

Moses Phooko

LRC Oral History Project**9 September 2008**

Int This is an interview with Moses Phooko and its Tuesday, the 9th of September (2008). Moses, on behalf of SALS Foundation, we really want to thank you for agreeing to participate in the LRC Oral History Project. I wondered whether we could start the interview...if you talk about early childhood memories, growing up in South Africa and where you think, your sense of social justice and injustice developed.

MP Well, I grew up in the Eastern Cape, formerly Transkei, that's where I spent much of my childhood. It's in rural areas, on the outskirts of South Africa. It's very rural and if you get an opportunity to go to university, it is one that you should grab because the majority of the community, is very indigent. So, that's why growing up around people who are illiterate, facing hardships, most of children unable to study, forces parents to go to Johannesburg and other big cities, in order to look for jobs. I also realised that there were no opportunities back at home, thus I was compelled by reason and common sense, to move and look for better opportunities,. I did my high school education in Soweto, Johannesburg.. On arrival, to Johannesburg, I saw something different. The education system is far much better than the one I received at home.

Int Right. In the Eastern Cape?

MP In the Eastern Cape. I thought that there was a need for me to do something, so that I can empower myself intellectually and go back and empower my community. Hence, I opted to join the legal profession so that I can study, thereafter, go back and assist to assist the community of Matatiele.

Int Community?

MP My community.

Int Right. So, when you were growing up, you came in primary school at the tail end of apartheid. But I am wondering in terms of social structure and poverty, which are very important issues in the Eastern Cape, I am wondering how you were affected, as a young black person in those circumstances?

MP Well, I was affected a lot because when you come from a family where there is no one who is working in fact, everyone is dependent on a pension, like the old age pension. For example, my parents were retrenched; I think that I was doing Standard Three, which is way back. I struggled during to primary education. It was only later in 1998, when the government introduced the so-called nutrition programme in school, then to some extent, it encouraged scholars to go to school to school and get something to eat and in a way encouraging them to attend school daily.

- Int Right, so when you were growing up and your parents were retrenched, what was the contact, if any with white people and did you understand that whites had more privileges?
- MP The entire system was based on segregation powers, in fact, black people were the most disadvantaged. Even our parents, they worked for almost the rest of their lives, but when they got retrenched, you find, that they received little money and benefits, regardless of the number of years, that they contributed. So, the apartheid system exploited people and the effects of it, can be seen mostly in African communities.
- Int I am also wondering in terms of actually how you understand wanting to become a lawyer, you say you want to empower your community, what about law do you feel would enable you to do that?
- MP You know what, I thought that if I am educated, and I would be able to understand things from a different angle, , I can also be able to face and challenge the government to deliver services to the people and to fulfil all her obligations towards the people.
- Int So, you came to Johannesburg, you studied high school. Which university did you go to?
- MP I attended the North West Universith, Mafikeng campus. It is in the North West Province.
- Int And what was your experience of the legal education you received?
- MP Well, I was excited to become a lawyer. I have always loved to watch the“Practice” **inaudible...**There was this passion, there was something inspiring me, but more specifically for social justice.
- Int And so you did, a BJuris, an BA-LLB?
- MP I did the straight LLB.
- Int Right and how long did it take you?
- MP It took me, in fact the programme is four years but it only took me three years and six months. The reason being after completing my Matric, I, I was not stable financially, so I had to raise some funds for six months, I only commenced in the middle of the year of which the programme was then flexible. You could register anytime. I then took many courses because I was struggling financially, and I couldn't afford to stay on the education system for such a long time. I made sure that I covered the six month in that time and I was able to complete.

- Int And then when you finished, did you want to do Articles at a commercial law firm or did you know about the LRC and applied there? How did you come to know about the LRC?
- MP You know in the University, they introduced the so-called Moot Court competition. The Moot Court competition is basically a hypothesis case, a case that that mainly deals with real problems affecting the African countries. I took part in that, and we were debating issues, which affect real people, things that are happening for example, poverty in South Africa, Zimbabwe and other challenges. I took part in that, and after (taking) part, I developed an interest in a public law firm. Then it happened that one day I was in the Computer Lab, playing around in the Internet and I somehow happened to come across the Legal Resources Centre, and read the profile. Then I thought that this is where I wanted to be and I applied. Fortunately, the Durban office accepted my application.
- Int Right, so then you moved from Johannesburg to Durban?
- MP Then I moved from North West, Mmabatho to Durban.
- Int Exactly. You have been here now, nearly two years?
- MP Almost two years. I commenced here on the 07 January 2007.
- Int And in terms of your principal and your rotations. Can you talk a bit about your experiences of the Legal Resources Centre?
- MP Well, the experience at the LRC has been both exciting and challenging at times, because you find that clients are faced with imminent evictions and we have to work out everything, after hours until 8pm in the evening, drafting affidavits, to be filed the following day in the court. So, it has been an exciting. I had an opportunity to work in all the projects. Initially, we used to work with an attorney, who was dealing with land claims, where we were assisting people who were dispossessed of their land and those indigent old people who do not know anything about the law at all. The education project, I have done a lot of cases, under the supervision of Mahendra (Chetty), going out of town, where you find children studying in sub-standard conditions. No toilets or resources necessary for education. At times, no classrooms at all. At times, they are just receiving their education. We have managed in quite a number of cases, there have been a proper infrastructure, resources, and we are still working on some of the cases.
- Int I am also wondering what your sense is, what your experience of Articleship is compared to people who you went to university with who are maybe in commercial law firms, etc. Are there aspects of lawyering that you feel you are missing out on?

- MP Well, here you are specifically focused on public law, of which it is quite an interesting area of law, because most of the things, they involve the Constitution, Constitutional Rights, so it is quite interesting to work with things relating to the Constitution. Although at times, you need to know something, I mean, as a lawyer, you would like to be exposed in various fields of law, so that you can be able to tackle anything. So, when it comes to civil, I am not that knowledgeable but I have done few civil cases, just for experience purposes and criminal work. We don't do much of the criminal work, we only touch there and there, of which I found the exposure, sufficient because I came here, knowing very well that it is a public law firm.
- Int I am also wondering what your experience is of doing particular aspects of public interest law and what has really interested you about public interest law?
- MP Public interest law is that the remedy, does not only benefit an individual but the entire community benefits, if you do something in a public law firm, that's what has been driving me to go as much as I can to do my job. You assisted in the entire people.
- Int I am curious what have been some of the cases, you have taken specifically? If you could talk about some cases and what have been some of the things you have learned?
- MP Most of the cases that we have dealt with are evictions cases. We have acted for shack dwellers for example, Annette Drive and Motala Heights informal settlements. These are shack dwellers; you find that they have occupied the land illegally. So the municipality has come up with a programme, in fact the government has come up with a programme, where they want to provide people with proper accommodation. The RDP houses. You find that these houses are built outside the city, miles away from essential services and if you were staying near the city before, there are schools there and if new house comes now, you have to live there and go and stay miles away from the city. You have to spend money for transport, children are affected as they have to change schools, the elderly. Then the municipality will just come at times; demolish the shacks without following the proper procedures. No court order, children, elders, women t are thereafter left homeless and frustrated. These are some of the cases that we have dealt with and the success rate has been quite interesting.
- Int In what way?
- MP I mean we have found the judgements in our favour. The municipality... has been ordered not to go to those settlements, at times, the government had been ordered to rebuild the demolished structures and to ensure that they don't just demolish without observing proper protocols that is obtaining the court order. That's when you can demolish somebody's home and after taking into account all other relevant circumstances.
- Int I am also wondering you have done your two years and where do you foresee yourself going from here, do you foresee yourself staying on at the LRC, or do you foresee

yourself going into private practice, going into a law firm, what's your option available to you?

MP Well, fortunately, I have been appointed to the Constitutional Court for next year. I'll be going to the Constitutional Court, I think I will be commencing in June.

Int Congratulations.

MP Thank you for that. Thereafter, I would like to further my studies abroad. I will apply for 2010/11, and thereafter, I will consider coming back to the LRC, depending on what options will be available then.

Int Right. In terms of the Constitutional Court, why did you choose that as an option?

MP Well, the work that I do here is mostly related to Constitutional issues. That's why; I thought of going, in fact, it is a privilege to be in the highest court in the country, working under the experience of senior justices

Int Whom will you be clerking for?

MP I will be clerking for Justice Yacoob. Its such an amazing, a lifetime experience. s I was looking forward to it and fortunately, things did work out.

Int Indeed. I am wondering in terms of being part of the Legal Resources Centre, what are some of the good things, and what are some of the challenges of being an organization, where you have the Durban office, then you have the National Office, you have different offices. What's been your experience of the Legal Resources Centre?

MP Well, the environment at the Legal Resources Centre, I would say is very conducive for working purposes. We have access to resources that you can use anytime in order to do your work efficiently. You don't have to run outside and say, I need that and that. Everything in the library there. We have a good relationship with other LRC offices, in case you need something to be done or someone to do something for you in that particular area, you can communicate with someone and there is no need to physically go there. And unfortunately, for now, I haven't seen any shortfalls. I think everything is okay, except that there was a stage, where ,I don't think I have a good standing to comment on this, regarding the financial constraints. However, the matter is okay.

Int When you around when JP (Purshotam) was working here?

MP Yes, I was around; I worked with him I think, for a period of more than a year in fact.

- Int With JP Purshotam...and what was your experience working with him?
- MP JP (Purshotam) is one of the unique character. He enjoys going to work. He likes things to be done timeously. Even himself when he does things. He likes working alone, he can work with people, but I think he prefers his own environment. Then, you can go to him at any given time. You will always get assisted. Even after hours, you come here and you will find JP in the office and you will work with him here and he will assist you. And he will always, maybe if he goes to court, he will tell you that I have this particular case and ask whether you would like to join him. According to me, he is one of the attorneys who used to go to court, often.
- Int I am wondering in your experience, who has been the lawyer, who has helped you the most in becoming a better lawyer, who has shaped the way you think?
- MP A difficult one. Having worked under the supervision of almost six people.
- Int So, you have worked with Mahendra Chetty, Sharita Samuel, JP Purshotam?
- MP Mahendra (Chetty), Sharita (Samuel), JP (Purshotam), Nomfundo Gobodo, who is now in Jo'burg and Musa Ndlovu, who is now in the public sector. I would say they have individually contributed to my training because they specialise in specific areas of law.
- Int I am wondering, whether if we could...I have asked you many questions, have I neglected to ask something, which you feel ought to be included in your oral history interview?
- MP Well, I think we have covered most of the things,. It is just that it is good being here, you work with ordinary people, people, you can see when you talk to, people you can see t that they are in the dark, they are defenceless, so it is something that is quite interesting and gives you that motive, you know if you had to go more, you think about the clients, the type of clientele, that we are serving, it is something that I am proud of.
- Int Okay. I wondered whether we could end the interview, if you could share a memory, whether it is working with JP Purshotam or a client, that you feel is really....epitomises what it means to do public interest law and to work for the Legal Resources Centre?
- MP Wow, I wonder whether I will be able to pick up on anything, there are so many memories. Well, I am unable to pick one now, but there was this client who came, you know the client was married in terms of customary law. They had the customary law certificate. Then things turned sour between her and the husband, the husband decided to take the marriage certificate, but this lady was so intelligent, she made herself a

copy and managed to hide it. The husband is now married somewhere and (he) is a very successful businessman. This client came, she managed to make a copy, then she kept it. She got the idea that in fact you can go and register the marriage. Then she went to take the customary certificate and she went to register her marriage and got her proper certificate. Then she came and asked me how is the marriage certificate going to assist her? You know what; I think it is very interesting. I think Mahendra (Chetty) assisted in the matter. There are few people who would do this. You are now protected in terms of the Recognition of Customary Marriages Act I think the marriage was in community of property so the husband is now aware that the marriage is registered and valid and she is entitled to her share. That is something that made me to laugh. You know we didn't expect that a woman from rural areas, and who is so old would do something like that, so that is one of the things that was interesting.

Int Just as a final point, you and I have spent a lot of today driving around Umlazi, which you were very kind and took me around and we saw two clients, Elizabeth Gumede and Gladys...

MP Mbutu

Int Yes and I am wondering in those two cases, in the last case, with Elizabeth Gumede , you had to interpret, how do you understand the situation in terms of how people in the townships understand their rights and how it is that people who may not have had education, etc, come to learn about a place like the Legal Resources Centre and actually understand that their rights can be defended?

MP Well, unlike before, I would say that things have improved now in the sense that there are quite a number of civil society organizations, so they at times hold workshops in rural in townships, even the LRC, if we have time or we are invited, we go out there and deliver some speeches and inform them about what we do and so on. Even before, we used go to the media, inform clients that this is what we do, our office is in Diakonia Centre and give them the entire details. So, I think that they are far much better equipped now and they are aware of their rights. Although some of them are, I wouldn't use the word ignorant but I am saying they are negligent, because you find that most of them when they come with their cases, it is very late. You have now to apply for condonation because everything is run out of time, so that is one thing I would advise that whenever they receive any legal document or anything that has to do with law, to take a step immediately, because at times, you find out a person has a good case, but she/he has been sitting there with a judgement for two years and you can't do anything. But having gone to those two clients, I mean, I am happy that they were able to stand up for what they believe was right. I would say it is a just cause. I mean there are few women who would be bold enough in terms of our culture, customary law to stand up and go out there. To some extent it is still regarded as a taboo to take someone to court, you are fighting this and that. They expect you to just sit back and relax. But I am glad. I am proud of those two clients for what they did t.

Int Thank you so much Moses, not just for the interview but also for taking me around to meet with the clients of the Legal Resources Centre, it is very much appreciated.

MP It is my pleasure. I have made a commitment to assist where I can.

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