are not familiar with the language of the courts are more vulnerable, they cannot afford to have legal services, and therefore efforts should be made to liaise with professional boards to provide pro-bono services. I also want to create a pool of protégés; these people who are aspirant to become judges should be awarded the opportunity to be located to senior judges as back-up support. During this period the working conditions should allow the mistakes and failures should be taken as learning curves so that everyone understands the sense of being accepted.

Mogoeng: You and I come a very long way; we were in the University of Zululand. We were one of the few poor students and as they said "poverty was written on our foreheads". Going to your proposal of having information centres, computerisation has been taken seriously; as you arrive in court there is a kiosk where you can source information about court cases and the court roll, plus the readiness of the matter. Would not that be same thing that we should work towards such as the idea of having an information centre?

Madondo: The people who come from the rural areas may find it difficult to use those computers. Maybe we could have someone on radio or television that will outline matters of the court to people and what issues they may encounter on a daily basis. If people don't understand the justice system then it means that it is not working.

Mogoeng: One of the committees we set up in July is to advise on how best to communicate who we are as the judiciary, what we do and how the system functions best to the nation. What views would you share? A lot is said about the judiciary but the judiciary does not speak for itself.

Madondo: If we were to strengthen the confidence of the public in the judiciary system. One should not be forgetful that majority of the population are not familiar with the system, so such initiatives also can add and help the people to have a thorough knowledge of the system and how it works.

Judge Achmat Jappie, Judge President of KZN: You've been on the KZN bench now for quite some time, is that correct?

Madondo: Yes that is correct.

Jappie: There are two issues that I would like to raise; these issues are coming from your colleagues on the bench. Over the last year or so you have gone out of your way to introduce an element of congeniality among the judges, could you tell us more about that.

Madondo: The first thing that I have in my mind is that without unity we cannot achieve any goal for the better of the population, and we must also strive to that our division must take its respectful place amongst other progressive divisions. The personal ambitions have to be solved so that we can be a winning team, and that is my view. Creating a conducive environment will lead to a better performance of our duties as judges.

Jappie: You have made mention of the fact that you were given the opportunity to act as senior judge for 10 weeks. My understanding is that was in Durban and you were placed in charge of the civil court.

Madondo: Yes, the first one was in Pietermaritzburg and the last one was in Durban.

Jappie: You made mention that you were managed to solve problems that arose. Which problems arose and how did you solve them?

Madondo: There were a number of problems and at the time we found that some legal practitioners were supposed to make discoveries before a trial and that did not happen. They want to have the matter heard through the application as well as the trial and those types of cases you'll find that they sitting for five days, hence we had to accommodate for that matter. In some instances you'll find that the case is old and we are to liaise with the court manager on how to accommodate those types of cases and the difficulties you'll have to deal with. You will find that the fault does not lie with the legal practitioners but rather with the administrative system – you have to accommodate the case and colleagues. I at times have to do this myself and dispose of the work.

Jappie: There's an expectation of the judges in KZN that those who are in the leadership position should lead from the front because we have a limited number of judges, hence the person who deals with the administration is expected to deal with court issues. What is your view on this matter, and does it happen?

Madondo: Well, during my acting stint most of the cases I managed to dispose them well through the roll-call period. Some cases are quite simple if you listen to both parties. The senior person must be involved because the case may take long.

Jappie: One issue that has been brought to my attention is that you don't often start your court on time. Do you wish to make any comment on that?

Madondo: In most instances it's due to my role in the chain of duty. Also, often you'll find that the courts themselves are not ready and they have to prepare everything while you still waiting.

Mr Cyril Xaba, MEC for KZN: Let me start disclosing the fact that you and I served in the KZN legislature between 1997 and 1999. Your candidature for the position seems to enjoy a wide support from a core section of people. Section 174(1) of the Constitution deals with the appointments of judiciary officers and section 174(2) deals with issues of demographics. Let me read 174(2) "The

need for the judiciary to reflect broadly the racial and gender composition must be considered when judiciary officers are appointed". I been looking the demographics on the bench; out of 29 judges we only have 11 Africans, nine Indians, seven Whites and two Coloured. In percentages; Africans is 37 per cent, Indian is 31 per cent, Whites is 24 per cent and Coloureds is 7 per cent. Would you want to comment on the progress we are making on the racial agenda we are making?

Madondo: You know yourself that as a chairperson of the BLA we are critical so that we can be able to assist the previously disadvantaged lawyers. Some are even now still battling. Those that are showing potential should be approached to join the bench.

Xaba: Are you conscious of the fact that the figures which I have read as they stand thus far might actually be reversed?

Madondo: Well we have less female judges. The plans I have in mind are aimed at addressing that problem.

Mogoeng: Have you at some stage compared South Africa to America in terms of the gender equalisation, because you'll see how much we put those jurisdictions to shame after centuries of not being oppressed by anybody as compared to 21 years of not having power?

Madondo: None were made but as a person living in this country and world I know that the whole democracy has not been achieved. We are trying by all means to make it better.

Commissioner Michael Masutha, Minister of Justice and Correctional Services: You talk a lot about inclusivity in relation much from the usual focus on gender and racial representation, and accommodation. I thought it was a breath of fresh air since it's never discussed. Is there any particular reason for this?

Madondo: I look at how things are happening these are the people who are always badly burned in the system, that's why there is a need to train judicial officers on the sensitivity to attend to the perspective who complained on the growth.

Commissioner Michael Masutha, Minister of Justice and Correctional Services: Do you believe that South Africans have lost confidence in our justice system, if not, why do you think they don't?

Madondo: I may find myself in a difficult to say they do but what I can say is that they do have confidence. If a person has committed a murder they are arrested and then two weeks later they are found roaming on the streets. Even the people who become potential witnesses become scared. There's another system which, in my view, should not be allowed to degenerate the law. The system is more accessible to educated people and not the poor; it has the potential of being preserved the social cohesion.

Commissioner Archibald Nyambi, Member of the National Council of Provinces: By looking at your CV it's really inspiring to see a person who has been a farm labourer and being in your current position of being interviewed for deputy judge president. In relation to farm workers in South Africa, can elaborate and compare their situation between then and now when it comes to accessing justice.

Madondo: During those days in 1967 we were earning 10 cents per day, equalling to R3 per month. The employer was the only person that farm workers knew of in the farms; we did not even have bathrooms and used the bark of trees. There are certain measures which have been put in place to meet the right status of the farmers. Even now, the conditions are still not satisfactory.

Nyambi: What do you think are the challenges when it comes to farm workers in relation to justice?

Madondo: There could be the same challenges because at times you will find that there are people who are not allowed to enter farms because they are private properties. If the unions can come out with plans to the fore then the farmers can have their problems addressed properly.

Nyambi: As a person who has been part of the legislature and the judiciary; can you explain your understanding of the doctrine of the separation of powers.

Madondo: If I may firstly define what it means. It means the allocation of duties, responsibilities and functions to ascertain institutions with defined areas of competency. The government has three spheres; legislature, executive and judiciary and each sphere have to respect the competence of the other. A suitable example, in a functioning democracy the duty to establish social problems falls within the ambit of judiciary; the courts should not interfere with that. The courts have to ensure whether the conduct or actions of those within the judiciary fall within the law. When it comes to policies of the government the court can only point out that maybe the policy somehow is unreasonable. These spheres are constitutionally joined to help the judiciary achieve its independence and that must only be done in a way which will not undermine the independence of the judiciary. That shows the separation of power. A court or a judge cannot draft a policy for the government.

Nyambi: Are you saying that judges are not allowed to make law?

Madondo: Judges are allowed to make law on a limited scope, but we do it in within framework of the law.

Nyambi: Is it right for politicians to criticize judges?

Madondo: If a politician has a valid reason for doing so then it is right.

Mogoeng: We still have seven more candidates to interview. Commissioners should reflect whether they want us to sit until late or continue until Saturday.

Advocate I Semenya SC: I have a bragging right to claim you and the Chief Justice as classmates. I somewhat think that you're background is just spoken about a little fittingly; I want to invite you to give us a 'cooler' background of where you come from. When one reads the papers; there is reference to your modesty and humility. Help us understand how you have tested out that background within the legal framework. How would you make the legal framework work to make this a better country for the people in the rural areas who are not exposed to it yet?

Madondo: I do not know whether I understand the question properly, but correct me if I am wrong. We've got a long way to go and there are issues which need to desperately be attended to. From where we grew up and the times in which we grew up was different from today – I was brought up in the rural area. That kind of atmosphere and the legal system in the rural area is quite different; I only came into contact with the western legal system when I was in university. The only system I knew was customary law. At first we were not put into authority and realised that no one else could have attended to this problem. A person in the position of the deputy judge president must have means of putting some measures in the community so that they will know the problems they are experiencing and how to address them.

Commissioner Dikeledi Magadzi, Member of the National Assembly: I am very humbled by how you have presented, particularly on the indigents, and how you have maintained to, on a regular basis, to stay in consultation with judges. The cultural linguistic issues which sometimes have a good impact on women and sometimes not, how would you see yourself as a person champions those issues for the vulnerable indigents. Is it a good thing that I, as a Tswana speaker, should be subjected to the language that is being spoken in court by a Chief Justice who is also Tswana speaking so that I will be able to express myself? The translator doesn't interpret correctly and some tend to translate African languages directly. How can we make sure that when we're dealing with issues of

transformation that we also move towards the court being accessible in any language? How can you describe your management and leadership style?

Madondo: The manner in which our courts are designed they don't somehow accommodate the language sector in a clear way. Using a particular language in court has been tried in other districts but the problems which were encountered is that when the matter is taken to an appeal it has to be translated into the language understood by everyone. Some kind of mechanism should be put in place and when it comes to interpretation my submission is that there must be training for interpreters. At times you are better off when the language you understand is spoken as to that you can also understand what the witnesses are saying. As I have said, if we have an information desk that will help to educate members of the community on court procedures. This will help with getting down to the problems experienced by people. What I have seen the judge president doing is to adopt a consultative approach where everybody will express their views and the views will be acknowledged and respected. By doing this every member will have sense of equality and see that their views are also valued, when a new issue is introduced the same will be done to get their opinions. This is also to encourage the sharing of opinions and communication between the members, this makes the members grow and develop in their profession.

Professor Nomthandazo Ntlama: I am an academic, and you mentioned that if you are appointed as deputy judge president judges will stay as acting until they become members of the division. What strategies may be used in order to attract acting judges?

Madondo: What I have said was not said literally. As it is now the judges are drawn from different posts – advocates, attorneys, magistrates and academics. Advocates and attorneys are presented by provision bodies and they should be approached; the bodies represent different organisations and they forward names of people which they believe will be available for acting posts. The acting posts are taken as learning experience, thus the person must be exposed on how to implement justice.

Ntlama, a professor of law: What criteria should be used in identifying those judges?

Madondo: I don't know if the answer I have given you is accepted. The criterion to be used is not known but the body of academics makes the recommendation to the division which they think will be available to act as judges; that is the criteria we use.

Commissioner Narend Singh, Member of the National Assembly: Let me also disclose that Mr Madondo and I were senators in 1996; I do not know why we didn't retain the title of senator like they do in America. We would be called Senators today. I am happy to see that one of us has reached this position of being a judge. I just want to confirm that the statistics given to us the Judicial Service, according to this schedule it was given to us on the 31 August. It states that there are only 29 judges in the KZN division of which 12 are Africans, three are Coloureds, seven are White and seven Indian; it goes on further to say that 19 are males and 10 are females. I take it that these are correct? My question is; you are turning 62 in November, and God willing, what is your medium to long term goals of being deputy judge president? Let me get a sense as to what your aspirations are.

Madondo: The aspirations are determined by circumstances. At this age I want to ensure that the people don't experience similar problems, I also want to ensure that the justice system is just speedy and affordable. My aspirations are also to become a judge president at some stage, which may be narrowed due to age. The crux of everything is to ensure that things are in a way that should be outlined.

Singh: Yesterday we were asking younger people as to what their aspirations are, so I thought I'd ask you too. I noted that you've been nominated by advocate Saliem Khan and attorney Dean who both sat as assessor with you, and they are both Indians. What do you make of this nomination?

Madondo: That shows that what I am doing is observed by people and they see a future in me. That's what I can say about that.

Singh: My last question relates to page nine, question 17 which says “what could you regard as your most significant contribution to the law and justice in South Africa?”. You stated that you facilitated a legal pro-bono service and you tried to solicit legal work for practitioners who were previously disadvantaged from parastatals and legal departments. I would like to know what success have you had with getting the advocates positions in legal departments because when entities come to report to Parliament we see that the legal advisors are white.

Madondo: At first we were operating as two organisations; BLA and NADAL, we realised that it could not work, so we started speaking with one voice. We put up a discussion document and some of the attorneys in particular received instructions which they did not act on. It was not properly managed so when I took up the position of approaching the bench there were talks to get more work. Discussions with departments have recently started and they are now being exposed to the work environment.

Singh: What’s your view on the representation of women?

Madondo: I will give you the answer using two stages. The first stage is what I have alluded to that in the pool you are located as to how many females from racial groups are there. You find and prepare them to become potential judges or judicial officers. When these people are invited to the bench it is done differently in the sense that all the people must have equal opportunities and they must be given the guidance, direction and leadership in becoming effective in justice and administration. They must enquire skills within that system. There are few females who want to join the judiciary due to the lack of exposure and the areas which they grew up in. If students can be nurtured then the problem of representation can be addressed.

Commissioner Mabunda: I just wanted to go on record that what Judge Madondo is talking about there’s clear commitment from the premier of KZN and that some of the drivers of transformative programme are in the gallery. It is something which is receiving serious attention. Your nomination is very impressive, you are nominated by the BLA, advocate Saliem Khan and supported by attorney Dean, but most interesting there is a senior counsel AE Potgieter who is the chairperson of the Pietermaritzburg Bar and ex deputy chair of the Society of Advocates in KwaZulu-Natal. So the blend is just very good; so when you said that they see hope and the future in you it cuts across. That’s my view; that it all blends together.

Commissioner Julius Malema, Member of the National Assembly: I just want to ask the judge how he’s going to compliment the judge president because they are both old. There should be one energetic person. If you look at the Supreme Court of Appeal arrangement, the Constitutional Court arrangement they have a younger and old person in charge. Don’t you think we should consider someone much younger to compliment the judge president?

Madondo: As you are old, in Zulu they say “indlelaibuzwakwabaphambili”, which means, as old and experience as we are we can give a clear direction and make a formidable base. This is the time for us to complement each other while building people; I want to ensure that the people coming after us are in a better position and can administer justice.

Malema: How do you build them when they do not exist? There is a position of judge president and deputy judge president; those are the most senior positions. If you were to build the young ones to continue with the legacy then surely there should be a younger person who can be mentored and capacitated to continue the legacy.

Madondo: I think that is what I am saying. You build someone who exists in the division; we will look at people who we are working with and see who we should mentor so to be able to take over.

Malema: Let me put it differently. If we were to appoint a much younger judge who is well capacitated; would that serve the purpose of continuity and change?

Madondo: One may be young in looks[?] and mind but as old as we are, we also have young ideas. We are looking forward to provide for the future. If there should be a younger judge it would be acceptable but that person still needs to be nurtured. Once that person is a leader the people below him will be looking at that person and if they have not been sufficiently moulded they will not do well.

Malema: If we were to appoint a younger person who has the potential; will it be wrong? I am not saying you are not young at heart, I have seen old people who claim to be young at heart and do something that are embarrassing because they think they are young at heart. The point is; I want a young person and not a young person at heart. Look at the MEC for KZN, he may be coming from the wrong party but he is young. We need somebody like that in a legal fraternity – when you look at him you should 'here rests the future'. If I look at you and the judge president I cannot confidently say 'here rests the future'. I am not saying you are not competent or that your credentials don't speak for themselves but I have got an appointment with the future and I need to build it now. My investment is in young people; would I be wrong to say that this capable young person who's black, maybe even female, would be a wonderful candidate. Would I be wrong to consider that candidate and not consider you?

Madondo: Well, I will start by saying one of the factors one may consider and evaluate the appointment, but that should not be the only consideration it should be coupled with other factors such as the potential. You also look at demographics of the population, the composition of the bench.

Malema: I will leave that point out and canvas it during the deliberations. I am worried that most judges and those aspirant judges cannot deal with the separation of powers; it comes across as the most difficult question and I don't know why. The question was put before you judge please educate us on the doctrine of the separation of powers and I was not happy with the answer. You all want to quote the judgements, which is wrong. There are three branches of the state; judiciary, executive and legislature. We need you to explain clearly as to what becomes the role of each branch, and how do we ensure non-interference of the branches. We should all know what this animal of 'separation of powers' is. It is your call to whether you will answer it again or if you think your answer was fine.

Madondo: The doctrine of the separation of powers lives and dies on the checks and balances. Certain duties and functions are demarcated to specific institutions. The legislature's job is to legislate. The executive is to give effect to those legislations and the judiciary is to adjudicate upon matters between the individuals or government. That is how it works. A judiciary should not interfere with the functions of the legislature and so should the legislature, as well as the executive. There is a need for the government to act in the public interest – they should function in a co-ordinated way.

Judge President Kgomo: The female aspect of gender representativity is close to my heart; in fact it should be so for the rest of the nation. You have worked with a woman I know very well; Fikile Mokgohloa. She acted there until 2008 and was appointed in November. You competed with her for this position three years ago. She has not made herself available; can you enlighten us as to why she didn't make herself available?

Madondo: Well I approached her at some stage and asked if she would make herself available and she said no. She said she would support my appointment – maybe she had other intensions. I do not know.

Commissioner Michael Masutha, Minister of Justice and Correctional Services: If possible, I would like the Honourable Malema to clarify what is this appointment he has with the future.

Mogoeng: Thank you judge Madondo, you are excused. We will break for lunch and then entertain the next candidate.