

Judicial Services Commission Interviews

Friday 09 October 2015

Eastern Cape Division of the High Court (Bhisho and Mthatha)

Chairperson: Chief Justice Mogoeng Mogoeng

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Interview of Judge M Makaula

Chief Justice Mogoeng: You have made yourself available for the position of Deputy Judge President in Bhisho, is that correct?

Judge Makaula: Yes, that is correct.

Mogoeng: In your own words, tell us what difference you believe you will make if appointed. What changes will you bring about, what challenges have you identified?

Makaula: In fact, what I have to say is that whatever vision I have will be a vision which is discussed with the Judge President and colleagues as is normally the procedure followed in the Eastern Cape division. I need the Eastern Cape to develop, I need the judiciary to develop as well. And the vision I would have would be in the context of such intention of developing the judiciary. And in doing so, whatever idea I have will be discussed with my colleagues, it will be discussed with the Judge President and the relevant stakeholder.

Mogoeng: On that understanding that you are going to discuss it with the Judge President and your colleagues and other role players, just give us a sense of what it is. I will tell you why. Say you are running for President of any country, you must still articulate your vision, on the clear understanding that you are going to share it with your Cabinet and other members of your party if you have to at some point, you have already done that. But to help us assess your suitability for this leadership role, you should be able to say to us, for instance I know one of the problems in your province is case flow management. I also know that on occasion I have asked exact judgments older than three months, I get them. What are you going to do to make sure the backlog is alleviated, what suggestions will you share with the Judge President, how are you going to suggest that reserved judgments be disposed of expeditiously, how are you going to suggest that a pool out of which acting judges and hopefully permanent judges will be appointed, could be created, and other challenges that you have picked up, for example, what suggestions do you have to give with the fact that judges spend much of their time in research, what should be done in relation to increasing the research capabilities of the court in which you serve or the province and any other suggestions that you may have in preparation for this application or even beforehand.

Makaula: The vision which I have regarding administration; the Eastern Cape is very rural and very wide. It is a wide division, in that we have four divisions, that is Mthatha, Bhisho, Grahamstown as well as Port Elizabeth. Access to justice is key and important and the question of case flow management. There are case flow management initiatives, and what I need to say is that, if needs be, then there has to be a number of judges who have to be appointed in order to assist in alleviating the backlog, especially in places like Mthatha which is quite a busy division. We still need to get more judges there in order to assist with the backlog. There are courts that I would suggest to the Judicial Services Commission that this introduced to alleviate the backlog. Criminal cases for example, civil cases for example, and I think the case flow management is there to deal specifically with that. If one follows it to the letter, as well as the norms and standards, then I think the problem would be solved. Because the intention of the case flow management, or one of the main objectives, is that cases should be finalised within a year or nine months at most in the Magistrate's Court. So the implementation of case flow management is key to the problem referred to earlier. When it comes to the issue of reserved judgements we have a policy in the Eastern Cape where we deal with reserved judgments. If one has a problem you approach your colleagues, always keeping an open door policy, assisting those who have a problem. So referring to reserved judgments I would urge whoever has a lot of reserved judgments to approach colleagues, to approach the Judge President if he is overburdened with work.

Mogoeng: Are you based in Bhisho or Mthatha?

Makaula: Grahamstown.

Mogoeng: How familiar are you with the case law problems in Mthatha?

Makaula: I am very familiar. I was dealing with them this week, even last week, I was in Mthatha. Next week I will be in Mthatha I am in charge of case flow management, I have been to Bisho where the pilot project started. So I am familiar with the case flow management.

Mogoeng: The challenges raised by practitioners not so long ago in relation to the way cases flow. Do you know whether they still exist or have they been dealt with?

Makaula: They are, and especially in Mthatha we are getting there. They are being dealt with in Mthatha. Bisho is flowing because that is where it started. In Mthatha we had hiccups here and there, but it is definitely off the ground and practitioners have raised it to the fullest.

Judge President Sangoni: You understand fully that what you are seeking now is a leadership position?

Makaula: Yes.

Sangoni: Are you able to make any difference between the position you have been holding all the time and this position you are eager to get into?

Makaula: There is a difference.

Sangoni: What is the difference as you see it?

Makaula: The difference as I see it is that in this position you have to lead, you have to lead colleagues and you have to be very careful and tactful in leading colleagues, but ultimately you have to take a decision on behalf of the colleagues. You involve them, you deal with them, they are running independent offices but ultimately they are accountable to their leader.

Sangoni: Do you think there is any space for experience?

Makaula: There is. I have been a judge for the past five to six years. I acted for a period of three years before I was appointed in 2010. So experience counts.

Sangoni: In what way does experience count?

Makaula: It helps in the sense that you have been in the division, you know what your colleagues want. You have attended meetings, you have heard suggestions from colleagues, there are things that can be implemented which the colleagues need implemented. So I have been around my colleagues, I have attended several meetings with them, I have made suggestions, I know how the Judge President operates and I know exactly where the problem areas are.

Sangoni: What is the position with the judges in this region, that is inclusive of all the sects? Do we have any confrontation, are the relations good, are the relations bad. If there is any negativity how will you solve it?

Makaula: I can assure you that we assist each other in writing judgements if one has a problem. What is key is tea time, in which time we discuss our problems with colleagues. We solve our problems. We do not have any hiccups in our division at all.

Sangoni: Specifically coming to your position now and the comments we got from people, there is the question of outstanding judgment. They say that you are lax in dishing out judgments, and this is your weakness; this is what has been said.

Makaula: Not taking anything away from their comments, I hear what they are saying. But the problem I have with that is that there is no specificity to it, it is just a general comment I tried and I still am trying to determine what their issue is. Not taking away anything, if they say this is the concern, I am unable to respond directly to that concern, the reason being that there is no specific cases that I have been referred to which points to the fact that I am lax. I have said in my response, in the past two years I have battled, battle with my health, but despite of that I have written numerous judgments. Civil, criminal, reviews, I have dealt with them expeditiously, and I made a concession over the past two years and I still stand by that concession. But on Monday this week, because when I responded I was in Mthatha, I attended our first meetings in Grahamstown. I checked on my files, because I keep judgments which I have handed down, that is civil, review, as well as appeals and penal judgments. I went through those files and I could not find a case where I had delayed it. If they were saying I had delayed in case A for instance, then I would be in a position to deal with that. But as it stands now, it is a general statement which I really am unable to respond to.

Sangoni: Simply put, if that question is put directly to you, is there any time that you delayed giving judgments, what would be your answer to that?

Makaula: No.

Sangani: At any time?

Makaula: Not that I know of, and if this concern was anything to go by, surely they would have approached you.

Sangani: Let us forget about me and them, let us talk about you. This two year period that you are talking about, what are you saying about it?

Makaula: These past two years I have been battling with my health. There were slip ups. I realise that there were judgments that slipped which I attended to expeditiously as soon as it was particularly possible for me to do so. But even during that period, if anything is pointed out to me, to say I was lax in that certain judgment, I would have to check on that judgment, check what the reasons were for delay. But as I sit here I do not know of any judgment that have slipped through even during the period that I have conceded.

Sangani: But you are able to say that during that time it is quite probable that something slipped?

Makaula: It is, I cannot deny that.

Sangani: But you have not been able to trace it?

Makaula: I have not been able to trace it, hence I say in my response that I concede during this period. If anything is brought to my attention during this period, I will consider it.

Sangani: You realise that judgments that are reserved and have been outstanding for a long time is a burning issue?

Makaula: It is. The Chief Justice's office is serious about it. Our division is serious about it, because if you recall, in each and every meeting we hold in Grahamstown, there is an idea of outstanding judgments.

Sangani: Some of the other negative things that came out of the comments, the Black Lawyers Association does not support you, are you aware?

Makaula: I am.

Sangani: Are you able to give any specific reason for this?

Makaula: I honestly do not know why, besides the reason that they are saying that I am delaying judgments, which I have alluded to that I have a problem; if they referred me to a specific case I would be in a position to admit it. But other than that, I do not have any other reason why they would do so.

Sangani: The central point against you is that judgments are not taken out timeously. There has also been a question of your own judgments, reported judgments. What is the position with your judgments? How many reported judgments do you have?

Makaula: I have got more than five reported judgements. There are judgments on the law reports, that is on Lexis Nexis and I have judgements online.

Sangani: But how many?

Makaula: I have referred to five.

Sangani: Have you referred to them on your form?

Makaula: Yes, I referred to five.

Sangani: What page is that?

Makaula: It is on page five, where I refer to five. Even at 16.2 I said I had reported judgments and I annexed all the judgments to my application form. I realise that all of them were only referred to in case numbers but all of them were attached to my application form.

Sangani: Do you have any judgments that on appeal were overturned?

Makaula: Only one.

Sangani: Only one taken on appeal?

Makaula: There are only two that I know of which were taken on appeal and I have referred to them. In fact there are three, because there is this one that I referred to in 16.3, and 16.4. The other one I know of, which

went to a full bench, being the Intercape case, which I referred to. The only one overturned by appeal was the Focus CC case.

Mogoeng: Let us go past this one. Are you saying that you had judgments that were reserved but you did not know they were reserved until reminded or are you saying that you knew there were reserved judgements but only after practitioners had reminded you that you owed judgment did you rule a judgment? There is no clarity there, what exactly are you saying?

Makaula: What I am saying is this; I reserved judgments and I did not know about them.

Mogoeng: How?

Makaula: When you go to court, you go to court, and then you leave court and then you depend on your secretary to bring your files to you.

Mogoeng: When you go to court it is your own case and your own responsibility. You leave the court knowing you were doing this case, and knowing whether you have finalised it or not. You do not depend on your secretary to say Judge, you have this primary responsibility, you have to write a judgment for a reserved case., or something like that.

Makaula: What I am saying is, you go to court, you deal with whatever cases, if you have opposing matters you deal with those five opposing matters. If they spill over into the next day you deal with them. You do not take the files when you leave court, your secretary will bring the files to you and say these are the files you dealt with. Alternatively, you call for the files yourself. In the particular instance, I dealt with many reserved judgments during that period. I slipped, the files were not brought to my office. You keep a book for Port Elizabeth, a book for Mthatha, a book for Bhisho, a book for Grahamstown. Once you miss those cases, if you are in Mthatha this week, and you take along the files to Grahamstown, the secretary does that for you and you get the files when you get to Grahamstown. You call for them if you need those files. What happened in this instance, I dealt with the files in Mthatha. Instead of the files being brought to my office, apparently they were taken to the front office. Because I was busy and because I had this condition, I missed calling those files from the secretary to deal with those judgements. It was only when one of the firms of attorneys called that I realised that there must have been something wrong. I asked my secretary to go back to my books and check if there were judgments that had not been dealt with.

Mogoeng: Let me round it up and then we can leave it with whatever answer you provide. Starting from practice, if as an advocate you are given a brief, and there is something that still needs to be done in that matter, you do not rely on your secretary, if you have any, you simply will not have rest until you have done what you are supposed to do there. It will stretch your conscience, the same applies to matters that you haven't finalised. You will be troubled, you will have a record of it somewhere yourself. You will not have peace until you dispose of that matter yourself. It is your burden, and your primary responsibility. You do not depend on anybody, not even the Judge President, not even on the practitioners, to remind you that you still have this responsibility that still needs to be carried out.

Makaula: I agree with you hence I took responsibility for the slip ups. I took responsibility for it and I will not in the least shift the blame. The blame lies squarely with me, which is why I am taking the blame. If you check my response that is what I ultimately say. I eventually had to see to it that there were systems in place so as to prevent this happening again. It is squarely on me, I am not shifting the blame onto the secretary, but because the secretary works with me, in the instances when there is something forget she reminds me. The issue of the secretary comes to the question of me not having received the file from them. Ordinarily how it works in my office is that, once the files are reserved, she brings the files to my office. Hence I say with respect, once I picked up the slip up I had to make controlling measures in my office so as to guard against this happening in the future. Which is why I have needed to put measures in place. Having not received the files for me. It is solely my responsibility, I cannot shy away from that.

Advocate M Hellens SC: You have applied for a position of leadership so I will put a situation to you and ask how you would deal with it. Let us say you had a judge of whom you have had complaints that he does not give judgments timeously and his response was without specifics he just cannot answer. Then it is pointed out to him that he has completely forgotten his duty to litigants and completely forgotten, to the exclusion of ever considering them again, until someone complained that there were a number of judgments outstanding, then he described that to you, in I would suggest a light manner, as slip ups. What would you do with that judge from a Deputy Judge President position to rectify it, would you accept that explanation?

Makaula: I would not accept an explanation 'willy nilly'. If that is the position, that he says it was a slip up, as in this sense I am saying it is a slip up, I am not trying to minimise or play down the mistake. I would deal with him after asking him the problem, and then immediately after that, I would see whether he was lax or not

lax, and then take remedial actions. If he needs assistance then I will assist him, if it has to be reported then I will report it.

Hellens: But would you find that conduct to be lax?

Makaula: Depending on the circumstances I would find it lax.

Hellens: In these specific circumstances, you know I am talking about your own conduct. Would you view, through the eyes of the Deputy Judge President, that to be lax conduct? And the second question, the word slip up, maybe there is a language difference between you and I, but a slip up is an occasional thing; you slip up and knock over a glass of water, you do not slip up and forget your duty as a judge to give judgements.

Makaula: It may be a choice of words but in this instance I had a health condition which contributed immensely.

Mogoeng: Was it a mental condition?

Makaula: No, not a mental condition, a health condition.

Mogoeng: But it did not affect your mind?

Makaula: No, but as I indicated in my reasons I had to use drugs which ordinarily affected the system hence I was not able to drive for a period of nine to eleven months.

Justice M Maya, Deputy President of the Supreme Court of Appeal: Mainly, I just wanted to place on record that I have known the candidate since our administrative days and that I have discussed his candidacy with him. I just wanted to ask about your health condition- you say you battled with this condition for a period of two years. When was that?

Makaula: That was in 2013 and 2014, up to 2015. As I said I was only helped by Doctor Hugh from Port Elizabeth. The effect of what occurred to me, that is the seizures, apparently there was a parasite which was stuck in my brain and it had caused damage because it was a scar which remained there. The treatment which I had been using for that had an effect on my diabetes, a tremendous effect, because that was what led to my uncontrollable diabetes.

Maya: Have those health issues been resolved? What is your condition now?

Makaula: I am one hundred percent. It has been resolved by Dr Hugh who is a specialist in diabetes.

Maya: So you are able to perform your duties?

Makaula: Like anything, as of this moment. I am just back to my health as I say in my response.

Professor Nomthandazo Ntlama: You have a list of reserved judgments on page two after your CV. What is the status of these reserved judgements now?

Makaula: They were delivered, all of them. Only two are left now, they are still with the researchers, the last one. If I have a look at the list, it is the Trizone case. There were supplementary heads which were filed two weeks ago and then I dealt with them with the researchers, that is the only one.

Mogoeng: I am sorry to interrupt the Professor. Just be careful with your words because your initial response was 'they were delivered, all of them'

Makaula: Hence I had to correct myself.

Mogoeng: That is why I say be careful with your words, because your initial response was that there were no longer any reserved judgments, and subsequently you then qualified. That is not how a judge should respond.

Makaula: I get your point, Chief Justice. It is the Trizone one.

Ntlama: So if we do give you an opportunity as a senior manager in the division, how would you deal with the tensions between the judges themselves and the profession?

Makaula: Through meetings. You hold meetings with them and check where the problem lies and then you deal with the problem. There should not be tension between the two because they work hand in glove. You should try by all means to not have any tensions.

Minister M Masutha, Minister of Justice and Correctional Services: You have done your best to give context to the circumstances that were engaged with you earlier, but I just want to clarify one thing. You were

obviously aware during that entire period over those two years that you had an undesirable state of health. What measures did you take besides seeking treatment, which you did and to good effect, but what else did you do in taking measures to ensure that your health did not compromise your work. Did you go, for example to sit with you leader of court, the Judge President, and explain your health and make some arrangements that would ameliorate the unpredictability of your state of health?

Makaula: At some point I did.

Masutha: And to what extent did he come to your aid?

Makaula: I did consult with the Judge President, he is aware of the health conditions I had and even some of my colleagues knew. For instance, if I had a problem I would ask for a week off so that I could deal with whatever work was outstanding, and he would give me a period to do so.

Masutha: You associate the slip ups to your state of health. Did you at any point anticipate that that state of health could affect your flow of work and therefore take administrative measures to pre-empt any risk of you being found inderelict of you duties?

Makaula: No, I did not think of it like that. I was working. I did my work, all of the work assigned to me. But if I were to make an example, if it could be said that optimally I was working on 8 cylinders I was working on 6. And I did all that was necessary, I dealt with all the petitions that came through and all the work that came through my desk.

Masutha: How many slip ups are we talking about? Is it one, is it two, or quite a few?

Makaula: It is three. One was brought to my attention, so I asked my secretary to check if there were any other outstanding matters which I missed, and then she came up with two more.

Masutha: Let me ask the question differently. On how many occasions were incidents of slip-ups were brought to your attention?

Makaula: Only one.

Masutha: So you were only pointed to one slip up that had occurred?

Makaula: And then because of that one, I requested my secretary to check and then she came up with two more.

Masutha: Who brought the slip up to your attention?

Makaula: She received a call from the firm of attorneys.

Masutha: Could it be this matter involving First Rand?

Makaula: No, it is not.

Masutha: Because here the Black Lawyers Association uses this as an example, that you had problems with reserved judgements and in particular there is the First Rand Bank case. Can you explain to us exactly what happened there?

Makaula: First Rand Bank was a matter I dealt with even before I was appointed. I was still acting then.

Masthua: So it is not linked to your two years of ill health?

Makaula: No, it is not. Apparently when they went to file heads the file was lost. They have been trying to reconstruct that file, I have attached correspondence dating from 2010.

Masutha: In whose care was the file lost?

Makaula: It was in the front office.

Masutha: Who is responsible for the front office?

Makaula: it is the Registrar.

Mastuha: So the Registrar lost the file.

Makaula: Yes.

Masutha: How does that get associated with you?

Makaula: It is because I was hearing the matter. Then supplementary heads were to be filed. The secretary took the file to the front office. When my investigations went on that is what transpired. Because she was still expecting heads to be filed.

Masutha: Because here they refer to reserved judgements. I am just trying to understand, how does the reservation part relate?

Makaula: They were to file supplementary heads, judgment was reserved and an issue of law came before court. They had to file supplementary heads because the other party said they were taken by surprise, that is what my report says, that is my recollection of the matter and that is what appears on file.

Masutha: Just the last area I want to check with you. We are dealing with filling of vacancies for Deputy Judge President for the Eastern Cape. Is this the Mthatha office?

Makaula: It is the Bhisho office.

Masutha: How do you see the filling of this position and the creation rather of the two Deputy Judge President positions, in what way would it assist with improvement of service delivery in the Eastern Cape?

Makaula: It would definitely improve because the Eastern Cape is very vast. The Judge President requires assistance in terms of the Mthatha area and the Bhisho area. It would definitely alleviate because it is more rural than towns, there are localities which are surrounding these towns. So it will definitely assist in service delivery.

Masutha: If you see yourself in that position, how do you see yourself, given your attributes, being in a position to actually enable to office to actually achieve the objectives?

Makaula: With good relationships with colleagues and stakeholders. Justice comes from the people. If I have good relationships.

Masutha: It is not about if it is about what, in the sense that you should not tell us in theoretical terms but specifically.

Makaula: Specifically, I will work with the attorneys, the DPP office, the judges and all relevant stakeholder in enhancing service delivery.

Mr Narend Singh, Member of Parliament (National Assembly): I am trying to reconcile the information on your application form with the CV that you have submitted. I note that the application form was signed on 11 August, and in there under 16.5 you have got 'Please list any reserved judgments', you have got three down. And then you have 'see annexure', but you struck that out.

Makaula: No, that was a mistake by my secretary because I did send an annexure. Hence we had the discussion before.

Singh: That was a mistake, so there are three. But when I look at your CV, there are eight reserved judgments. I take it your CV must have been completed before 6 August because your last judgment you list there was August.

Makaula: I do not have that here with me.

Singh: It was part of your CV.

Makaula: Yes, I am trying to find it, Mr Singh.

Singh: I am just trying to reconcile this information. A few days after you put three outstanding but here there are eight listed. When did you deliver these judgments, because you say all are delivered except three? Some of them are 2009 and 2013.

Makaula: The 2009 one is still outstanding because they have not furnished some of the information.

Mogoeng: You mean judgment was reserved in 2009?

Makaula: Yes.

Singh: That is the concern with the specificity that the Judge referred to earlier, when he said that he did not know why they were complaining. In the document that we have got, they mention this case.

Makaula: I do not have the document. The one that was sent to me does not refer to that case.

Singh: It is under the comments. Judge Makaula is a senior judge having been appointed in 2010. The Black Lawyers Association has difficulty with his reserved judgments, particularly the First Rand Bank trading as West Bank case being reserved since 2009. The list of reserved judgments is of concern to the Black Lawyers Association, particularly if he were to be appointed Deputy Judge President as this would set a bad precedent. The Black Lawyers Association does not support his appointment.

Makaula: If you check on the responses I referred specifically to that case, and I annexed, I do not know whether the Commissioner has it. If one looks at the response, that matter does not depend entirely on me. It depends on the practitioners because there is still outstanding information. We have been in correspondence since then as I have intimated.

Singh: I am not questioning that particular reserved judgment. In general, you have three on your form, you have eight on your CV, a couple of days later you have completed all and you just have three left. I am not getting a clear sense of how many reserved judgments there are and when those last judgments were delivered.

Makaula: I have a list of when they were last delivered.

Mogoeng: I wonder why you have not been reported to the Judicial Services Commission. After 8 months, is it six months, after six months you must be reported for a reserved judgment. But now in your case it has been years.

Advocate Nkosi-Thomas SC: Is it important, would you say, for an applicant such as yourself to make a full and frank disclosure to us sitting here as a Commission, of matters, positive or negative, that may impact on your suitability or otherwise to be appointed?

Makaula: Unreservedly, it is.

Nkosi-Thomas: Are you satisfied that you have made such a full, frank and clear disclosure as far as your reserved judgments are concerned?

Makaula: I think I have done so.

Ms Thoko Didiza, Member of Parliament (National Assembly): In the position I assume that you have applied for, part of responsibility if you are given the opportunity, would relate to issues of management and also dealing with issues of administration. I think the issue you have in responding in respect of reserved judgments, what administrative capacity would you think would be necessary to be brought in?

Makaula: In fact, there are already in place. The Judge President requires us to submit a list every Thursday of reserved judgments, recently as far back as July. We had agreed unanimously in the division, once you reserve a judgment, your secretary is expected to send a list on a daily basis of reserved judgments to the Judge President's secretary. So there are safeguards in place now, if you reserve a judgment today the secretary must inform the Judge President's secretary.

Didiza: Do you think those are adequate, you don't need any others maybe?

Makaula: I think those are adequate, especially if one is reminded time and again of reserved judgments, by going to the meetings and by the secretary knowing it has been recorded. And the ultimate responsibility is with the judge.

Didiza: There has been some concern about the number of women in the judiciary and the call particularly by women judges themselves or women advocates but also civil society, about the need of ensuring that women participate in leadership positions. What is your position on women's representation in decision-making and what do you think they bring?

Makaula: It is still lacking. Women contribute a lot. It is still lacking in the judiciary and it is still lacking in our division. It has to be there, transformation, and women have to be appointed to responsible positions. It is not about sex that one has the capabilities and qualities. So there is definitely a need for women.

Didiza: What would you do to make sure that you contribute to that increase?

Makaula: Mentor women. Call them, ask them to come and act, they get mentored and they get recognised.

Mr Julius Malema: I am a bit reluctant because I want to go home and I want us to finish quite earlier, but there are certain things that my conscience does not allow to pass me. What is the purpose of writing a judgment?

Makaula: The purpose of writing a judgment is to resolve the dispute between the litigants expeditiously.

Malema: Maybe I should ask it differently. How do you get a judge to be accountable?

Makaula: A judge is always accountable, if I get your question correctly.

Malema: My question is a very simple one. How do we get a judge to be accountable? Because whether you are appointed a judge, you are a public servant, you are serving the people, and you have to be accountable to them. So how do we get you as a judge to be accountable?

Makaula: If a judge does not do his work then he is reported to the Judicial Services Commission. That is my take, I do not understand if I am responding to the question appropriately.

Mogoeng: I thought the Commissioner's question was, primarily, how do judges account.

Makaula: They account by doing their work. I do not know whether I understand the question, Chief Justice, if you could correct me.

Mogoeng: I thought we accounted primarily through our judgments?

Makaula: Well I did not understand it that way. Hence I was saying we have to deliver the judgment and resolve the dispute between the litigants.

Malema: You did not understand that judges are accountable through their judgment?

Makaula: No, I did not get that that was what you wanted.

Malema: Let us leave what I wanted. You agree that judges are accountable through their judgments?

Makaula: Certainly I do.

Malema: And by not writing a judgment you are unaccountable?

Makaula: Certainly.

Malema: And you have been unaccountable from 2009.

Makaula: Not really.

Malema: On this matter, you have just agreed that you have not been accountable from 2009. You are a law unto yourself.

Makaula: If I could refer back to that, I would only write a judgment if I have a file. If that file is missing, I would not be able to write a judgment. Furthermore, if the practitioners fail to reconstruct the file or are unable to reconstruct the file still, I would not be able to deliver that judgment.

Malema: Let us leave 2009. What is leadership to you?

Makaula: Leadership is to lead the people you are working with and to take responsible decisions in respect of the office you are leading.

Malema: You would agree with me that amongst others leadership has got a responsibility to lead by example.

Makaula: Definitely I agree.

Malema: You do not lead by example, and therefore would not qualify to be a leader. Am I correct?

Makaula: It is not my call to make.

Malema: I am making an observation. You wrote here eight reserved judgments, later on three, later on two, I don't know what the number is now. SC Nkosi-Thomas says do you think it is your duty to be open and disclose everything else about yourself. The question emanates from the fact that we do not actually know the status quo of your reserved judgments as it is now. I am saying, all these judgments and the explanations you have given, doesn't place you as an exemplary leader. I put it to you because I am going to argue that point, and I do not want someone to say that you are unfair you didn't put it to him. Would I be correct to say that this commission, this body, cannot recommend to the President a person who has eight reserved judgments and among those was a case held in 2009?

Makaula: If the explanation I have given is anything to go by then I would leave it at that. Even in respect of these eight, in fact, I will just leave it at that.

Malema: Mt brother, you know I fight very hard for black people, but I don't want what you are doing to us here because you are making our work very difficult. We have a problem here, of a judge who says I had forgotten my judgment and forgotten to deliver my judgment because I do not get reminded. Who must remind you? The secretary must give me the file. Later on, it was that the cases were not properly assembled because a file went missing and therefore the attorneys have to construct the file, there is nothing I can do. With all the explanation you have given here, would it be correct for the commission to still recommend you to the President? The Chief Justice says I am sure that you should have been reported to the committee that deals with such conduct. Do you still want us to appoint you as Deputy Judge President?

Makaula: As I say, it depends entirely on the Commission. I am an interested party.

Malema: But we have opened your mind, we are pointing to certain things. You are a judge, you ought to be an honourable man. You ought to concede when the truth is pointed to you and facts are presented before you, no matter how interested you are. You are required at all times to be objective and ensure that justice is done. Would we be doing justice to the people of South Africa if we appoint a man with such reserved judgments and with no proper explanation?

Makaula: With all due respect, Commissioner Malema, let me go back to this. I conceded that the reserved judgment lies squarely with me. Beyond that I am unable to say anything.

Mogoeng: For what it is worth, I have a reserved judgment. Wherever I go, even now, I carry that material necessary to finalise that judgment, I do not have peace because it has not been delivered. That is for what it is worth. You are excused.