

Top woman commercial lawyer graces Cape High Court bench

IN EARLY childhood, Nolwazi Penelope Boqwana, recently appointed to the Bench of the Western Cape High Court, dreamt of a career in law. No other options were ever on the table for consideration. She was, in this respect, greatly influenced by her late father who himself would greatly have loved to study law but lacked the opportunity of doing so. Nolwazi grew up in the Eastern Cape and finished her schooling in a township school, Khwezi Lomso in Zwide, Port Elizabeth.

Having graduated from the University of the Witwatersrand with B Proc LLB degrees, Nolwazi commenced her articles with a large commercial firm in Johannesburg. During articles she worked primarily in the fields of labour law, mining sector health and safety law and insurance litigation. Having qualified as an attorney, she joined a firm in Sandton and was involved in challenging and important commercial matters. One of these was her participation in a consortium of lawyers who conducted legal analyses on third cellular operator applications, on behalf of ICASA, culminating in the appointment of CELL C as South Africa's third cell phone operator.

She thereafter spent five years as labour law counsel to Anglo Gold Ashanti Limited. Her responsibilities included furnishing advice on labour matters, litigation, business strategy, particularly on the labour aspects in mergers and acquisitions, involvement in collective bargaining with trade unions, the drafting of company policies and protocols, and conducting investigations into mining accidents. She was also tasked with presenting in-house workshops and training sessions for the Anglo Gold South African executive team and business units on labour law matters and was part of the wage negotiation team and labour policy committee representing Anglo Gold Ashanti at the Chamber of Mines. She highlights her visit to Ashanti Goldfields in Ghana where she conducted due-

diligence on Ashanti's labour practices prior to its merger with AngloGold. In time, she also developed an interest in pension law, and was *inter alia* appointed as a trustee to the Mineworkers Provident Fund (one of the largest funds in the country formed in the 1980s by the National Union of Mineworkers and the Chamber of Mines) which she served for seven years, and also chaired in the early 2000s. That gave her valuable insights into pension fund laws and regulations, governance, audit and risk management, investment management, commercial contracts and into the vitally important effect that pension funds have on the lives and well-being of their members. She became involved in the retirement fund industry and served as a board member of the Institute for Retirement Funds for many years. She was later appointed as a substitute trustee of the Government Employees Pension Fund. She further completed a Management Development Programme with the Gordon Institute of Business Science, whilst at Anglo Gold.

On leaving Anglo in June 2005, she set up a labour consulting company in Port Elizabeth, which she later continued in partnership with a colleague. The consultancy focused on pension fund issues and also providing advice and training on labour law matters, disciplinary hearings, arbitration and dispute resolution. She was also a panellist at Tokiso Dispute Settlement for a number of years.

In 2008 she joined Thipa Incorporated (a Johannesburg based law firm) as a director, heading its Port Elizabeth branch and its litigation department. Her primary areas of specialisation at Thipa Inc, were pension law and employee benefits, financial services law and commercial litigation. Most of the litigation involved administrative and constitutional law. Her involvement in those matters meant commuting between Port Elizabeth and Johannesburg and travelling to different courts around the country representing

clients until she went back to Johannesburg. She was then invited to act in the Labour Court as a Judge and thereafter in the Western Cape High Court. After three spells as an acting judge in the Labour Court, and three in the Western Cape High Court, she was appointed to the bench on 2 December 2013.

Judge Boqwana's community upliftment interests have revolved mainly around educational projects and mentorship of young girls and women, including the SAICA Workplace Readiness Programme, the Cell C Take a Girl Child to School Initiative, Vision 4 Women mentorship programme and the Khwezi Lomso Alumni Trust Fund which raises funds for school upliftment. She was also a member of the South African Women Lawyers Association, and a trustee of the Mineworkers Charitable Trust Fund.

Her main leisure activity is running – she tries to hit the road as often as she can, no matter how taxing her day in court has been. She has found her time on the High Court bench immensely stimulating, bringing with it a realisation not only of the law's complexities, but also the vital importance of making sure that the legal system ensures that the citizens of the country are afforded meaningful and effective access to justice.

Serving on the bench presents its own challenges. These include the appreciation that law continues a vast and continually evolving area. Everyone involved in the administration of justice – those who appear before judges and the judges themselves – are, or should be, continually learning, continually acquiring a greater mastery of the law's complexities. Judge Boqwana is well aware of this truth. 'Judges should keep an open mind, and be prepared to listen to arguments presented to them, to evaluate those arguments and to always be open to persuasion,' she says.

'One of the most important things that counsel should realise is that it is their duty to assist the court, in arriving at a fair and just decision. Counsel should present arguments succinctly and as elegantly as possible, and not think that a particular submission is stronger if it is repeated over and over again. Counsel should consider the opposition case – if they cannot point out the weaknesses in the case put up by the other side, then perhaps the matter should not be in court at all.' 