

Mosalo Sello Constitutional Court Oral History Project

12th January 2012

Int This is an interview with Mr. Mosalo Sello and it's the 12th of January 2012. Mosalo, thank you so much for agreeing to participate in the Constitutional Court Oral History Project, we really appreciate it.

MS It is my pleasure

Int I wondered if we could start talking about early childhood memories, where you were born, where you grew up, a bit about your family background and what were some of the events that had shaped your experiences of growing up in South Africa?

MS I, I was born in the North-West Province, it is the former Bophuthatswana. But before it became Bophuthatswana, I think it was called the Transvaal. We fell under the province called Transvaal. I was born in 1972. For...I, I, I am a Basuto by background and that area is actually Botswana area, its actually comprised of mostly Botswana. For us Basuto to go there, I think my grandfather migrated from, I think he was working for the farmers, moving from farm to farm. That's what they were called, sometimes they were called sharecroppers, sometimes they were called bywoners. Bywoners were people who were staying there, sharing land with the whites, that's why we...they moved and they settled there. This..that area is called Grootgefonde, it's in the Lichtenberg District. It was cold, those areas its actually small villages. There were...I think around after 1913 or so, they started moving people into like small villages. And when I grew up, when I was growing up, people were calling them reserves. And I was wondering what was why they called them reserves and I came to understand that those were labour reserves. You know people were basically put in those areas for, for the farmers to come and take them during those seasons when they want them. So, I grew up there, so I was born there, so ja, basically that's a short background about my self. But then I can say, that area is a very small area, people who moved into those areas and they are not like your ideal places for people to stay because they are very, very far away from things. So, for example, to go into town, we have to go about 50ks (kilometres) from us. And that costs money. You know like to buy things like cheaper things, if you want to buy things in shops around, it becomes very expensive
(Telephone interruption). Sorry about that.

Int It's okay.

MS So, basically that's that and the most practiced economic...practice there is is agriculture. People farm small livestock, you know, they plough

small like there and there. So, ja, that's where I grew up. I went into school there. I started school around 1979. We were walking, you know, I was walking ten kilometres to school and back on a daily basis and I think I was then...I was seven by then. In middle school the same thing, I went to another village far away because our village did not have the school, about 25 kilometres away and the other one was ten kilometres away. Middle school and high school, so that's where I went. I started studying at Wits University in 1997, after matriculating in 1993. So, in other words, I stayed three years, no four years before I started my studying at Wits. I studied there and then I went onto to do other things and then I came to work at the Court in 2005, like I said, from the 1st. So basically, that's that. And then my experience at the Court, I think it's been a very tremendous experience here. Firstly, I heard about the Court around, I didn't know much about the Constitutional Court per se but I was aware that we...are in a Constitutional dispensation, you know, there was an Interim Constitution. The Constitutional Court was established and I know of almost all the judges that sat there. And one of the outstanding judgements of the time that was brought out by the Constitutional Court was the *Makwanyane. S (State) vs. Makwanyane (S v Makwanyane and Another)* case, which actually basically did away with...abolished altogether the death penalty. So, I think it was handled by Justice Mokgoro, if I am not mistaken (there were 11 separate judgments for this case). So that's why, that's what I basically knew from the beginning, I think 1996, when I studied my first year, I did some law. So, we dealt with those cases.

Int Right, and what was your degree in?

MS I studied a BA in Psychology and Sociology and then I went on to do Industrial Sociology. I tried, I started with a Masters degree in 2001. I have done coursework on that but I could not...I have not finished the degree yet but I have done a lot of coursework and I submitted my proposal already. So...

Int In Industrial Sociology?

MS No, in another course that is in Tourism Development, ja.

Int Okay. I am also curious, you have this interest in the law, and then how did you after graduation, how did you then come to the Court?

MS I came to the Court, through, you know how I came to the Court is that I, I, I needed a job and somebody told me that the judge at the Court needed somebody and then I applied.

Int Who was the judge?

MS Judge van der Westhuizen.

Int Okay.

MS Then yes, then I applied and then I got an interview with the judge. Then, he appointed me.

Int And you work as his PA?

MS I am his PA.

Int And you have been here since 2005?

MS Yes...

Int It's been a long time.

MS Ja, it's been a long time. Ja, it's been a long time but a very interesting time as well, you know.

Int Tell me about the interesting time?

MS The interesting time is that you get to know about the judges and the legal system far away from it and it's a quite a thing, if you think about it. When somebody talks about judges and lawyers, and the Court, sometimes you get this feeling that, somebody is in trouble and maybe is get...is about to be made right.

Int Right...

MS So getting to work at the Court, it was interesting because getting to work with the Judges at this level for me, its great because sometimes, you look at judges from a distance and you look at them as very, very serious people.

Int Right.

MS And the institution itself, the Court system itself, when you look at it from the distance, its so scary like hindsight but when you come into it, you find that, it is the normal, it is the normal, what can I say...working place where people work and where judges carry out their duties. And where actually things are

made right, like I said, the process of doing their work. So, it's not like that, that very scary. And working with the judges at the Constitutional Court, I think its, its fulfilling as well, you know, because you know that you are adding value to what they are doing in one way or the other.

Int Right.

MS Ja. So basically, that's the interesting part for me.

Int Right. I am curious when the person told you that there was a position at the Constitutional Court, had you heard about the Constitutional Court prior to that?

MS Yes, I had heard about it in 1997 when I studied law. Like I said, we were studying these, the precedents and one of the precedents that we studied was the precedent from the Court, the *S vs. Makwanyane (S v Makwanyane and Another)* and other cases. We studied those ones, and those the Presidential Law, they call it the Common Law. Ja so that's what we were doing.

Int What did you think of the Court then when you were studying law?

MS Well, you know, when you study, you do in your first year for example, your ideas about what you really want to do is not like that...but when you get to...you only, you know your idea about that is not strengthened. Then you don't really pay much attention about it but it was interesting for me to, to...I thought at the time that the Court was doing a good job. Because, like I made a reference to the cases that we studied, so I thought that they were doing a good job, ja.

Int I am also curious and you worked here... the other PA's are predominantly female...

MS Ja!

Int How did you feel fitting in? Or did you fit in?

MS You know for me...I, I think going into...I, I think schooling basically it's a good thing. If you go to school, if you study, any... I usually say to my brothers, and to everyone that I come across, you must finish your matric, its very, very important because it opens your mind to a lot of stereotypes. If you go to tertiary level as well, then you will study a lot of things there. As you study,

you learn that there are things...you know, I studied a course...I was lectured by this gentleman who studied, theories of...deconstructive theory.

Int Right...

MS Where you are either male or you are female, I mean, things can be done, you know, can be done by anyone. Actually, that theory says we have to change things around. You know, a man should now be, you know, be a gatekeeper at home and then, a women must go to work (laughs) so basically, ja, I think that's what opened my mind to say being a secretary is not a women's job basically. It is a job that one...everyone can do. As long you put your mind to it and you're are willing to deliver when you do it and you know, ja. So I didn't have a problem really. I fit in well. I didn't feel...I didn't feel and people usually ask me this question from time to time. So, I say to them, no, it's a normal job and I fit in well with everyone. Because, I think we are all here to do...to work and to serve or way or other.

Int I think it is extremely progressive for Judge van der Westhuizen to hire you. I am wondering in terms of relationships with administrative staff, with other people, how has your relationship been?

MS Ja, like I said, you see, having a background, a tertiary background helped me a lot because even, you know, you, its easy for you to fit in, in most of the environments.

Int Right...

MS Especially, if you studied you know, the course that I studied. It actually opens your mind to say, besides the stereotypes, besides the social constructionist...and these are things that are constructed by the society to say that male does that, female does that. But in terms of the administrative staff, I was fit in. I think that I fit in well. I can't really say I had, like...there were problems in the workplace and you can't run away from that, but one has to find a way. You need to know that, this is a workplace, you know, you can't hold grudges at work, firstly and you cannot...you must try yourself to cultivate the harmonious working relationships and usually when things happen, what I have learned is that you have to do your self-attribution first, before...when something happens you have to ask yourself, Mosalo, what have I done myself. And the most important thing for me is always, is being humble and being respectful and being professional, as well. Ja, for me, I think that's what helped me. Even if somebody stepped on my toe, I always greet them tomorrow and you know, I, I discuss with those people if I can. It depends on the level of seniority of course because I mean, always your boss will always be your boss and I am not talking about Judge van der Westhuizen, I am

talking about the administrative staff for example. Let me make an example, for example, Martie Stander is my boss, ja...

Int Sure...

MS Ja, because she is higher from me in seniority. So, I, I usually respect them and give them the space that they need. Basically, you have to give everybody the space that they need. If I go into an office, I must always know that I have to knock if I come into the office.

Int Sure...

MS And I cannot barge in, because I work at the Court. So, I think those, those things it...they actually help me to relate well with my colleagues and other new friends, and the law clerks, ja.

Int I am also curious, Mosalo, working for one person for such a long time, you get to know them very well. I am wondering what your relationship has been with the judge, what are the areas of conflict? How have you overcome it...?

MS I cannot say really there's been, there's been areas of conflict per se. Our, our relationship when we started with the judge (reference to Justice Johann van der Westhuizen), he was really aware that I, I have gone to tertiary education. He was really...he was honest with me about it, saying, Mosalo, I like your question for working for me, but I realise that you have a good background in education. And even if you wanted to leave tomorrow it won't be a problem from my side. If even I would really appreciate your, your valuable input in what I do. So, starting to work for the judge, and working for him, for this long, has not been, there's not been areas of conflict per se. I mean, even when we...its just that...your boss will always be your boss and when he...is, not angry but when he being firm with you, he's being firm with you, that's how I interpret it and you know, and, and you know, that helps me well, a lot. Ja, so I cannot say...

Int When you say firm with you, what do you mean?

MS Firm, I mean, for example, if something is going wrong, he tells me Mosalo, for example, he would say, Mosalo, this is not good enough! He will be very honest with me. Then, I will understand. I wouldn't take it like for example, even if it's not my mistake per se. For example I work with other people and for others things to be delivered. For example, the Transport Office, you know, just to get a car, you need to work with him. If a car is not repaired on time, the judge will talk to me and I'll have to handle that. So, for example, if I am

delayed by somebody else, I won't blame those people. I will take it...because it's my responsibility to help the judge. So, its not like if somebody is delayed then I will have to name them to the judge, to say this guy is delaying or whatever like that. I try always to, to be, like I said, to create that environment that is, its not really ideal but you try by all means not to strain relationships. So, ja, I think for me, that's how it's panned out so far.

Int I am curious Mosalo, in terms of the chambers, what kind of atmosphere is there in the chambers? How do you relate to the law clerks? What kind of law clerks do you get?

MS Oh, you know, in our chamber, ja, in our chamber, we've had different, we have had a mixture of people, for example, we have had, we had people from the Asian background, Chinese, Indian. We have had black people, white. We have had, we have had...I don't remember us having someone from the Coloured background unless if they were here before me. But we have had a mixture of people, you know from overseas and here. So to be honest with you, with you, all the people that we have had so far have been, have been good people, in terms of...the law clerks. And myself, I know my turf. I know that I am there to work for the judge and assist as much as possible, as much as possible regarding to the judge's needs. And the clerks also know their duty. We all know where we come in and all of us, we know that we help the judge. And I try by all means to be, to be open-minded about things, even if, you know, I realise that some of the law clerks come from...fresh from university and some of them are not exposed to the workplace background. And I try by all means to be tolerant with them even if they...because sometimes, some of them don't understand some of the work etiquettes, so you have to understand that, you know, as working for so long and you have that thing as well. And I think for me, I have always been there to assure them, you know, in our chamber, the judge is...he is a very, he is a very, if you look at him from a distance, I usually say that to people, if you look at Judge van der Westhuizen from a distance, you would think that he...he perhaps he's just a distanced person but he...can crack jokes and he can laugh about them. And he also...he is also human. And he can be...I think he can be....dissatisfied about things and tell you like I said, he said to me, Mosalo, this is not good enough. And I am not sure, sometimes, when he has conversations with his secretary, with his actually clerks, sometimes, I don't get involved in those things. (*Telephone interruption*). Let me switch this off. Sorry about that.

Int That's okay.

(Pause in Recording)

Int I am also curious Mosalo, in terms of... in terms of...some of the stressful aspects of your job, what are the stressful aspects of your job?

MS The stressful aspect for me is...you see the judge stays in Pretoria and I stay here in Diepsloot. The stressful part there is when the judge needs something, for example, its not very stressful as such but you know, when you, when you have, have a home of your own...its when the judge needs something and I have to do it. It means I, I usually I have to come back from my home for example over the weekend, come take something here and take it to the judge's house.

Int In Pretoria?

MS In Pretoria and sometimes that happens...like I said sometimes, its somebody's mistake that something didn't happen and I, I have to do it. It happened on several occasions, of course. So, that is the only...but basically I would say there is...there is, it's become routine for me. I know what is expected of me. Then I know what and its become routine but not monotonous, ja because its always exciting working for them but its...so its not been very, very stressful. I cannot really pinpoint one thing except for the fact that he stays in Pretoria and I stay here in Johannesburg. So, when you need something very urgently, that is the only part, ja. So, basically, that's the only part that's been...

Int I wondered in terms of the change in the Court over time: when you arrived, Justice Chaskalson was going to be leaving and Justice Langa had taken over as Chief Justice at some point during that year; I wondered whether you could talk a bit about your experience of the different Chief Justices, in terms of the management of the Court and the impact it may have on you?

MS On myself?

Int Well, on your functioning.

MS Okay. What I can say when I came in, at first you don't get to but you can..but we don't get to discuss some things with the judges. But you can judge from it for yourself from a, a distance as to your impressions. You can make your own impressions about it. I could say, you know, Justice Chaskalson has always made it, a case that we are, we are satisfied as the employees of the Court. And I think he passed on that baton to Justice Langa, the same way and we were treated, we are treated well basically here at the Court. And, I believe, and all of us are really satisfied. There is nothing that I can say, you know, maybe the Chief Justice has done wrong or anything like that. I haven't seen myself, nothing myself and I believe from a distance as I see it, the

judges themselves as well are trying to keep, to keep us satisfied. Ja, and you know to keep us protected as much as possible from I don't know, protected from maybe from abuse, or anything like that. Ja, so, ja, abuse for example maybe labour abuse from higher administrative staff or anything like that. And I do not have...I do not think that themselves as well, have those intentions anyway.

Int Sure, sure.

MS I am simply saying this is my impression that I think that they are trying to keep, they are trying to keep the Court at the, at the...there is a very high work, you know, high work ethic here at the Court, which actually, I think its led...the Chief Justices are leading when it comes to that. So, my impression about them, about Justice Langa and Justice Chaskalson, their impact on us, I think has been good. On myself, basically, I am saying there is nothing that I can say, has affected me. That they did wrong, ja.

Int I am also wondering Mosalo in terms of your interest in the law, you mentioned Makwanyane case; now that you are working in the Court, what have your observations been of the different types of judgements that have come? What has been your level of interest?

MS Ja, my level of interest, well from time to time, I try to, you know to read some of the judgements when I have time. I don't get to, I don't get to get involved in writing those judgements as the clerks do. You know, but I ...I help for example, in terms of typing them mostly. So, my interests has, has actually been, actually taken an interest in reading them. So, basically, I would think that, my impressions about the judgements of the Court is that, they are trying to...to...you know, to make things right, where things are wrong. For example, there are cases that are very interesting for me, for example, the case, where where sodomy was not, was not classified as rape (*National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others*), you know, the Court has changed that view. That, is going to be classified, I am not sure how far the legislation has gone in terms, you know amending it but I think the Court has, has, you know, the, the precedents that they create, that they, that the judgements of the Court creates, can be very interesting to me.

(Telephone Interruption)

Int Mosalo, you were mentioning the cases that were of interest to you; you mentioned the Sodomy case (*National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others*). In terms of socio-economic rights, what do you think, do you think the Court has done enough?

MS Ja, the socio-economic rights cases, I remember, which one do I remember, I think the case is Grootkom...Grootboom (*Government of the Republic of South Africa and Others v Grootboom and Others*) case and the one about Modderfontein (*President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd*), the informal settlements. The one that...ja, those are the cases that I remember of my head. Ja, so I think in terms of that...I think...and also the cases of you know, the royalty, you know there was this thing...

Int Customary Law?

MS Ja. Customary Law cases. I think those have been very interesting for me. That the Court in cases upheld that women can also be Chief and, and you know Chiefs of their communities.

Int Right.

MS Ja, the one that I remember is the *Shilubane (Shilubana and Others v Nwamitwa)* case, which was very interesting for me as well.

Int Sure. I am also curious in terms of an HR perspective, so not your chambers, from a HR perspective, what have been some of the positive aspects of working in the Court and what have been the negative aspects?

MS The HR part. I don't remember anything on the top of my head that, that has, that, that has from my side, HR that has been a problem per se.

Int You mentioned to me curiously that there is such a strong work ethic in the Court and I certainly see that. There's also a very nice calming environment, everyone seems to know what they have to do and they get on with it. What do you attribute that to?

MS I think basically, I would say the leadership. The leadership, I think the leadership, for example the administrative leadership, Mr. Misser, they, you know, when you manage people, you don't interfere with their work that much. You let them use their initiative, where and allow them to do their work. You just come in where you see things are not good or going wrong or when not going right. So, I think, I think they allow us to...there is no...for example, I request cars from time to time. I go to Pretoria from time to time to deliver things for the judge as I mentioned earlier. And mostly I haven't had problems there. I think its because, I think its because they also as the leadership of the administrative leadership, they realise the importance of us delivering on our mandate as serving to the judges. And they realise the importance of the

judges delivering on their mandate, as the judges of the Court. So, I think the leadership part and also the leadership of the Justices themselves and the Chief Justices, I think, I think that is the most important things. For me, leadership is the most important thing there. That creates that environment of, of harmony, ja.

Int I am also curious how long does have the judge have left in terms of number of years on the Court?

MS Judge van der Westhuizen?

Int Yes.

MS The judge has about, I think about four or five years now, that is left because he came here in 2004.

Int Right.

MS This is his eighth year. I think he will be left with, ja, I think about five years (Judge van der Westhuizen's term ends in 2016), if I am not mistaken.

Int Right and how...do you envisage yourself remaining at the Court?

MS Ja, ja, I would, I would if that is possible, then ja, I would, I would, I would, I would, I would remain. If there is any judge, who would like to absorb me, you know working for them. And also, I am looking also at the prospect of maybe studying, studying law or maybe something that can add value to the Court. Ja, basically, ja, I would really like to...be here because it's a good place to work.

Int Why do you think it is a good place to work? What makes you say that?

MS Like I said, you know, the leadership of the Court, the administrative leadership of the Court, you know, they, the collegiality, that you get at the Court. You know, the...ja, those things, they, they actually attractive to....to anyone realises them and I see it and I think it's a good environment to work in.

Int I also wondered in terms of any concerns you may have about the Court and its future in South Africa? Do you have any concerns about the Court?

MS Ja, you know, for me, for me, I, I felt very sad with the case of, to be honest with the case of the (John) Hlophe case (*judgment pending at the time of the interview*), where there was...an alleged attempt by the...by the Judge President (of the Western Cape) to interfere with the workings of the Court. That is the first thing. I think, that was a very saddening moment for me. It was really, really embarrassing. The second thing is, you know, the political attack on, on the Court, you know, for me, that, that is not good because it tends to...to, it tends to, what can I, which word can I use. You know, the dignity of the Court, if its attacked by, you know, you cannot always, the judges do not always have to defend themselves against, what decision they take and what they do. And you know, by all these things, and I think the judges have not yet, have not defended themselves per se. But I think those two things for me, that incident and the incident, you know the frequent attacks against the judgements of the Court and pol...particularly from a political side, political organisations and the judges being called drunk judges and all that. For me, it's a sad thing because I think to some extent, an attack on a judge is an attach on the judiciary. And for me, that that is a sad thing and I think if it was possible, we could all learn to allow the courts and the judges to do their jobs without fear of being attacked. I know that they are not fearing being attacked because they are doing their jobs without fear and favour and....so basically, I, for me it's a sad thing and so that basically...

Int Mosalo I have asked you a range of questions, I am wondering if there is something I have neglected to ask you that you would like to include in your oral history?

MS Anything that I would like to include.(Laughs). Ja, I know, I, I don't think there is anything that I have thought about including at this stage (laughs) from my part...I have said that I think your questions have covered most of the sort of things to people if they were going to ask me of my account of my working at the Court and the Court itself.

Int One final question, what does that mean to you, to work at the Constitutional Court?

MS I think it's a privilege and a honour to serve at this level and ja, basically that's it and its also fulfilling to be, to be working you know for the highest court in the land and I take it very, very seriously. Not serious in the sense that I forget that...I take it seriously because, you know, the Court delivers at the very mandate to develop our democracy, develop being the South Africa and changing whatever that happens and in actually improving in what was done before. So, I think I take that very, very seriously. Ja, so for me, that that is, that is that, that it's a privilege and a honour to be working here at this Court.

Int Mosalo, thank you so much for your time. I really appreciate it.

MS It was my pleasure, as I have said. Thank you, thank you Roxsana.

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