



JUDGES MATTER

Judicial Service Commission interviews

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KwaZulu – Natal High Court: Deputy Judge President

Interview of Judge S Gyanda

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Chief Justice Mogoeng : Good morning Judge Gyanda. You have applied for the position of Deputy Judge President for the KwaZulu-Natal Division of the High Court.

Judge Gyanda: Yes.

Mogoeng: Just remind us, for how long have you been a judge?

Gyanda: This is my sixteenth year.

Mogoeng: Sixteenth year. And how many years are you left with before retirement?

Gyanda: If I am to go to the full age of retirement, I've got eight years.

Mogoeng: So you still have a long time to stay in the division. Now tell me, what do you understand to be the key responsibilities of a leader of the High Court, such as you will be if appointed?

Gyanda: Well, to ensure the smooth running of the division, to ensure collegiality amongst the judges, to have their support, and to ensure that we all work together harmoniously to support the Judge President, and ensuring that all of the work in the division is promptly and expeditiously done.

Mogoeng: You have acted as Judge President of the division before, have you not?

Gyanda: Yes, I have.

Mogoeng: I don't know about you, but my experience as a leader in the judiciary over the years has been, it's one of the most difficult leadership roles to fulfil. You can't move the one from here to another place in case of difficulties, and the disciplinary process is very long. How have you equipped yourself to cope with the leadership challenge in the judiciary? And of course taking into account the over-emphasis of independence. Some judges quite often remind us that we are independent.

Gyanda: Yes. The problems that I faced in the period when I acted as the Judge President, I found that the best way to deal with it was to understand the problems from the point of view of the judge who had raised the problem, and to see how best we could meet each other part of the way in ensuring that the problem is ameliorated or overcome.

Mogoeng: One of the challenges that emerged at some stage, I won't say when, from your division, but there was a problem that came from the requirement that it be known how each judge is going

about his or her work. For instance, wanting to know whether judgments are reserved, and if so how many and for how long. Also, wanting to know how long it takes to finalise cases and so on. There was a concern, if I'm not mistaken, part of the concern was that we are not public servants, we are judges. Is that still a problem? Is it no longer a problem? If it is still a problem, how will you deal with it?

Gyanda: It is a problem with one particular judge, but that commenced with the fact that the judge's registrar had passed on, and she had not been able to get a full-time registrar employed to do the typing. In our division, we don't have a typing pool. The typing backed up, and the judgments were not delivered timeously. And I found when I was acting as Judge President, that I would keep her out of court where I could, so she that she could catch up with some of the judgments. And I think by now, she must be almost there, caught up with her reserved judgments. But you do get occasions, we receive complaints from members of the public and attorneys, and advocates on these matters and then when you speak to judge concerned, it is usually delivered within the short term.

Mogoeng: Very briefly, the constitutionally imposed responsibility to ensure that courts function properly or as efficiently as they should - how do you see yourself assisting the Judge President in making that a reality? In other words, Section 165(6)?

Gyanda: In our division, the efficient running of the court is hamstrung, at present, by the lack of capacity to deal with cases. First of all, the lack of the number of courts able to deal with matters accommodation wise. And then more recently, difficulties with the recording equipment that's continuously breaking down, and manpower within the courts. The lack of court ushers to assist in the smooth running of the court recently. And then we have had strikes and protest action, which results in the workforce not being able to come to court at all on some occasions, which has delayed the court process. But those are the main challenges we have had in dealing with the smooth running of the courts.

Judge President Jappie: Good morning Chief Justice. I'd like to continue on something which the Chief Justice had already raised. There still is, to an extent, a tension which arises from the norms and the standards that judges are required to comply with, and the claim by judges of judicial independence. They sometimes come across, the judges themselves, as if consider this to be contradictory. How would you manage that tension?

Gyanda: As I said, from the outset you need to discuss the issues with the judge: which norms and standards do you find it difficult to comply with? In view of the fact that he or she finds it restricts or impedes his or her independence or judge's impartiality. And then, to try and reason with the judge to show him or her that it is does not, and then we have to meet halfway and decide how best to overcome the problem.

Jappie: The Deputy Judge President has to work together with the Judge President, so it is important that the two share a common vision for the division. What is your vision for the future for KwaZulu-Natal?

Gyanda: First of all, to improve the facilities that we have to provide the judges and public for the better accommodation and hearing of disputes. As I said, Chief Justice, we have had these difficulties in regards to accommodation, the machinery collapsing, the court staff not being present, and the accommodation. If these are improved, and we improve the number of judges that we have, then we would be able to deal with the work that has to be done by the division. The case flow management scheme implemented by Chief Justice has really been a remarkable success, and the backlogs have not been as bad as before, we seem to be managing much better. My vision is that we should have no backlogs, and judges and staff should work together cordially as a team.

Jappie: Now you acted as the Judge President during first session last year. If you can tell us, what were the main problems that you as a person experienced while running the division?

Judge Gyanda: The problems that experienced are the same that I've already addressed to the Chief Justice. You get complaints from judges about lack of staff, lack of supply in the material required for the daily functioning for the court. Those were the types of complaints that I had to deal with. I had one complaint where a judge was finding it difficult to go on session, because the judge had a young

family that had to be attended to, and I dealt with that as I thought best in the circumstance by giving that judge more duties in Durban and Pietermaritzburg as opposed to circuit. But, those are the main problem areas I had to deal with while I was acting as Judge President.

Judge President Jappie: It appears to me you see the problems of the division as consisting one of infrastructure challenges, and two, as interpersonal relationships between the senior and junior judges. How do you rate your personal relationships with the rest of the judges?

Gyanda: I get on exceptionally well with everybody in the division. There's nobody I can think of that I have had a problem with on any occasion and at any level.

Jappie: How important do you consider that to be for the efficient running of the division?

Gyanda: It is very important, because people work better when they get along better.

Premier Mcunu: My first question is your earlier answer, when you were responding to the question about efficiencies in the division: what in specific terms, apart from lack of staff, equipment and other things, that you think will improve the effectiveness and efficiency of the division?

Gyanda: Proper training of the judges before they are appointed permanently, that would help greatly. We had at one stage courses for aspirant judges, I don't know if they still have it, but I found that it was essential to the well-rounded training of a judge before they became permanent judges, or even before they start acting. Training, as well all know, is ongoing process, because nobody knows everything and we learn everyday. So the seminars that are organised by the Chief Justice and his department are essential for maintaining a well-trained judiciary.

Mcunu: The next question is that historically, KZN has always been under-resourced with regard to the number of judges compared to other provinces and populations there, and this has gone on for quite a long time. If you get appointed as Deputy Chief Justice, what would be your role in turning this situation around?

Gyanda: It is something that the Judge President and the Deputy will have to work together with in trying to convince the Chief Justice and the powers that be that, when a comparison is done to the population in KwaZulu-Natal against the number of judges, and then you compare it to the other judiciaries, we are under-resourced, and we have been under-resourced for a long time. I remember that Judge Tshabalala was trying forever to get additional judges because we were short staffed. I know from discussions with our current Judge President that he also has been trying to get additional judges. But, you can't just get additional judges, we don't have sufficient accommodation. In Pietermaritzburg, chamber-wise we don't have space and court-wise, we don't have space, both in Pietermaritzburg and Durban. I believe with the proposed extension to the Durban High Court and the renovations which are due to commence, it might alleviate the problem somehow. But until then, there is not going to be space for additional judges to cope with the disproportionate number of people in the province as compared to the number of judges.

Mcunu: So it seems to me that apart from what you were saying about training and every other thing, even if you were to do those things, and even if issues of staff were resolved, as long as these problems of short staffing and a lack of accommodation exist, we cannot reach the kind of efficiencies and effectiveness that you're talking about?

Gyanda: Well, we've been trying over the years. For example, we used to use the Scottborough Court as an extension to the Durban High Court. So a judge would have to go and sit there. And we used the Pinetown court, as well, but that also had some difficulties, which ended up in the Supreme Court of Appeals about the manner in which the judges' staff and assessors were accommodated there. So, if and when the need arises, and we are short of accommodation in courts and chambers, we have the resort of going out to Scottborough and to Pinetown, and on occasions, even to the Durban Magistrates Court when they have space to accommodate us.

Mcunu: How strong do you feel about this?

Judge Gyanda: Very strongly, because the sooner we get up to speed with all these things, the

quicker the work will be done, and the more comfortable the judges will feel, knowing that they are not going to be overloaded in a session, and that they can dedicate the proper amount of time to their cases, rather than feeling over-worked at all times.

Mcunu: What I see in your CV, you seemed to have played some role on transformation. What, in short, has been your role in transformation, and what do you think, going forward, should be the main features of the transformation process in the division?

Gyanda: Opportunities should be made available should be made available to everybody. Equal opportunities should be made available to everybody, and I found that the best way to assist in the transformation process was to assist people who required assistance when I was an advocate during pupillage and during training, and even when I was on the bench, encouraging people to come and sit as assessors where you saw their ability to understand the task to be able to make a positive input and then encourage them to take up acting positions. It is very hard to get people to take up acting positions. In this last session, we had to wait until the last week of the last session before we got the names of the acting judges for the next session, because it is just so hard to get people to make themselves available to come and act in the division. So, that would in my view, be the main point that we should drive home: we should encourage people to take up the opportunities, we should make available to them the equal facilities so that they can have the training and understanding of what the job entails.

Mcunu: How would this exactly be achieved?

Gyanda: Well, it starts right from the beginning, education in universities, then when they come to the Bar, or the side bar, that they have articles with a proper firm, at the bar that they are pupiled with an advocate that's qualified to train them. And then we have the input, which we used to have, but I do not if we still have, from NADEL and the BLA where they hold training courses for aspirant attorneys and advocates where qualified advocates and attorneys take time to train these applicants and attorneys. And then when they come to the bar, if we have a mentoring system where senior advocates then mentor the juniors. We had at one stage in Durban, a system where a silk would make himself available for a month or two weeks in a month, where any junior doing a criminal trial found himself in difficulties, and required a senior to assist him, the bar council would appoint this silk to go into the case and guide the junior. This was a great boon to the juniors, because they'd be working with a skilled person, a senior counsel, who had the training and experience. These mentoring programs are very important. Even as a judge the people we get in touch with, the assessors that we use, it is important for us to encourage them, and to advise them on how best to equip themselves to deal with the difficulties in their various aspects.

Mcunu: Do you have any concern at all about the apparent masculinity of the division?

Gyanda: We try, as much as we can, to encourage females because we want to achieve the balance. It's been a pet program in our division, but our Judge President will tell you how difficult it is to get people, whether it is males or females, to come onto the bench, to take up acting appointments. It is especially more difficult to get females, I don't know why. Our Judge President made a joke at his hearing and it went down badly, but it is really difficult to get females to buy into to come and assess, and come and act.

Mcunu: With your experience you should know why.

Gyanda: I don't know. I just think that we have inculcated in them the feeling this a male-dominate profession, that they are somehow less than us. But hopefully that is changing. The females that are on our bench, they stand up, as equal to everybody else, they do their job and they produce very well. And it's encouraging. Maybe also, the younger generation of, especially black females, are getting into very lucrative practices and jobs that they are reluctant to give up to come to the bench. They find the bench is going to be stifling them economically, and that's why they're not coming.

Mcunu: What is your feeling about access to justice, especially for rural people in the south or north of the province?

Gyanda: We should make every effort to ensure that everybody, wherever they may be living, and

however poor or wealthy they are, that they have proper access to justice. The one thing I have not been seeing is the in forma pauperis proceedings. In forma pauperis different from legal aid, if you couldn't afford it, an advocate would certify to the court the cost of litigation, and the litigation will be conducted on your behalf by an attorney or advocate, free of charge. I have not seen one of those for the last fifteen years. It used to be allocated on a roster basis, but I haven't seen one for a very long time and I don't know why. It was an obligation of advocates and attorneys to do that. You don't only work that you get paid for, legal aid work you're getting paid for, but in in forma pauperis you're not getting paid at all. But it is a contribution to society, but that's seemed to have disappeared, I don't know why.

Mogoeng: Thank you Premier. Colleagues, as I get to you, you know only the Premier and Judge President have the leeway, let us be more focused, remembering that this is a leadership position.

Minister Masutha: Can you give us more information as to what the state of the court was when I first visited, and following the meetings, what change, if any, has since occurred?

Gyanda: Minister, I must disappoint you by saying that the position with our courts changed very little since your visit. We had promises of things being done, after you left there were rigorous cleaning of the premises, the windows and toilets, and within a couple of weeks and everything fell into the same rut that we are used to. Things are not working, things are broken. The ceiling that you pointed out to me has fallen down is still the same. For a couple of days or weeks after you had visited, there was rigorous running around by members of staff, but then it just all came to a stop. We have a got a toilet downstairs, the door doesn't close, nobody's attended to it.

Masutha: What, in your opinion, explains why interventions of this nature are not sustained with structural programmes?

Gyanda: We report the matter to the person in charge of taking care of that matter. We get the stock response that it's being attended to. And, when you follow up, they tell you it has been reported, but they don't know what they've done. When following up again, you get the other stock report that they don't have the budget to deal with it that or it's going to be attended to, and you are fobbed off. It is frustrating, and I can understand how frustrated the Judge President gets when he is receiving all these complaints on a regular basis.

Minister: Let me put it slightly differently: we called three different organisations together, Public Works, Justice and the OCJ, given their respective roles, one would have expected some level of coordination was sustained in order to improve things. What, in your opinion, has been lacking in ensuring that this type relationship sustained to better the conditions in the court?

Gyanda: In Pietermaritzburg there is an employed handyman who has done a tremendous job in attending to the day-to-day needs. I think we need to employ one in Durban as well, so that we don't have to keep on running the gauntlet, moving from one level to the other, trying to get things done. But, by and large the biggest complaint has been the lack of funds. If you talk about our court building, it's the same. We are inundated by complaints from attorneys and advocates about the condition of the public toilets. I feel embarrassed that we still get these complaints. We have got security staff that are not working beyond their normal hours because they do not get paid overtime, with the result that the cleaners are not let in early enough to take proper care of the building. By eleven o'clock the attorneys and advocates are coming to complain about the condition of the toilets.

Mogoeng: Colleagues remember: relevance, relevance, relevance.

Advocate Hellens: Judge Gyanda, in your time when you acted as a JP in KwaZulu - Natal, what was your worst case of reserved judgments in one of your judges, both as to duration and number of reserved judgments, and what did you do about that?

Gyanda: I've spoken about the one case where we had a judge who had a number of judgments being reserved, I do not recall the exact number, but they had been reserved for a long time. During the period that I had been acting as Judge President, I tried to arrange to keep the judge out of court as much as possible where I could, so that they could catch up. I don't know the exact number or the extent of how long they were outstanding. There was one particular judge had judgments outstanding

for more than a year. But, that was due to ill-health.

Hellens: Apart from the ill health, can you give me any idea of the number of judgments, and when you say a long time, how long?

Mogoeng: Allow me to interrupt: Judge Gyanda, fortunately you are a very experienced judge, just be direct as far as possible, and there will be a follow-up if it is called for.

Gyanda: Well, the longest I think was twelve months, and that particular judge had been ill, and acting out of the division.

Advocate Hellens: I wasn't asking about the ill health. It seems to me that your response as JP was to talk to the judge, ease the judge's burden and encourage to do better. Is there nothing more severe, more direct and more impactful that one can do as a JP?

Gyanda: I can't see of anything in that regard.

Hellens: Are you empowered to report to the matter to the Judicial Conduct Committee, or threaten to?

Gyanda: You can threaten to.

Hellens: But did you?

Gyanda: I find that if you tackle it the way I do it, it gets done. If you threaten somebody who is already in a difficult position, you are not helping.

Commissioner Singh MP: I want to follow up with a question about access to justice: it's always a problem, KwaZulu-Natal is a vast province, and access to justice can be due to lack of finances, inability of the poor to access justice like a rich person could do, it could be location, because the only towns I have heard that you mentioned are Durban, Pinetown, Pietermaritzburg and Scotborough, and yet there are other areas where people need to go to the High Court. The other issue is language, particularly in KwaZulu-Natal. What can be done to ameliorate some these challenges that exist, that ordinary citizens have?

Gyanda: You may be misconstruing my answer in relation to the shortage of space about us going out to Scotborough and Pinetown. Our courts do go on circuit to Ramsgate, Newcastle, Mtunzini, Matubatuba, Vryheid, and to areas like that. The language problem has been dealt with adequately by the provision of properly qualified interpreters in court.

Singh: So you are saying that the interpreters are properly qualified in KwaZulu-Natal?

Gyanda: Yes.

Singh: The next question relates to the advocates and attorneys you spoke of. You said fifteen years ago there used to be a system where they assist, free pro-bona services, and you don't know why that's not happening. Has there been any move to interact with the Bar or attorneys profession to find out exactly why this is not happening?

Gyanda: Not that I know of. I have canvassed with the senior counsel that appear before me from time to time as to why these mentoring programmes, for example, are not continued with. But the in forma pauperis cases, I don't know if it's ever been taken up with the bar and the side bar. Previously, the Bar used to control that, but I think that with the equal empowerment of the side bar, this has caused problems with the in forma pauperis matters.

Singh: Finally, do you believe that more should be done, and what can you do, if you are appointed DJP, in that regard, because it's a very important way for poor people to access justice, if they get free service.

Gyanda: We've got to convince the law societies and the Bar councils to reinstate that service, with

the assistance of the Registrar of the High Court.

Professor Ntlama: In your response earlier you said you would ensure collegiality in the division. The question is, what mechanism would you put in place to ensure that collegiality? And secondly, you made mention of the challenge relating to acting appointments, so what is your view regarding the tapping into academia to fill in the void? Third one, since KwaZulu-Natal is very vast, what is your view regarding the infusion of traditional values in the interpretation of the Constitution? And the last question –

Mogoeng: There should only be three, there can't be so many.

Gyanda: Do you mind repeating, I didn't write down because I didn't expect so many in one go.

Ntlama: What measures would you put in place to ensure collegiality in the division?

Gyanda: In our division we have judges' tea every morning, where most of the judges meet to have tea and we chat, and on Thursdays we have a judges' lunch, and we have discussions even after lunch. In our division, very often we get invited by judges to their homes, so we get on very well. I am quite happy with what is in place to ensure collegiality. More than that, we do not have the time, because we're busy working.

Ntlama: Your opinion on the challenge of acting appointments?

Gyanda: If people in academia were exposed to practice, or the court itself, then you could use people like that. But people who have a total lack of court exposure are going to find it extremely difficult to take up an acting position, and that is why it's been a boon to the judiciary the programmes conducted by the Office of the Chief Justice in training aspirant judges. And, what was your last question?

Ntlama: No, it's fine.

Commissioner Ndoni: What are your primary strengths as an administrator?

Gyanda: I have administered my practice by myself. I have been an administrator in the amateur soccer association called the Durban Football Association, and I administered and managed a football club myself.

Ndoni: I'm looking for what are your primary strengths that you acquired?

Gyanda: To be on top of things at all times, you have got to know what is happening. And, to take care of problems that arise.

Ndoni: What challenges are you looking for?

Gyanda: To be able to overcome those difficulties we have in the division, and to ensure that all of the judges are happily working at their posts.

Mogoeng: I don't know if you have answered her. One of the responsibilities of a Judge President and a Deputy Judge President is to ensure, not only that the High Courts work well, but also the district and regional court. We know that the most of the problems that the judiciary has are at the Magistrates' Court level. How are you going to deal with that?

Gyanda: The Magistrates' Court interacts with the Judge President at the Provincial Efficiency Enhancement Committee (PEEC) meetings, and the difficulties are dealt with at that level. The Regional President is there, and between the Regional President and the Judge President the deal with the issues relating to the difficulties of the division.

Commissioner Notyesi: I was not present at the previous proceedings, but I have read through some of the questions that you have to deal with. In one of your responses in relation to the slow pace of delivery of judgments, you said that more judges should be encouraged to do more ex tempore

judgments, as a solution to the slow delivery or non-delivery of judgments. Is that your strategy if you are to be appointed?

Gyanda: There are many judgments that can be delivered ex tempore, where the issues are not complex or involved. There is no need then to reserve the judgment for a long period, one can reserve it overnight to the next day. But what's been happening is that certain judges reserve, as a matter of course, every judgment for a period of time. Now if we encourage the judges, where the issues are simple and not complex, to deliver the judgments quickly and ex tempore, either on the day that they finish the hearing or the day after, this will deal with the backlog and the fact there so many reserved judgments.

Notyesi: Do you agree with me that telling judges to give ex tempore judgments could interfere with how they conduct their work, in view of the fact that there are norms and standards which have been set out?

Gyanda: It is not a question of telling judges to give ex tempore judgments, but rather encouraging judges to deliver ex tempore judgments where the issues are not complex, and where they can do it, to encourage it, rather than reserving it over a period of time. It has a disadvantage when it's a simple issue to reserve it and then you have a problem recollecting, and it takes a long time to produce a judgment.

Notyesi: There is encouragement for senior judges to mentor acting judges. I understand that there was a person acting in Pietermaritzburg who was criticised by other acting judges, who was arriving at court late, and not taking the court seriously. I do not get what your intervention was as an acting Judge President at that time?

Gyanda: I was in Pietermaritzburg at the time. The judge in charge of the Durban High Court was Judge Kruger. He complained about a certain judge just adjourning matters for no reason, and he wanted to know how this person got appointed as an acting judge. I could not intervene. He had to ensure that the work was done by that judge.

Commissioner Didiza: In your earlier answer to the Premier about how you deal with the issue of improving diversity, particularly how it related to gender, and in your answer you stated some of things you do. But, I want to know whether it adds value to engage with the law profession within KwaZulu-Natal, and even working with others nationally, to ensure that through those engagements, you can have the possibility of encouraging people who may avail themselves for the acting positions, particularly to also address the gender dimension.

Gyanda: That is being done all the time. Our Judge President does that, encouraging these organisations and the attorneys' profession to make people available to come and act in the division.

Didiza: But I'm asking you specifically, if were you personally given an opportunity to serve in the capacity of DJP?

Gyanda: I have been doing that and I did that even when I was not acting Judge President. I attended meetings of organisations, and I communicated with the members about the need to make themselves available as acting judges. There is one particular firm I have been phoning often and leaving messages when I was looking for judges, but there was no response. As I say, some people make too much money in practice to be concerned about coming to the bench.

Didiza: The last question relates to the judgment you delivered on the matter between Le Sueur and Ethekwini Municipality, that relates to the powers of the municipality in regulating on environmental matters. In reading through the summary of the judgment, it became clear to me that we may still, even 21 years into our democracy, be struggling with the interpretation of the Constitution in respect of the powers of the National, Provincial as well as the Local sphere. In your judgment you indicate that, implicit to municipal planning and its role, the Constitution would have assumed that even the local level, which is the municipality, have a responsibility to protect the environment, and the other party didn't think so. I am just wondering, having recognised that, do you think there is a need to continuously educate society, but also engage with public sector, particularly the executive and the legislatures, for them to have a better appreciation of what some those tensions that might be seen to

be in the Constitutional provisions about powers and functions of various spheres of state?

Gyanda: It is important to engage with others about exactly what the Constitution provides. But then we cannot then go and impose on other structures what their beliefs are. We'd be accused of contravening the separation of powers if we go and tell the executive, go and engage the executive about how these things are to be interpreted. I don't see this function of judges. We are to deliver a judgment and it's there for the public to know.

Advocate Ntsebeza: What is your own language proficiency?

Gyanda: English is the language that I'm good at. Zulu, I can understand a little bit, very little, I can't speak it. My mother tongue, I can understand, but I can't speak it at all.

Ntsebeza: Afrikaans?

Gyanda: Afrikaans I can read, understand, and write. Because that I was forced to study at University.

Ntsebeza: Other than just relying on interpreters, and there have been disasters in trying to do that, do you think judges should be encouraged to acquire functional knowledge of at least one African language, or a predominant African language in that division?

Gyanda: I agree, I see that it is even catered for in the university degree, in KwaZulu-Natal it's become customary for the students to do Zulu. I suppose in the other provinces they will do the dominant local languages as well.

Ntsebeza: Would you do anything about your judges, if you are appointed to the position, making an effort on acquiring the use of an African language?

Gyanda: I bought a tapes to teach me to speak Zulu but I am still struggling with it for a long time.

Ntsebeza: Now on circuit courts, what is the allocation of judges to do circuit courts, against the perception, and you can take it that I've heard this perception, that senior judges do not get sent to circuit court, and/or white judges and/or Indian judges do not get sent circuit court? Must I disabuse my mind of that perception?

Gyanda: Yes, in our division I think you must disabuse your mind of that. I like going on circuit. It helps me to catch up with any work, and I am sure it helps the other judges, too. I have not come across a judge in our division refusing to go on circuit. There has been a tendency to keep the more senior judges at either Pietermaritzburg or Durban, so that other judges who have difficulties can approach them.

Ntsebeza: So the perception is not out place?

Gyanda: No, senior judges do go on circuit, but not as much as the other judges.

Ntsebeza: Now the AFT has made this remark, and I see we have been skirting around it. One of the remarks they make, and they recommend you incidentally, is that: "Judge Gyanda is an Indian male in a division headed by a coloured male." Is that something we should take into account? If so, why? If not so, why not?

Gyanda: I don't think it matters what race the person is. As I said previously, we are now more than 21 years into our democracy, we shouldn't be concerned about racial quotas, and I don't know why they said Indian male, and why they referred to the Judge President as coloured male. I thought that the Judge President was more Indian anything, as all his friends are Indians, or most of his friends are Indians, most people regard him as Indian in our community. Race shouldn't play a role in the appointment of anybody.

Mogoeng: You are excused, Judge Gyanda.