



JUDGES MATTER

Judicial Service Commission interviews

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KwaZulu – Natal High Court: Deputy Judge President

Interview of Judge B J Mnguni

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Chief Justice Mogoeng: Good morning Judge Mnguni. For how many years have you been a judge?

Judge Mnguni: Since the 1st of January 2009. So about six and a half years.

Mogoeng: Is it fair to say you still have a long way to go before you retire?

Mnguni: I suppose so, unless the almighty decides otherwise.

Mogoeng: That won't be retirement. Share your leadership vision for the division with us.

Mnguni: Prior to joining the bench, I was an attorney for almost fifteen years. But before that I worked for legal services at the University of Zululand, where I met the late JP Msimang, and after finishing my LLB, I joined his firm at Pietermaritzburg. In 1994, I qualified as an attorney, and we amalgamated with Shepstone Wylie Tomlinson in Pietermaritzburg. As the years go by, I became one of the partners in the firm, and obviously as a partner you take responsibility in the management position. I became part of the executive committee in the firm, which made sure the firm was run smoothly at all material times, and that we don't find ourselves at odds with the Law Society. Then the firm changed its name, even at that point I was still a senior partner in the firm, also entrusted with a leadership position, a member of the executive committee in the firm. I then in 2008, well before that I was approached by the retired Judge President Tshabalala to come and do acting in the High Court. Later on he requested that I make myself available and then I did, and I then joined the bench.

Mogoeng: Where do you see yourself taking the division? What are the challenges? And what solution will you bring about? What is your leadership vision?

Mnguni: The difficulty that I had when I joined the bench were that I found that, because I was also on the liaison committee of the Pietermaritzburg Law Society, dealing mainly with the High Court matters, I found that we as attorneys and advocates often complain about the services we get in the High Court. Then, when I joined the bench, JP Tshabalala and Msimang requested me to be part of the committee to try and resolve the problems that the High Court was facing. Immediately after my appointment, I became a part of that. Even though I was one of the junior judges at the time, when the heads of court decided that a committee be formed which will try and see if they can source acting judges, I became part of that committee despite the fact I had almost a year in the bench. So I've been involved in the leadership since then, I've been involved in many committees in the running of the court, one of which would be the human resources committee, which would deal with people on an almost daily basis. With that in mind, I think I have acquired necessary skills to know how the courts should deal with the problems or challenges that the High Court finds itself facing.

Commissioner Malema MP: Chief Justice can I just come in? You normally do it very well, but I think the candidate is not well settled.

Mogoeng: I think my mistake was to assume that because there are experienced judges applying for a leadership position like Gyanda and Madondo he was settled, but I think we should start there. We're not the same. You acted acting as Deputy Judge President, for how long?

Mnguni: Well, my acting stay started on I think 25th of January 2016, and it will end on 30th of April. This year.

Mogoeng: Were you comfortable playing that leadership role?

Mnguni: More than comfortable, in the sense that I was involved in the running of the courts, although at limited level, so there was nothing new I couldn't overcome. So I was aware of the difficulties that we face as a division, so it was much easier for me to step in and try to resolve whatever problems I come across.

Mogoeng: Did you participate in the activities of the Provincial Efficiency Enhancement Committee [PEEC], or not? I know it is the primary responsibility of the Judge President.

Mnguni: Not yet, I was not given that opportunity.

Mogoeng: And in the course of acting for this short period, what problems did you pick up that require attention? Whether it is an issue of reserved judgments and how to deal with them, whether it's an issue of access to justice in terms of circuit courts and so on, or the proficiency in languages by interpreters, what kind of problems did you pick up there that you think that require attention going forward? Issues like ensuring there is proper gender representation, and what could be done to ensure that there are more women, not only in the KwaZulu-Natal division of the High Court, but throughout the country, and what can be done, how can people be encouraged to prepare themselves at some stage for assimilation into the High Court system, and what sort of challenges for instance in the relationships between judges have you picked up, and how do you think these can be addressed? I'm just giving examples – that might not apply to KZN.

Mnguni: I'm not sure, the Chief Justice referred earlier to the Provincial Efficiency Enhancement Committee, what I came across when I was acting, in a way, I thought to myself if I look at section 8 (4)(c) of the Superior Court Act, we don't seem to be doing what that section wants us to do.

Mogoeng: Just remind us all what that is about?

Mnguni: That section gives the Judge Presidents responsibilities to coordinate the judicial functions of all courts, which also refers to the magistrates courts. I haven't come across a committee which deals directly with the office of the Judge President in relation to that section.

Mogoeng: If I may of help, Judge President Jappie was in charge of that committee, I know because when I was conducting workshops around the country, still in Mafikeng, he was in charge of it. He is involved in it even at a national level. It brings together all the key role players in the justice system to tackle the challenges that inhibit performance. So that is happening.

Mnguni: Yes, but my concern is that there isn't any committee which deals specifically with issues relating to the office of the Judge President and the magistrates.

Mogoeng: No, it is that committee that is chaired by the Judge President that deals with those issues. It exists, it has been in existence for years now.

Mnguni: That's one of the issues, but when it comes to the issue of transformation, I've mentioned earlier on that I've been, since 2010, at some point, involved as a member of the committee that deals with identifying acting judges. I know the problems insofar as the issue of females is concerned, the problem being that it is difficult to source, especially those females who are busy in private practice, because they don't find it attractive to join the bench. I think we need to have, somehow, a committee

within ourselves, because also what becomes apparent when the person is acting is that sometimes they don't have the necessary assistance, and that is one thing that drives people away from coming to the bench to act. I think we need to have a committee that will assist in alleviating that problem.

Mogoeng: Well, how would you deal with it as a leader? Let me tell you what I do at the Constitutional Court: it does not matter whether they come from the Supreme Court of Appeal or the High Court, or some specialist court, as soon as you arrive, knowing that you are not familiar with the operations of the court, already, at least two colleagues are identified to assist, but with the assurance that all other colleagues are also willing to assist. So what system can you come up with, or would you suggest to the JP, to make that mentorship a reality?

Mnguni: Yes, that's exactly what I was going to suggest, because it doesn't happen in our division that you get assigned to particular judges to try and help you. That I think is very important, because when you're acting, you're likely along the way to make mistakes, but we must understand that, whatever mistakes you make in that process, it's a mistake of all of us. So in that sense it is important to assign people to make sure that we try to minimise the occurrence of that mistake.

Judge President Jappie: You and I know each other for a long time. When you joined the bench, very early on I got to know that both Judge President Tshabalala and Judge Msimang relied a lot on your help. Is that so?

Mnguni: That is true.

Jappie: And I know that you were often involved in various committees as far as the High Court was concerned. You may not have been in the leadership position, but you were involved, one, in the liaison committee with the attorneys, is that correct? You were also on the committee dealing with acting judges ...

Mogoeng: JP, maybe he should tell us what his involvement is, because that can be misunderstood as some kind of leading question designed to make the path smoother for him.

Mnguni: I have been involved in a number of committees as the JP has indicated. One of the key committees which I was requested to serve on was the committee that relates to case flow management. In fact, the reason why I was invited to join that committee is because when I was still in practice, I dealt among other things with road accident matters, and they seemed to cause problems by clogging up the court roll. We then came together as committee members, see whether we could come with a solution, try and resolve that problem at the level of the case flow management committee. As a result of that, we came up with a directive, which has helped us, as the court, to resolve matters, it was initially designed for the RAF matters, but as time went on, we have also used it in other civil matters. Which is helpful, because now, if you ask me today to allocate you a date in a civil matter, you can get a date in May or June. That has helped, it is as a result of the contribution I made in relation to that aspect. Also, I know that we have a problem with criminal matters. We also tried to implement the case flow management in relation to the criminal matters. What we decided as a committee was that, we used to get a calendar two or three weeks before you go, for instance, on circuit, or you're sitting as a court. But we said to ourselves that, in order for us to be able to facilitate, and try and see that when judges go out on circuit, they have work to do, we have to try and do case flow management at a central level, which mean in that instance that the Judge President, with my assistance, will deal with the matters, and if we feel, of course we have to invite all the legal representatives, including the NPA, to make sure that, when you send a judge, for instance, out at Mthubathuba to do circuit court, the matter will immediately start on the first day of the circuit. Unfortunately the system was not implemented after JP Msimang passed away, and I believe it's one of the systems that we have to bring back, to make sure that you don't send a judge out unless you know that a judge is going to be working in that circuit.

Mogoeng: I thought the JP's implementing judicial case management that facilitate exactly that?

Mnguni: We have, but the problem is, when you're leaving it to the individual judges, it becomes a problem, because it doesn't get done properly, some of the judges don't do it properly. That's why I believe we have to do it at a central level, so that you know, when you tell the NPA that look, I'm not giving you a judge unless I'm satisfied that, when I send the judge out, the judge will have some work

to do at the circuit.

Jappie: The division as such is now obliged to enforce norms and standards. What can you, as the DJP do, to ensure that the judges comply and stick to the norms and standards?

Mnguni: If you want to assume the position of the DJP, you need to have that energy to make sure that, not only at High Court level, because it is also the responsibility of the JP to deal with matters relating to the magistrates' court, to make sure that everything goes smoothly. It is also important to get someone who is going to go down in the trenches, and make sure that the work is done at that level.

Jappie: Well, how would you go about doing that?

Mnguni: I've already referred to committee that is in existence. But I honestly think that, if we want to have effective way of dealing with this aspect, you need to do more, you need to have more communication with the President of the magistrates' court, as well as the chief magistrate in the magistrates' court.

Jappie: Well, let's just stick to the High Court for a minute. How would you describe your relationship with the rest of the judges?

Mnguni: As far as I know, I have no problems with any of the judges.

Jappie: As a DJP, to some extent you would have to lead from the front, and you would have to be a mentor to other judges, particularly junior judges. Do you think you can do that?

Mnguni: I'm doing that at the level of participating in the committees that I'm involved in. In any event, if you as a DJP allocate work, and it is difficult for me to accept that you can allocate a file to a judge without knowing, you as a DJP, what is going on in that file. Which basically means that, for each and every file that comes to you, you've got to at least go through the file, and know the complexities involved in that particular file. It also ties in with the fact that you also have to know the strengths and weaknesses of the judges that you have.

Jappie: Of the three candidates, you are the most junior. Do you think that that would be a hindrance, in the event of you getting the position?

Mnguni: On my side, I don't think so. In fact, if you look at my history, right from the outset when I joined the High Court, I have been involved in the committees that are set out in the questionnaire. And, none of the senior or junior judges objected to that. And the committee that deals with the appointment of acting judges is a very crucial committee, but none of the judges objected to that.

Jappie: The last aspect is the question of collegiality. What role do you think you can play as far as that is concerned?

Mnguni: I think the JP will know that, when we joined the bench it was about five of us who were appointed almost at the same time, and when we arrived at High Court, we found that the judges had a tendency of not mingling. We then started engaging with them, and said that we need to look like ordinary citizens of this country, behave in a manner that an ordinary human being will behave. And that actually worked. It is important for us to socialise, and we tried to form a social club for the judges so that we could go out and enjoy ourselves, as judges.

Jappie: If you are given the position as a DJP, do you think that you can do the job?

Mnguni: Judging by what I've been doing since January, I do not foresee a problem.

Premier Mchunu: From what you said, acting from January up till now, what have you come across that would have prepared you for this position of DJP?

Mnguni: I have already said that I have been involved in a number of committees. Some of these matters that you come across in these committees, and it takes you time to come up with solutions. It

is much easier, when you are in the management, to make sure that you have those matters resolved. Let me give you an example: we had a problem with the issue of interpreters. When you want an interpreter, they will tell you they will advertise a post at level five, which becomes a problem for us as a High Court, because it will then mean you will get an interpreter without any experience. At that level of the High Court, you don't need a person who you're going to teach how to do the job, you need someone who's going to fit in and do the job straight away. I believe, if you have someone from the street, definitely it will compromise the justice system and the fairness of the trial.

Premier: As a judge, what has tried you, what has tested you, in the past - 2009 until now?

Mnguni: I find difficult that we don't seem to go out of the office to the periphery, in order to meet the marginalised and the previously excluded.

Premier: I'm fine with that, that is what you don't do. But I am talking about you, not as a judge, but *you* in particular, what do you believe has tested you and tried you?

Mnguni: It was the journey I went through in my education. Unfortunately, when I finished my matric, I didn't have money to go to university. Out of the blue I was helped by a family, which put me through to the university for three years, and that is why in my CV I also mentioned that I worked for them. Also, coming to the bench: it's a bit different from having your own company, where you associate with people who are like-minded. You come across people who you have never met before, yet you are expected to work with them.

Premier: When you responded to the question of committees, I got an impression that you are not aware of the committee that is chaired by the Judge President, that addresses exactly what you were concerned about, and I didn't seem to find the reason why you don't seem to have been aware of that particular committee.

Mnguni: No, I am aware of the committee. But I believe it doesn't deal with the pertinent issues relating to the courts, the relationship between the office of the Judge President and the offices of the magistrates.

Premier: Other than what you indicate in your CV as your leadership role, like in committees, what other leadership role have you played in society?

Mnguni: I am also a member of the St Vincent De Paul society, which is actively involved in helping the indigent people with legal advice.

Premier: How would you enhance the integrity of the division, if you get appointed?

Mnguni: That's precisely why I said earlier on that I have a problem with that committee, because I don't believe there's enough interaction between the heads, when I say the heads I'm talking about the chief magistrate, the president of the regional courts, and the JP. When the Premier delivered his speech on the 26th of February, he mentioned that people have lost trust in the criminal justice system, that's precisely why I believe we have to go out and do more to restore that relationship, because people must believe that the courts are there to help them resolve their differences. Once you lose that trust, obviously you're working on an empty shell.

Mogoeng: Isn't it your experience that sometimes even leaders, when they say the judiciary, they mean the police, prosecuting authority, we are just one thing?

Mnguni: It is true, but that is why we have to try. We are now in a new era, given by the fact that we have a separate Office of the Chief Justice, so we have to go an extra mile to defend our integrity.

Commissioner Fourie: In your professional career: you have been an attorney for fifteen years, and you were a director of a big firm in Pietermaritzburg. Then you became a judge on the 1st of January 2009. So you've been a judge for just in excess of seven years. Where does that put you in the seniority levels of your division?

Mnguni: It is difficult for me to say. We have a system, but I did not check on that.

Fourie: Are you more or less in the middle?

Mnguni: Probably just above the middle.

Fourie: And you don't see that as a problem?

Mnguni: No, I don't see that as a problem.

Fourie: You have been on four committees since you have been appointed as a judge, and you're still on them. One of which is the appointment of acting judges. Can you just tell me what that committee does? And how do you go about it?

Mnguni: We come together and see, depending on which direction we want to go, and decide based on the role what sort of person you want in respect of that.

Fourie: Perhaps I can narrow the question: one of the previous candidates said there's a challenge to get women to act, and despite appeals and requests to many organisations, it remains a challenge. Do you agree with that? And if so, what does your committee do to deal with that?

Mnguni: I do agree. The problem is that as a committee we have always had to dig deep to find the people we want to appoint. When I became a judge, we had one African female judge. Within two or three years we managed to get at least four, so that tells you that we have to dig deep because we want to transform the bench.

Fourie: And do you find them?

Mnguni: We do, if you go the extra mile.

Fourie: Would you say you are satisfied with this committee?

Mnguni: Yes, I am satisfied with the committee. The pay is not always good enough to attract the top female advocates, but within those challenges we are able to find competent people.

Advocate Hellens: Judge Mnguni, imagine your Judge President is away on long leave and now you're running the division. You have got a judge that has eight judgments over three months that have been reserved, and some are five, six or seven months, one's a year overdue. There have been complaints from attorneys. What would you do here?

Mnguni: There are two approaches here. The first is to approach the judge and find out what the problems are. As a manager, you have to bear in mind that you have a responsibility to try and help that particular judge.

Hellens: Yes, but so what do you do?

Mnguni: You try and find out exactly what is the problem. You try and assist, and if it is within a session you try and see whether you can get one or two days for him to do that judgment, so that he can report to you that he has done the judgment within those days.

Hellens: On the scenario I'm painting to you, he hasn't come to you or the JP to say look, I've got these problems which are preventing me from delivering justice within a reasonable time. You're going to him, and asking him why he is not delivering justice within a reasonable time. Do you take such a soft approach? Can anything hold up a judgment, barring illness, death, something tragic, as long as that, and is such a soft approach appropriate?

Mnguni: I don't think so. As I said, you have a responsibility as a manager to find out what is going wrong in that particular judge. And also, you have the mechanisms to report the judge to the JSC. I would firstly investigate why has it taken such a long time for that particular judge to deliver that judgment, and if I am not satisfied, because there might be a reason. Other than that, the only way you can deal with it, because of norms and standards, you have to report the judge, simple is that.

Mogoeng: No but you know it's not after three months that you would report them?

Mnguni: It is after six months, yes.

Advocate Ntsebeza: What is your view about the allocation of judges to the circuit court in terms of seniority of judges, demographics etcetera?

Mnguni: Honestly I believe that each and every one of us should do a circuit court. I know that as Judge President and Deputy Judge President it would be difficult for you to go on circuit, but ideally, because if you keep sending the same people on circuit, you are creating an impression that a particular court is only good for some judges. So you have got to have everyone participating in the process, because we're trying to build a new society.

Ntsebeza: Second question came from the KZN Bar Council, which includes the AFT, and I've been putting it to the other judges, and they have been supportive of all of you three judges. There is a remark that has been made by that KZN Bar Council, and it is to this effect: Judge Gyanda is an Indian male, the division is headed by a coloured male. Now, is this something that we should take into account? If so, why? If not, why not?

Mnguni: I believe so. It ties with the answer I gave earlier on, that when you keep sending particular judges, African judges for instance, to a circuit court, you're creating the impression that that court is only good for those judges. In the same way that, if we don't involve African people in the administration of the courts, we'll create that impression that they're not good enough to administer the big offices like the High Court.

Commissioner Nyambi: I'll link it with the last question. In a situation where you have a white candidate and an African one, and the white candidate is exceptionally good in terms of performance, the interview, and the CV, how can you deal with that situation, if you can advise us?

Mnguni: Invariably you don't look at that only, you have to look at other factors which might persuade you in taking the decision, because that's what the Constitution demands of us. Which in fact, you look at the racial composition, the gender issues, all those issues, they come directly from the Constitution.

Nyambi: No, I am very specific here. I'm saying we're in a situation, we have two: the white one and the black one, and the qualifications are almost the same. But the performance, the African one, it's below expectations.

Mnguni: If it is below the par, I don't think you should appoint the person, because at the end of the day, it is the integrity of the judiciary that is at stake. But if the performance is fine, he has some certain limitations, you then resort to the Constitution.

Nyambi: I'm interested in unity in the division. Have you had some discussions with other candidates before coming here, about this process?

Mnguni: No. You mean whether they have tried to persuade me to support me in the appointment?

Nyambi: It's a specific question: have you discussed the possibility of any outcomes of this process with the other candidates, because you are from the same division?

Mnguni: No, we have. In fact, we always joke about it during tea, saying that may the best person win. Not with the idea of trying to solicit support.

Nyambi: Share with us your understanding of judicial accountability.

Mnguni: That's exactly what I spoke about earlier on, that if, as judges of the division, we have the norms and standards which we have to try and comply with. If you look at the norms and standards, they speak to the accountability and independence of the judiciary. So you've got to try and stick to that.

Commissioner Malema MP: My first question is about this environment here. How do you find it? Is it intimidating, is it friendly?

Mnguni: It did initially, until you intervened.

Malema: I'm worried, I haven't seen any improvement even after my intervention. What is wrong, Judge?

Mnguni: No, there's nothing wrong.

Malema: So you find these cameras, the public, the judges here and everyone else, is it conducive for you to give us the best of you in this interview?

Mnguni: In a way it does intimidate you, because you're facing 23 people, it does intimidate you, and more so when you see the cameras.

Mogoeng: On a lighter note, wait until they interview you for the position of Chief Justice.

Malema: Well, why would a judge who's applying for a position of leadership, get so easily intimidated like that? Because you're going to have to preside over senior judges, some of them you looked up to them, some of them you admired them, some are junior, and you have to show leadership, at all times.

Mnguni: That is quite correct, but you must also bear in mind that you come to an environment that you're not familiar with. It's always going to test you, irrespective of how confident you are.

Malema: Now I want you to just be specific, in the KwaZulu-Natal division, what are the challenges?

Mnguni: I have already mentioned one challenge that we don't, as an office, we don't seem to go out to the people and make sure service delivery is taking place.

Malema: No, I am not talking about those things, going to the people is our responsibility as politicians. You as a DJP, what are the challenges in the courts? Some person was saying toilets are not working, and other people were giving themselves an opportunity to go and fix toilets there. Now, what are the challenges? Aircons are not working, windows are not opening, the cleaners don't clean the courts, the judges don't give judgments in time. The Chief Justice tried to ask you that question and you keep on giving not so satisfying answer. We want to know about the court, we are not in Natal, I come from the rural province of Limpopo, so I want you to give us the picture of what are the problems in KwaZulu-Natal.

Mnguni: Indeed, we have challenges in the cleaning of the courts and all those, but having said that, I don't think they will hinder you as a judge in performing your function. To a limited degree, they may, but if you're serious about your work, I don't see why I should not sit in court when the air-conditioner is not working.

Malema: I said to a colleague I want to help you, but you can't help yourself. You are answering a question I am not asking. I'm asking Judge, for a moment just leave yourself, and give us the challenges of KwaZulu-Natal division? Let's simplify it, can you give us six challenges in KwaZulu-Natal division?

Mnguni: The first one is that we have lost one female judge, we have to try and get a person to replace her. Unfortunately, it seems we are not increasing the number of African judges in the bench. We seem to be replacing African judges with African judges, so the number is not increasing. So those are the things, I think we have to go an extra mile, see if we can get African judges, especially females, to our bench.

Malema: I was going to ask you for a vision, but you can't give me a vision if you don't know challenges. The last question is: your inability to speak to questions here and the fact that you continue to appear unsettled, does that have to do with your seniority? Does it come as a result of your inexperience, you are so junior that you are unable to come across as a person who is readily

available to take leadership?

Mnguni: I don't think so. Administration is a totally different ballgame.

Malema: So what is an advantage of appointing a junior judge? We dealt with two senior judges before you. What advantage do we have in appointing you? You know very well that in the legal fraternity, seniority matters a lot. How do you even want to compete with your seniors like that? Normally people are given some form of respect, and if they come before you, let's give them a chance, in eight years I'll be more prepared to take over leadership. Unless you're saying you're bringing something exceptional, which we can't find in these two senior judges.

Mnguni: That is precisely what I was trying to say. The advantage that I have is that I'm younger, I still have a long way to go, we must have, with the Judge President, a shared vision. The JP will leave, and I still have to carry that vision forward.

Commissioner Singh MP: I note Judge that you've been nominated by the Centre for Legal Services and the Black Lawyers' Association, and the Black Lawyers' Association make a point of saying: he has matured as a judge despite his relatively young age. Do you think this age factor is a plus for you, it's a negative for you, given that if you are appointed, you have to hit the road running, there is no time for a learning curve?

Mnguni: I really think that my involvement with the workings of the court right from the onset, I am well equipped to take over and run the division in the event of the JP deciding to retire, because I know exactly what challenges we face, how to deal with them.

Singh: I note that one of your referees is Dr Donald Mkhwanazi, who I know quite well, he is a businessman. What would be the reason for Dr Mkhwanazi to be a referee for you?

Mnguni: Both of them, with the late Judge Msimang, they shared one vision, black excellency.

Singh: But Dr Mkhwanazi now, what is his link with you? Do you have any links with him, have you acted for him?

Mnguni: No.

Singh: But he is one of your referees, and I suppose with referees, you ask them to be your referee.

Mnguni: If you ask him, he will give an honest opinion about me.

Singh: So you asked him to be a referee in this case?

Mnguni: No, no, well he knows that in my CV I mention his name, because if you want an honest opinion about myself, you'll get it from him.

Commissioner Notyesi: I could see that when you were asked about the PEEC's, and the fact that your JP is actually participating, you were not sure that your JP is actually in that structure.

Mnguni: No, I'm sure he's in that structure. That's why I made a distinction, I said to me, that structure doesn't deal with pertinent issues relating to the relationship between the office of the JP and the heads of court.

Notyesi: It was the Chief Justice who actually said to you, who drew your attention to the presence ...

Mnguni: No, I mentioned specifically that I am aware of this committee, but I don't think that, in the relationship that we intend to have, its achieving the purpose, that's what I said.

Notyesi: I further heard you saying that well, there is a need for a committee where heads of courts must be present, am I right? Other than the PEEC's, you need a structure where the President of the Regional Court, and the chief magistrates must be present?

Mnguni: That structure is very important. You must bear in mind that one of the challenges that we have is that it is difficult for us to get female judges on board. And you'll find that in Regional Courts, you've got quite a number of female judicial officers who, if you have that relationship, would make it much easier to get the assistance of the President of that court.

Notyesi: My pint exactly, because in the PEEC's, which is an emphasis, Presidents of regional courts, chief magistrates, head of various divisions, Judge President, they sit in that structure. So the structure that you propose, I do not know whether you know exactly the PEEC, that's why I have a problem.

Mnguni: I know. The problem is the structure we have, right now is that it involves all the stakeholders. I'm saying, at a level of where you'd want to source judges from the regional courts, from the district court, you need to have a constant communication with the President of the Regional Courts, and the chief magistrate.

Notyesi: What do you understand of the assignment of duties by the Judge President to the Deputy, in terms of the Act?

Mnguni: Well, insofar as relating to the functions that the Judge President does, automatically you have to deal with the issues that the JP will have to assign you to do, but also, you are placed in a position where you personally have to go out, with the assistance of the JP, and try to identify people that you'd want to bring on board to act. Because you're part of the committee that appoints acting judges.

Advocate Motimele: The National Efficiency and Enhancement Committee is a very important transformative structure put in place, compared to the old heads of courts meeting. In order to ensure that it achieves what it sets out to achieve, how would you propose that it its minutes, the decisions taken there, are shared with the division, and also afford the division the opportunity to feed in through the JP and interrogate what is discussed there?

Mnguni: It's a very key committee. That's why I say, if you make a decision in that committee, you've got to be able to disseminate that, whatever information that committee deals with, to the judges. We're looking at having one single judiciary, you can't have a situation where people speak with both ends of their mouth. That's why it is important that there is a constant communication between the committees and the divisions, as well as the magistracy.

Motimele: Simply put, does the Judge President share the minutes of that committee with the judges in the division?

Mnguni: Yes, he does.

Commissioner Modise: Earlier on, responding to the first set of questions put to you, you conveyed a sense of unease. You said that you need to behave like ordinary people of the country, you also said that you feel you don't get the opportunity to go to the periphery. Now that worries me, because I don't understand what you meant by saying go to the periphery. You also said you do not socialise, and there's a need for you judges to socialise. One of your colleagues earlier on did say that on certain days you come together, you have tea together, you then meet as judges and share information. Is that the socialising you are referring to?

Mnguni: No, we had a social club where we'll, for instance, try and arrange lunch at a certain restaurant, and all go there and have lunch together, as judges.

Modise: My unease comes to, maybe being a lay person looking at the judiciary, you expect them to behave in a certain manner. You do not expect to see judges so open, and socialising in such a manner that they can be lobbied. So what is the socialising you want as a judge?

Mnguni: We as judges we socialise and share ideas about our work. Not that we go to nightclubs, I didn't mean to say that.

Commissioner Didiza: I read the recommendation from the BLA, and on the interpretation committee

which you are part of, they say the committee deals with ensuring that the language service are on point. And as you'll know that language development, particularly isiZulu and some of the African languages, has not been as speedy as we want, and at times, translating technical terms becomes difficult. What has your committee been doing such that BLA can say you are on point, to ensure that some of these challenges that emanate from translation, as it does at times, are dealt with, and how would ensure that some people, whose mother tongue is not necessarily isiZulu, will be able to be helped, particularly when they preside, to also on their own be able to have this on point proficiency when it comes to language?

Mnguni: The reason why that committee was set up is because we had a problem, because when the posts of language practitioners are advertised, they seem to attract, or they are advertised at a level of level five, which becomes a problem, because in that way you are likely to attract people who have no experience of interpreting. So we then decided that look, because if we don't get people who would be helpful to the court, we're going to compromise the justice system. So let's have this committee, which will, when the post becomes available, we have certain requirements that we'd want those people to meet, before they can be recommended to assist in interpreting in High Court. But of course there are challenges, because of the staff shortages, sometimes we'll get language practitioners on contract basis, which becomes a problem. I personally believe that interpreting is a profession. So you need to have suitably qualified people in the profession, so they can also take pride in the profession that they're in. We then put the committee in place to make sure that we comply with the comments that we set out that will help is in identifying the correct people for the position.

Didiza: As an example, what would be the criteria?

Mnguni: For instance, the first thing you'll want a person to do is to write an essay. Then you'll look at their performance, you'll compare, before you invite them for the interviews.

Didiza: Would that essay be a legal essay?

Mnguni: Yes, it would deal with certain legal issues that are common to all courts.

Malema: I am worried, and I want to give the Judge an opportunity to explain his relationship with Mkhwanazi, because he didn't explain it. How can you say this man can speak very well about you, but you don't tell us how you relate with him? Do you do business with him? Did he teach you? How do you know him?

Mnguni: I said earlier on, he helped me when I was studying

Malema: He paid for your fees?

Mnguni: He did not pay for my fees. A person doesn't have to pay your fees to help you. He helped with motivation, because he looks for black excellency, that's how it would encourage you.

Malema: But how did he do that?

Mnguni: By encouraging me.

Malema: Chief Justice, maybe through you, maybe if you ask the Judge a question he will answer. How did he encourage you? Did he meet you at a motivational talk, or what? I mean, what is your relationship? A judge must be able to define. What is your relationship with this businessman?

Mnguni: I don't have any relationship, except that he is one of my mentors.

Malema: He mentored you? How did he mentor you? How did he mentor you? Did you go to class, did you go to his house? Where have you met him?

Mnguni: There were three of them, its Hlongwane, Msimang and him who mentored me, and encouraged me to do what I'm doing now.

Malema: How did Mkhwanazi mentor you? I would have failed in my constitutional duty to have a judge who can't explain how a businessman, in your upbringing, helped you. I got mentored by a lot of people. So have you had one-on-one with this Mkhwanazi?

Mnguni: You know a number of times I had.

Malema: OK. So you visited him in his house?

Mnguni: No, no. Fortunately, one of his sons is in Hilton College, so that's how, you know, he will visit campus and we'll talk .

Malema: Judge, do you have any business relationship with Mkhwanazi?

Mnguni: No, I don't have. In the same way that I've mentioned Mr Mbili there, who works for the security ...

Malema: No, no, no, no. Don't divert me, I am on this one. I'm on Mkhwanazi, I'm not interested, you see here you have mentioned magistrates' court, its reasonable, its understandable, you have mentioned legal advice, the problem is Donald Mkhwanazi. When a person mentors you, especially in the legal fraternity, you either go and work in their office, or they take you under their wing, they do all sorts of things. But this relationship is not clearly defined whether Dr Mkhwanazi came to the college, or anything of that sort.

Mnguni: You see, for instance when I was at university, they would come and address us and explain to us the position in the country, and try to encourage us, in the same way the Deputy Chief Justice will come and address us, and try to point out a certain path to us.

Malema: But, I speak to a lot of people, the biggest rally I addressed was in the FNB stadium, and let's say someone hears me speak and gets inspired by me, and then puts me as their reference? I've never met that person. And then that person says to me, Chief Justice, Julius Malema will speak very well of me because he addressed us when he came to motivate us.

Mnguni: As I said earlier on, he knows my upbringing, where I come from.

Malema: Is there any financial relationship between you?

Mnguni: No, I said that there is not.

Malema: The answer is not clear. I am not happy.

Mogoeng: Commissioner Malema, I think we must leave it there. You have made your point. You are excused.