



Judicial Service Commission interviews

6 April 2016, evening session

Western Cape Division of the High Court Deputy Judge President vacancy

Interview of Judge R Allie

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President Mpati: Thank you colleagues. We are now about to commence for the position of Deputy Judge President of the Western Cape High Court. Can I first welcome the Judge President of the Western Cape High Court, Hlophe JP, as well as the representative of the Premier of the Western Cape, Ms Fiona Stewart. Welcome to you both. Just for everybody's information, you will note that I am going to chair this session, the reason being that the Chief Justice has, in his wisdom, decided to recuse himself because of certain information or exchanges that occurred between one of the candidates and another person that has come to his potential knowledge. It is for that reason he thought it prudent to recuse himself. The Deputy Chief Justice is unfortunately out of the country at the moment and that is the reason I am now chairing, otherwise he would have been flown down to come and chair the session.

Mpati: Good afternoon Judge Allie.

Judge Allie: Good afternoon.

Mpati: How are you?

Allie: I'm well thank you.

Mpati: I just want to place on record before we start that you and I served on the Judicial Conduct Committee for a time. The Judicial Conduct Committee is a sub-committee of the JSC.

Allie: That is correct.

Mpati: You are a judge in the Western Cape High Court?

Allie: That is so.

Mpati: And for how long have you been a judge?

Allie: Twelve years and four months.

Mpati: Twelve years and four months. That is a long time. You must know the division very well?

Allie: Yes, I do.

Mpati: What can you tell us about the division that needs improvement, things that are done very well in that division, so that other JP's can learn from it?

Allie: Yes. Our division, the Western Cape Division, was one of the divisions that actually started case flow management. We started initially with pre-trials in RAF matters, Road Accident Fund matters, and later we expanded that to pre-trial civil matters. We have also had a joint working committee which the Judge President headed up in which he met regularly with all stakeholders in the province, including the heads of the district court and the heads of the regional court, the National Prosecuting Authority, Legal Aid South Africa and other stakeholders. So we are very gratified to see that the structures that are now in existence, such as the PEEC and the NEEC, is in fact a continuation of what we in the Western Cape had implemented several years ago. As you correctly point out there is always room for improvement. There are areas in pre-trials and case flow management which we can still streamline. Regrettably we still are confronted with situations, despite our best efforts, where, often on the day of trial, litigants seek a postponement because they want to exchange documents that are not discovered on the last minute, or they seek to have documents discovered, so there is still room for further improvement. We can still streamline case flow management. But certainly we are very gratified in the Western Cape High Court by the structures that have been put into existence, because it is in fact a continuation and a tightening and a more efficient way of continuing with case flow management. And ultimately we all have the same objective which is to create efficiency and enhancement of the judicial administration so that we can unblock the log jams and with regard to our civil roll, there is now only a six week waiting period for allocation of trial dates or opposed motions. For us that is good, but there is still room for improvement.

Mpati: So case flow management does work?

Allie: It does work, indeed.

Mpati: I'm sure you have seen the Deputy Judge President of the Western Cape. Has she retired or is she about to retire?

Allie: She retires effectively at the end of this recess, which is the 17th of April this year. So as we speak she still remains the Deputy Judge for a few more days.

Mpati: Having observed her, what in your view or knowledge are the responsibilities of the Deputy Judge President?

Allie: The responsibilities which I have observed include that she assisted the Judge President with the allocation of files. Not every day, but on a need basis. She was quite involved with the setting up of the case flow management model which we implemented prior to the PEEC and NEEC. She did a lot of the Road Accident Fund pre-trials and she was very hand-on in those procedures. She also did the allocation of petitions. She assists largely with the allocation of full benches. She is the go-to person in the absence of the Judge President, but she obviously works in consultation with the Judge President. So obviously from time to time she might deputise or chair our weekly judges meetings when he is not available. She is involved in meetings with other role players like the National Prosecuting Authority. She ultimately, she also plays a role in meeting with the profession – the bar and the side bar – and she is chair of the practice committee which deals with practice directions. She was chair of that committee right up until sometime last year where she handed the chair of that committee over to me. So I have been working with her and taking over the practice committee and seeing what her duties and functions would be.

Mpati: So if you were to be appointed as Deputy Judge President, you know those duties of the Deputy Judge President?

Allie: Yes, and of course I would also work in close collaboration with the Judge President to the extent that I may not know any of them.

Mpati: Having said that, what is the relationship like between you and the judges of the Western Cape Division?

Allie: I have a collegial and amicable relationship with the judges in the division. I work closely with a number of them. Obviously, by virtue of the fact that I have been around for almost twelve and a half years. I have sat in appeals with most of them. I've had no difficulty with working with them. I also indicated that I served on the practice committee so I work with a number of my colleagues there, and I work effectively with them. I also serve on the library committee, I also work with colleagues there and we have regular meetings with judges where we work in ad hoc committees, and we are able to work with each other collegially there.

Mpati: As you know, now and again, let's say after a cycle of four years, the Judge President might go on long leave, and the responsibilities of the Judge President will fall upon you as Deputy.

Allie: That is correct.

Mpati: Are there any challenges in that division, for example questions of late delivery of judgments and so forth?

Allie: We have had a practice going for as long as I have been on the bench, and I acted for at least three years prior to me becoming a permanent judge, I would say from the year 2000 when I first acted in the High Court and then obviously when I was there permanently from the year 2004, the Western Cape High Court has always had a situation where reserved judgments were noted on a list and circulated to the profession, the bar and side bar, as well as judges in the division, so it had the effect of some peer pressure being put on colleagues, because in a sense it was a name and shame because their names were on the list. We had a practice going then, before the assistance of the regulations which we now have, where reserved judgments have to be delivered within three months. Way back then we already had a practice whereby we would deliver reserved judgments at the end of the term in which they were reserved, or alternatively early in the following term so that has not been a major difficulty. But my style of management in the committees is one of consultation. I will always consult with colleagues first. If I am going to be Deputy Judge President and we have colleagues who are not delivering judgments in the three month period from the date of it being reserved, my style would be to first consult and establish what difficulties they are experiencing. If they are simply overloaded with work, and the Judge President has always had this policy, if colleagues approach the Judge President and say that we have too many reserveds, we are a little bit snowed under, can you give us some leeway and for two or three days not allocate work to us, I would have no difficulty to continue such a practice. But obviously each case would have to be decided on its merits, and there would have to be some truth that a colleague is overloaded with work. There are certainly mechanisms to ensure that the colleague delivers the judgments more speedily. But in any case, now with the rules and standards and imperative on judgments to deliver the judgments within three months, it would go to the Office of the Chief Justice anyway and having served on the Judicial Conduct Committee, I am fully aware of the pressures that follow thereafter.

Mpati: Can you remind me, after how long is the head of court required to report that failure to deliver a judgment timeously?

Allie: Now we have a system whereby the reserveds is automatically forwarded to the Office of the Chief Justice. That comes to the attention of the Office of the Chief Justice as they are prepared, these lists. The moment any of these reserveds stand for longer than three months, it is up the Office of the Chief Justice to take the matter further. But of course, that doesn't mean our Judge President and Deputy Judge President are caught napping, they are in fact encouraging our judges weekly in the weekly meetings to ensure that their names are off that reserved list, and that they deliver their judgments within those three months. So I would say three months is effectively the cut-off period.

Mpati: I'm interested in that answer, because what if the Office of the Chief Justice does nothing?

Allie: Well that is why I say, our team is not caught napping. Our Judge President and Deputy Judge President are alive to the fact that judgments ought to be delivered within three months, hence we are reminded in meetings weekly. The list is circulated. It is pointed out to us.

Mpati: I'm sorry to interrupt you. I just want to know, you have sent the list, but nothing happens and six months goes past, what are you required to do? Are you suggesting that the Office of the Chief Justice needs to initiate whatever needs to be done?

Allie: No, like I said we would consult the colleague and find out what the problem is, and if the problem can be resolved. It will be reported as an issue that needs further discussion at the JCC.

Mpati: Reported to the Judicial Conduct Committee?

Allie: Yes.

Mpati: So you know the head of the court has that responsibility?

Allie: Yes, they definitely have that responsibility.

Judge President Hlophe: I have one question for the candidate. Judge Allie, if you are successful, what value will you add to the office of the Judge President?

Allie: The office of the Judge President obviously has the same constitutional imperative, as does the JSC itself, and that is to ensure that the judiciary reflects broadly the racial and gender representivity of the country. To the extent that we are now 39 per cent women judges in the division, it is heartening but still insufficient. To the extent that I could be of assistance in ensuring that we facilitate the bringing into the judiciary of more women judges, and particularly women to act as judges. I believe that if I was in the office of the Judge President I would support the office by meeting with women's lawyers organisations, and lawyer's organisations generally, to see how we could improve the representivity of the judiciary as far as gender goes. There are several women lawyer's organisations which spring to mind that one could meet with.

Hlophe: Just a follow-up, President. Are there any weaknesses that you have identified in the system, in particular how the Western Cape High Court is being run?

Allie: Yes, there is always room for improvement. With regard to case flow management we are doing very well, statistics speak for themselves, but I do believe we could streamline the pre-trial procedures even further. With regard to the criminal matters that we get, there is a situation where we are receiving far too many criminal matters that could in fact be dealt with at regional court level, so there is definitely room for improvement there. Obviously in consultation with the National Prosecuting Authority, to ensure that these are heard at regional court level. There is also the aspect, now that I'm on the issue of criminal cases, of the section 105A matters, the plea and sentence agreement issues. I know the Judge President himself has been engaging with the National Prosecuting Authority and others to ensure that that initiative is streamlined, so that we don't have a situation where matters are allocated to judges, despite the pre-trial procedure, and then the plea and sentence agreements come up at the last minute, because it effectively is a waste of resources. And to ensure more judicial oversight in those agreements. Of course when it comes to the enhancing and promoting of more gender and racial representivity, there is certainly a need for a woman Deputy Judge President who can be more receptive and responsive to the needs of women judges and aspirant women judges.

Mpati: I've heard other candidates for positions of DJP saying this is what I think should be improved. But have you ever, in the judges' meetings for instance, raised this with either the Deputy Judge President or the JP, to say I know we are doing alright, but we can improve here and here?

Allie: Yes, in fact we have probably some of the most robust judges meetings ever. We often have judges raising issues, and they are taken forward. We also have, once a term in the full judges' meeting, where issues of concern concerning practice in the division are raised, and a lot of these issues are raised at these meetings. As I've indicated, we have very robust and vigorous debates in our division.

Ms Stewart: My perception in the litigation I have been involved in is the state has taken on a transformation agenda in cases it runs, through the office of the state attorney, but that agenda has not been adopted by private business to the same extent of the state. I want to know if you've got the same perception?

Allie: I have probably not been involved in sufficient matters of that nature to make an informed decision on that. You are obviously referring to the members of the profession that the private sector briefs? Indeed, it is an issue with regard to gender transformation, we as the judiciary can do our bit, in terms of obviously when women in the profession avail themselves for acting positions, we do the mentoring, we do the skills sharing, we do the training, and we provide the support. But ultimately it is for the profession, and its clients, to ensure that there is a better distribution of work to women lawyers in the profession so that they can gain skills and exposure, in areas such as commerce and other areas they have previously been excluded from. That is something that the profession should be dealing with.

Minister Masutha: The Western Cape Bar is one of the least representative in terms of gender and race in the country. I think if my figures are still correct, less than twenty of over four hundred advocates are African. The pool from which to source judges that bars provide is a critical source, would you agree?

Allie: Yes, the pool is critical, and indeed they should be broadening the pool. The conditions at the bar and at the side bar should be improved, so that women can in fact sustain themselves in practice. In addition to that, we are no longer restricted to drawing acting judges from the bar. As you know, we may draw acting judges from the magistracy, we may draw acting judges from academia, and we may draw acting judges from the side bar. And indeed there are more women in those professions, who we have been drawing, and let's be honest, to the extent that the Western Cape used to be regarded a coloured labour preference area, we have a situation where not many African black practitioners have been able to in fact succeed in the Western Cape. That is regrettable, it's a situation that obviously needs to be addressed. There is nothing stopping us from bringing African black practitioners from other provinces, and indeed that is what we have done, and I support that initiative.

Masutha: What do you think though alienates African and women practitioners from joining that bar in your own observation? As a judge sitting very close to the action, you should have your own observations?

Allie: I was never a member of the bar, I was a member of the side bar. Indeed the conditions that prevail at the bar – firstly, economically, it is hard for members who do not have the financial resources to sustain themselves initially at the bar. They have to effectively take chambers in blue chip company buildings. The costs are prohibitive. They have to sustain themselves for long periods of time before they receive briefs that are sufficiently remunerative. Regrettably, it's still a situation where they do not receive briefs in the areas of the work which are more remunerative, and more challenging. That needs to be addressed, and I understand that the Legal Practice Act is meant to address that in some way.

Masutha: Now obviously you as a sitting judge observe the teams of practitioners that appear before you, and how they are composed or constituted. Do you see inclination on the part of senior practitioners towards tagging along women, especially African women, Africans in general, and other categories of black, so as to empower them, to transfer skills, so that they become more attractive to clients, be it public or private clients?

Allie: I must say, speaking from my experience in the twelve and a bit years, they are very far and few between. There are so far and few between that they are noticeable. You immediately notice when you have an African black junior legal practitioner being taken along in a brief and being mentored in court. Very far and few between. Not nearly enough. A long way to go in terms of sharing skills.

Masutha: Lastly, in relation to silk, again the same challenge, also as a result of the pool being very thin. Do you think that nonetheless the judiciary should play a role in the recommendations that are made to the President as to who should be accorded silk? And if so, specifically what role do you believe the judiciary should play?

Allie: I in fact was called upon to make such an input in the division once, and I in fact declined, for the following reasons. There has been no objective criteria developed for the judiciary to make such an input. If the judiciary does so, it will be on a very ad hoc and rather subjective basis, it will effectively be the perceptions of advocates that individual judges have, based on the performance of particular

advocates in particular matters. To my mind, that doesn't endear itself to me as a very fair and objective process. So I have grave reservations about the judiciary making comments on who ought to and ought not to be given silk status. In fact, I think the bar itself has some way to go in terms of establishing its criteria more clear. And in fact, it ought to be taking account of its skewed briefing patterns. If you say that members of the bar deserve silk status because of the nature and complexity of the work they are engaged in, then one ignores the skewed briefing.

Masutha: The intention is to actually develop such criteria. Do you think the judiciary should be invited to give input as the President perhaps works on the kind of criteria that would assist him in ...

Allie: Sorry, is the question input as to the development of criteria?

Masutha: As to the criteria themselves, in other words the development of the policy, the overarching policy framework.

Allie: To the extent that the judiciary may have some comment to make as to the structure of the bar and the way it operates, most certainly there would be no harm if the judiciary gave input into the criteria.

Mpati: So your difficulty is that the judiciary being involved in promoting or not promoting a particular candidate?

Allie: Yes, in the absence of any criteria. And then of course it is very subjective, because there is no standard test that is applied.

Judge President Kgomo: I am going to be taking a particular line. As you know, I represent on this body, the judges president and also in some way, the judiciary, apart from the Chief Justice of course, and the President of the Supreme Court of Appeal. You understand that?

Allie: Yes, yes.

Kgomo: Now, I just want to enquire from you whether you remember some interchange of emails between yourself and Professor Motala on the judicial norms and standards?

Allie: Yes I do indeed. In fact it commenced with text messages. Professor Motala and I were at the time social friends. There were text messages that went between us, and later there were emails. I'd would like to, though, say something about that right up front if I may, may I?

Kgomo: Yes, the Chairperson is saying please do.

Allie: I unreservedly apologise to anybody who is offended by the Whatsapps. I accept that the content and tone thereof was inappropriate, but it is important for me to explain the context in which it occurred. If I may go ahead and explain the context?

Mpati: Yes.

Allie: I asked the Professor -

Kgomo: Just give me a moment. The Chairperson, we'll take this up from a particular point, but if you can just indicate to the JSC, where, in this exchange or the correspondence, did you apologise? You apologised now, but I would like you to refer us, in the documents, the emails before us, where you apologised.

Allie: I did not apologise in the emails or Whatsapps. I considered that to be private communication between friends, and I called upon the Professor at the time not to make it public. But to the extent that he has now recently made it public to this forum, there is obviously now a need, since it has now become public information, so I am apologising now. Can I go ahead and explain the context?

Kgomo: This is precisely where we are getting to. I want to give you a fair chance. It has happened previously with two candidates. Before we put to them certain things that may be adverse, we

enquired from them whether, having considered all that has gone into what we know, and what is before us, whether they would still want to continue. Because once you agree that we continue, it is in the public domain, then you must know that you bear the consequences. Are you confident that you want to continue?

Allie: Yes. I would like to continue, if you don't mind, because I would like to explain the context.

Kgomo: Yes, continue.

Allie: I asked the Professor not to make the texts public, because it was private communications, but since he made it public, I now have to deal with it. The disclosure that he made public I find to be an unconscionable breach of trust and confidence between two friends. The text messages that went between the Professor and I was part of a robust and heated debate, because he launched an unfair attack on the judges in our division, and accused us of racism. His comments, in my view, were ill-informed, because he did not know that our objections to the first draft of the norms and standards and our criticisms at the time were the result of a consultative process among all judges in the division, and our initial objections which we handed to the Chief Justice, in a meeting in which we debated it with the Chief Justice, in fact it was the decision of the division, with the exclusion of certain judges who were heads of court or acting heads of court. It was a decision of the majority of judges in our division. The Professor was not aware, clearly, of this fact. And his criticism singled out one judge, and then accused the entire division of racism. So to my mind, that was in fact an ill-informed and an unwarranted and unjustified attack on the division, and I told him, and said things I said to him I wouldn't say to someone else, because I trusted him as a friend and he breached that trust, because the discussions we had were part of our robust way of communicating with one another. Over the past few years, prior to that, we have communicated with one another in messages over a whole host of issues affecting the profession, affecting the judiciary, affecting even legal academia and up until then all of those communications had remained private and personal communications. I didn't think this would be any different. But of course the lessons that I have learnt, like many people, is that I should not communicate in text messages even in personal communications.

Kgomo: Yes. Okay, then we proceed. This happened from the 19th of February 2014. Is that correct?

Allie: That seems to be correct. I don't have the exact date but if that's what it says in the messages then that would be correct.

Kgomo: Okay I think in fairness to you -

Allie: No I can have a look, I do have it if I may page...

Kgomo: If they give it to you it means we have them in the same order but you can still look at yours.

Allie: That is correct Judge President Kgomo. The communications started on the 19th of February.

Kgomo: That is more than two years ago?

Allie: That is correct.

Kgomo: You say, if we look at the second paragraph and I'll just read it after the greeting, you say: I am one of the et al, speaking to Professor Motala now, I'm one of the et al, as you no doubt know it was a fully consultative process and represents the unanimous view of the Western Cape Division. That is written. Have I read correctly?

Allie: That's correct.

Kgomo: But from what you have just said that can't be correct, because you said it excluded the heads of court, which means that, if I'm right and you must correct me and this august house, this would not be correct then because the heads of court and the Judge President would not have been present. You have said so yourself.

Allie: Yes, in our division we have judges who are heads of other courts. We have an acting head of the Land Claims Court at the time, the acting head of another court, if I'm not mistaken the Free State,

we have the head of the Labour Appeal Court, we had the head of the Competition Appeal Court, so it excluded those judges, because they were not present in the division at the time to be part of the debate. So yes, not every single word in the communications between myself and the Professor is one hundred per cent correct. So indeed, I am not nailing my colours to the mast and saying that every single word is correct.

Kgomo: So it's wrong isn't it, to convey to Professor Motala, in some way, that even the Judge President was part of what was decided here, because the Judge President was not part of that decision. It's not the unanimous decision of the Western Cape -

Allie: No, it was not the unanimous view of the Western Cape, but it did include our Deputy Judge President and our Judge President, not the Judge President and Deputy Judge President of other courts who happened to be sitting in our courts.

Kgomo: Yes. And then I want to read the last sentence in that paragraph. You say: I drafted most of the response, should be most of the responses, with minimal input from Griesel, because it seems that Professor Motala had mentioned Griesel?

Allie: Yes. In fact he had chosen one name above others for criticism, and what I was trying to convey, in the sloppiness of the late hour, in a very short message which is obviously not as long as an email, was that I had a huge amount of input. More input into the drafting of the document, but of course, not sole input, as I indicated it became a consultative process. I was one of the draftspersons, it was then circulated to all colleagues who made input. In fact if you read the documents themselves, you will see quotations from various colleagues themselves in the documents. We actually quote some colleagues verbatim in the document. Obviously I took responsibility as the primary draftsperson, but I am not saying I was the sole draftsperson. I just felt it was unfair for him to single out one judge's name, and then go on an unfair criticism based on an allegation of racism as though we, the rest of the judges, would be led by one judge and allow him to make alleged racist criticisms and objections, without us having any input or say. That was my difficulty with the criticisms that he was levelling in the media.

Kgomo: Now that part that I read to you of the WhatsApp was at 11.50pm and at 12, and this is an aspect that I wanted to look at, that is the third paragraph, the first sentence reads: the committee that so proudly drafted your regional norms and standards comprise Nathan Erasmus, an apartheid-era apparatchik, Stevan Majiedt, a previous Nadel member who's now compromised his independence for personal gain, and Krish Govender, who overtly supported Binns-Ward's appointment at the JSC. Now, let's break this up a bit. Are you saying Judge Erasmus, Nathan Erasmus, who I know is more senior than you, is an apartheid apparatchik? Are you saying that and do you stand by that?

Allie: No, that is why before I asked if I could first deal with the context, I apologised, because as I said, it was a heated and robust exchange and I was obviously angry and felt betrayed by a person I considered a friend, who appeared to share my values, my goals, who was making unfair and unjustified criticisms. And so in the heat of the moment I made these comments. Hence I apologised for offending people with those comments. I am not defending those comments by saying that I stand by them or still hold them. In fact when it comes to Judge Erasmus, he and I work collegially together, and he has been very supportive of me.

Kgomo: Yes. Noting that you are applying here to be second in charge, and this is a leadership position, so that there should not be any misunderstanding. Share with us what you mean by an apartheid apparatchik.

Allie: It basically meant someone who worked in the judicial system, or the justice system, at a time when apartheid laws had to be implemented, it was part of their conditions of service.

Kgomo: And Stevan Majiedt is the second judge that you referred to: a previous Nadel member who's now compromised in his independence for the personal gain. Now Stevan Majiedt is a judge of the Supreme Court of Appeal, isn't it.

Allie: That is correct.

Kgomo: At the time that you wrote this was he already a judge of the Supreme Court of Appeal or was he a judge of the Northern Cape?

Allie: My memory fails me as to where he was then, Judge-President. But like I said, I apologise for offending those people, and those comments were made in the context of a heated debate.

Mr Malema MP: We want to follow, we are not following. Where do we go here? Which page?

Kgomo: It is WhatsApp paragraph 3, page 3. Sorry. It's not paginated.

Mpati: Have you got it Commissioner Malema?

Malema: Yes. Apartheid apparatchik.

Kgomo: You say Judge Majiedt is compromised. Can you please elaborate? Compromised his independence for personal gain. That's what you say of a colleague in another court. Tell this body, compromised his independence for personal gain. Everything that is said there, justify it?

Allie: No I cannot justify it. I apologise for it.

Kgomo: But why would you say it?

Allie: As I indicated -

Kgomo: To Professor Motala? An outsider. If I say outsider, not even to another judge.

Allie: As I have indicated, at the time we were friends. We discussed many issues, as you will see from his emails attached he made some spurious remarks about other judges, so we discussed it as we often did in a very heated way, in a very robust way. But I considered it to be personal communications between friends at the time.

Kgomo: But you are not attacking Professor Motala? You are attack third persons.

Allie: Yes, with hindsight I ought not to have done that.

Kgomo: And now do you still hold those views, concerning Judge Majiedt, that he compromised his independence for personal gain?

Allie: No, absolutely not. In fact, since that first draft that the Western Cape High Court objected to of the norms and standards, the final product of the norms and standards has been much improved and we were very happy to see that a lot of our objections and criticisms were in fact taken into account, as well as the objections of other divisions, and the final product is really very workable and at some point I hope I have the opportunity to elaborate what I mean on that. I find the final product of the norms and standards very productive for the administration of justice, and in fact the committee whose members I criticise here obviously were instrumental in setting up the structures that we now have, which is the NEEC and the PEEC and the regional structures, the REEC, and they are working, I can see the wisdom in them now, they are working very well and in fact it is not merely a matter of unblocking the log jams in the system and identifying the difficulties with the administration of justice and the service delivery, but I've have also come to learn as a result of discussions with none other than judge Nathan Erasmus himself, it is a situation where other stakeholders on those committees are being called on to intervene logistically in areas which need urgent attention. For example I understand that in a particular area in the Western Cape, the domestic violence court received something in the region of ten thousand complaints over a limited period, and that spoke volumes of the fact that there was some serious social economic problems going on in particular area in the Western Cape. And as a result of us having a PEE structure, and as a result of us having an NEE structure, which was set up by this very committee, not only could there be judicial intervention to assist that court, namely the domestic violence court, but you could also have social development, who are represented on this PEEC, paying attention to the problem there, and they could actually send social workers out into that particular area. So I see the wisdom of what the committee suggested at the time. My greatest difficulty at the time was the way the norms and standards were initially drafted. It did not seem to be capable of practical implementation, but also because we as the

Western Cape High Court had already been implementing a lot of the initiatives suggested, for example we already had a list for reserved judgments, we already had case flow management, and at the time many of us, and I myself, felt that perhaps the norms and standards, the way they were structured, was unnecessary, because we were already implementing all of that. I have subsequently come to realise the wisdom in it. In that it provides consistency for the entire country. I had no idea as to the difficulties that were being experienced in the other divisions, and I was thinking purely from the experience of our lived reality and what our experiences were. I thought we were working fine the way we were, but I have subsequently come to realise that there is great benefit and virtue in the structures that was set up. So indeed Professor Motala's criticisms were heated, they angered me. They were unfair. I then responded likewise in an unfair and intemperate way, and I apologise for this.

Kgomo: I don't want to interrupt you because I am not a Chairperson, but I want to say to you to be as brief as possible for the sake of progress. Judge Allie, if Judge Majiedt compromised his independence for personal gain, would he be fit and proper to remain a judge? Should he then not have been reported to the Judicial Conduct Committee? The same with Judge Erasmus? So that they can explain themselves, complain to the Judicial Service Commission about these people. Would they be fit and proper people to remain judges?

Allie: If my allegations at the time were correct, then probably the correct thing to have done would have been to report them, but then one would have had to have had evidence of that. As I have indicated, I was merely just reacting in anger to the unfair criticisms that were levelled against the division, and as I have indicated I do apologise for that. I don't believe that my comments were correct, I still don't believe that they are correct.

Kgomo: Let's make progress. Krish Govender, who overtly supported Binns-Ward's appointment at the Judicial Service Commission. Binns-Ward is now a judge and a colleague in your division? So what are you saying? Are you saying that Judge Binns-Ward should not have been appointed because Krish Govender, who is a very experienced attorney I know, I served with him in Nadel, should not have supported him? Tell us.

Allie: No, I'm not saying that. In that sentence I am merely stating who the members were of the committee that I am aware of and what I know about them. I am not stating anything about Judge Binns-Ward other than what I knew at the time was that Mr Govender seemed to be overtly supporting him. Nothing more than that. There is no imputing of any impropriety to Judge Binns-Ward, certainly not to Mr Govender. I was merely sketching for the benefit of somebody who wasn't in South Africa, and I thought was making rather ill-informed attacks on the Western Cape High Court as to what information exists that is known about the people on the committee whose work he appeared to be defending at the expense of criticising the Western Cape High Court unfairly. There was no intention to say anything negative about Judge Binns-Ward. In fact we work together on committees and we sit together in appeals and other matters. So, once again I can only repeat what I said previously. I don't hold any views of a negative nature, it was factual, but it wasn't meant to humiliate or insult the judges concerned.

Kgomo: In the interests of time, I am skipping a number of things. The following day, I'm now in the fourth paragraph of the same page, 12.16am February. You write: thus in open cahoots striving to curtail fruitless and wasteful 'expenditure' include the CJ, which means the Chief Justice, and his undemocratically appointed group of judges trip all over the world to investigate different models. Thus it include tje – what does that mean?

Allie: It is a typographical error. It is supposed to be 'the.'

Kgomo: It includes Chief Justice, eight bodyguards, many cars and extravagant conferences at which the entire hertz fleet had to remain outside the hotel with drivers in case any of us needed them while in conference, and the ER 24 personnel living and eating in the hotel with us in case any of us have a headache. We've been working for years with inadequate resources and so the proposed norms and standards presupposes a full functional high speed internet, intranet and e-library, sufficient, properly-trained researchers for each judge and not just at the Con Court, and properly skilled and trained PAs. I want to stop there. You are now talking about the head of the Judiciary in terms of the

Constitution and Superior Courts Act. This is what you are saying about the head of the judiciary. What do you want to say about this?

Allie: Well the words in inverted commas 'striving to curtail fruitless and wasteful expenditure' was part of the first draft of the norms and standards document. What I was trying to convey to the Professor was that if we are going to have to curtail fruitless and wasteful expenditure, then we must be even-handed about that and consistent about that. And one must in fact curtail fruitless and wasteful expenditure everywhere. The reference to trips to different parts of the world, in fact after the meeting we had with the Chief Justice at which we presented our objections which Professor Motlala labelled as racist objections, we in fact discussed with the same judges who served on the committee outside, we questioned the need to go and investigate other case flow models in other countries, whereas we had sufficient and good enough best practice right here in South Africa. So it was not a secretive conversation, it was part of a debate among judges about whether in fact the decision to go and investigate other models in other countries was wise decision at the time. So I was linking that to the need to curtail fruitless and wasteful expenditure, I was doing the same with regards to the conference. It was not a conference actually organised by this Chief Justice, it was a conference organised by the previous Chief Justice, at which this Chief Justice was obviously present and involved. At the conference I must say that I did find it strange that there was this huge amount of drivers and cars available throughout the operation of the conference, not just to drop us there. And also the ER personnel who were there in case we needed any assistance and we are talking about a fair amount of them in the hotel. At the time, I did consider that also to be wasteful. I was trying to convince the Professor that this issue is actually not as he may see it to be. That there are more issues, that we must be consistent in curtailing fruitless and wasteful expenditure, and to the extent that he appeared to be defending the initial draft, and if you look at his e-mails he even suggests that the initial draft of the norms and standards was what he conceptualised as long ago as 2001, and he mentions in his emails all the different heads of the judiciary that he had tried to convince to implement these norms and standards previously since 2001. To my mind, it seemed as though he was taking ownership of the first draft of the norms and standards, and I was criticising aspects of it with him, to the extent that he appeared to be taking ownership of those norms and standards, saying that he mooted the idea with members of the judiciary as long ago as 2001, and continued to do so.

Kgomo: I want to end up with the last quotation. Just page over, it is under the paragraph, the time would be 12.19 on the 20 of February, and that is the last paragraph. Dullah was known for his cronyism. My kids must pull themselves up by their own bootstraps. I will never use my relationship contacts with people to advance them. It's a principle I would die for. And then I am aware that there is a need for norms and aspirational values but not in its current form. It's a sick roadshow being conducted by an individual with no conviction or insight. History will vindicate us on this. It's an individual with no conviction or insight. Who is this individual who has no conviction or insight?

Allie: The individual really is Professor Motlala, because he took ownership of it, to the extent of it and he was prepared to in fact go out battling publicly for it, and unfairly criticising our objections to it. The reference to the other aspects that you read, I don't know if I must address those. Professor Motlala is not here to defend himself so I am reluctant -

Mpati: The question is who this individual is, and you say Professor Motlala?

Allie: Yes, to the extent that he has taken ownership of it and he is going under the media battling for it.

Kgomo: Judge, just look at the context. It's a sick roadshow being conducted by an individual with no conviction or insight. Is Professor Motlala conducting this sick roadshow?

Allie: Well, to the extent that he was going in the media, he in fact had a follow-up op-ed piece on it, and he was in Legal Brief on it. What he was doing was obviously conducting a media campaign on it. He has taken ownership, and said that it was his idea as long ago as 2001, and he mentions all the individuals in the judiciary he has tried to get to buy into the idea. He was effectively running a media campaign and putting us in a position where he was unfairly criticising our objections to it. He had no insight. I was trying to give him insight. By that time, by that page, I had given up because he was

coming back with answers which was just more of the same. He was running it as a media campaign. Probably roadshow is not correct. More media campaign.

Kgomo: I don't want us to leave here without suggesting to you that the person you're referring to here is the Chief Justice, with whom you have to work with if you are appointed the Deputy Judge President?

Allie: In the context of that paragraph, is that what you're saying? OK, if you can give me a minute to then consider the paragraph in its context. Because I was referring to cronyism, I was referring to what Professor Motala had said about how he got to start his academic programme after consultations as Dullah. So I initially understood what I was saying there, I was speaking about Professor Motala. Then when I was speaking about my children I was also speaking about Professor Motala and the favours that he asked of me considering his child. But if you read it in the context, it could be interpreted, yes, the word roadshow, it would seem to indicate that it is a reference to the Chief Justice.

Kgomo: You say you have apologised to these people. You have named them in theseWhatsapps and e-mails and so forth. Have you written to them to tell them that you apologise, or have you told them that you apologise to them?

Allie: No, as I've indicated at the beginning, in fact I considered this to be personal, private text messages between friends. I did not expect that it would be made public. It would have remained something I said to Professor Motala in the heat of the moment, and I thought it would end there. Two years had lapsed, and I assumed that with the passage of time, that's where it would remain, that Professor Motala would continue as before and I would continue as before, and whatever heated exchange, as you know you've only read out what I've said and not what Professor Motala has said, and there's always a context to everything. When my reference to children and to his children, there's also a context to it, but he's not here to defend himself, so I wouldn't want to go into that. But I do want to say that there is a history, when friends become angry with one another, there is a history. It didn't arise only at the start of these communications. It was an argument, as it were, between people who were friends at the time. I did not see my communications with him as being in the capacity of a judge, but just in the private capacity as a friend, who -

Mpati: I'm sorry Judge Allie, I'm sorry, you've been there. I think the question was simply whether you did or didn't apologise?

Allie: No I did not, because I did not expect that it would become public information.

Mr C P Fourie: I've been mostly been covered by Judge President Kgomo. I just want to refer you, Judge Allie, to two short other quotes form the WhatsApp exchange between yourself and Professor Motala, and then just ask you two questions thereafter. The paragraph that Judge Kgomo read starting with 'thus striving to curtail fruitless and wasteful expenditure,' starting with that. He read most of the paragraph except the last sentence. The last sentence says 'the Minister is not making that type of funding available to the Chief Justice, who, if current and past extravagance is an indicator, will not manage those resources for the improvement of our infrastructure.' Do you stand by that?

Allie: No, no, of course not. As I've indicated, what has subsequently transpired is that there has been a tremendous improvement in the infrastructure.

Fourie: Then further down on that page at 12.34, there is an email, WhatsApp by you saying 'I'm going to send the CJ an email now demanding an answer to that question. Thanks for the heads up. I'm no Griesel, Gauntlett, or any individual whose guilt for political indiscretions can be exploited. I'm no armchair strategist. I am going for the jugular.'

Allie: Yes, I was very angry at the time. What I was saying to him is also reference to his previous media critiques. Besides critiquing Judge Griesel unfairly, as though he was the sole draftsman of those criticisms, he's also critiqued Advocate Gauntlett and others in the media. He is very well known for his op-ed pieces in the media. And so I was saying, to the extent that he seeks to exploit those individuals political indiscretions, he's not going to succeed in doing that with me, because I am not

someone that was not involved in making a difference in the profession and on the bench. So I'm not an armchair person. I'm going for the jugular was a reference to going for his jugular literally, because I was angry.

Fourie: I won't debate that with you. But let me just put it to you because that is my impression. My impression is that your gripe is that what you regarded as personal exchanges landed in the public domain. Your gripe does not seem to be the contents of those personal exchanges.

Allie: Could I comment on that?

Fourie: You could comment on that.

Allie: There are many aspects of these personal exchanges, particularly the ones which criticise colleagues, or the one which mention colleagues in a bad light, the ones which mention individuals in a bad light, the ones which say that resources will not necessarily find their way into improving our infrastructure, that I regret. Indeed I regret. I don't stand by them. At the time I was angry for Professor Motale, I thought he had been through lots of debates with me and other colleagues and he ought to know better than to criticise us in the way he did. I readily concede that a lot of the content was a heated exchange, and a lot of it was incorrect and I've stated that, so I don't stand by every single aspect.

Fourie: Professor Motale thought it wise to refer this to this Commission. And he says 'these exchanges, I believe, demonstrate that Judge Allie does not have the gravitas, maturity or temperament for the position of Deputy Judge President.' What do you say about that?

Allie: Yes. I disagree with what he says there. My debate with him was a heated one. It was a robust one. Having felt that we were being unfairly criticised as a division, and in a misguided way, it was me coming to the defence of the judges in the division. I do have the temperament required to be a Deputy Judge President by virtue of the fact that I am able to assert myself when necessary, but I am able to make the necessary concessions. I am able to grow and develop inasmuch as any other deputy head would be able to grow and develop. When it comes to the temperament required in dealing with colleagues, as I have indicated previously I have a history of dealing with colleagues in the division in a fair manner, and I'm sure I'll be able to do so.

Fourie: Because of other commissioners waiting to ask questions, I am not going to pursue the matter further. Just to place on record that for example, my colleague Krish Govender never served on a committee that prepared the norms and standards or the draft thereof.

Allie: That is what I subsequently found out.

Mpati: Colleagues, I want to believe that virtually all questions relating to this document have been canvassed. I want to implore you to try and get ahead to questions relating to the position of DJP, that the candidate is here for.

Mr J Nyambi MP: Do you believe that a judge must always discharge official duties, act honourably, and in a manner befitting judicial office?

Allie: Yes.

Nyambi: Do you think you have done that given all what was raised now? I don't want to get into the details of it.

Allie: I have always discharged my duties honourably. I have always acted honourably. I acknowledge in these messages I behaved in an emotional and angry way, and that if I had behaved in this way in the course and scope of my employment and my capacity as a judge, then I would not be fit to hold office, but it was a personal, private argument between two friends.

Nyambi: You are the one who dealt with the case of, may his soul rest in peace, Honourable Ambrosini v the Speaker of the National Assembly?

Allie: That is correct.

Nyambi: Can you quickly summarise for a layman the verdict of the Constitutional Court, so that we can understand it?

Allie: Those are not one of the cases that I think I presented. I would not have it on the top of my head exactly.

Nyambi: Just the summary of the judgment. Your interpretation of your understanding of that judgment?

Allie: I'm not sure I can recollect it, I know the matter was about the procedure adopted in debates for the passing of a Private Members' Bill, and I know the Constitutional Court overturned my decision and found that in fact the procedure had to be changed. And it was in fact subsequently changed. I'm sorry, but I don't recall the details of how it was to be changed. But they found that it was not in accordance with the constitution, the procedures were not in accordance with the constitution.

Nyambi: Let me get it correct. Are you saying that after it was changed, you never tried to familiarise yourself with the judgment?

Allie: No, I did at the time. It's been some time ago, I've been doing a lot of other judgments since.

Nyambi: Your understanding of judicial accountability? Share with us your understanding of judicial accountability.

Allie: Well, judges ought to be accountable firstly in the conduct of their work, and ought to be accountable to the Judge President and then ultimately to be accountable to Chief Justice. Of course if judges are found to be incapacitated or have incapacity or have found to have committed gross misconduct, then the Judicial Conduct Committee will consider whether it is fitting to set up a Tribunal. If the Tribunal finds the judge guilty of such misconduct, then the Tribunal will recommend that the judge be discharged from duty. In addition to that, the judge would have to go through the procedure of two thirds of the National Assembly voting on whether the judge should be removed from service, and pass a resolution to that effect, and it is for the President then to remove the judge. That is the procedure that would be followed to hold a judge accountable. But of course the Office of the Chief Justice has already put in place mechanisms of accountability. One of them, some of them of course is that we have a registrable interests now, where judges have to account for their financial position. We also have a situation where we have norms and standards which encapsulate what would have initially been a judicial code of conduct to which judges are held. And we also have the judicial conduct committee, where the misconduct of judges are reported as complaints, and various sanctions may be imposed. So to that extent I would say there is judicial accountability.

Malema: Judge, would you agree with me that here we appoint honourable judges who behave in an honourable manner?

Allie: Yes.

Malema: Would you call the conduct as discussed between you and Judge Kgomo as honourable?

Allie: The conduct between me and Professor Motala?

Malema: No, the discussion about that, ja. You had a long discussion with Judge Kgomo, I don't want to go into it.

Allie: My response to Judge Kgomo's questions?

Mpati: No, I's not, you discussed it with Judge President Kgomo -

Malema: You discussed your emails, smses, Whatsapps with Judge Kgomo now. And you have since apologised. Because you accept that that was not an honourable thing to do.

Allie: Yes, the content of my messages were not honourable and I admit that it was not honourable.

Malema: And people that engage in conduct that is not honourable, they are not honourable themselves. Do you agree?

Allie: I think that it depends on the nature of the conduct.

Malema: You apologised and said sorry because your conduct was not honourable. And you know that this body appoints honourable people, and therefore people who engage in a conduct that is not honourable cannot be honourable themselves. Do you agree?

Allie: I cannot agree.

Malema: OK. Do you think it is honourable and expected of a judge to discuss colleagues with friends? We take it as a private conversation from what you are telling us. It is a private conversation between friends. You discuss your colleagues' judicial issues with friends? You think that is honourable?

Allie: What I found dishonourable was that in fact the friend was prepared to publicly criticise the judges without getting the judges' version of events.

Malema: So you are discussing the judicial matters with friends, and you say you don't see anything wrong with that? I don't want to talk about your friends, I am talking to you. He is not here. I am talking about your conduct as a judge.

Allie: No, I do see that it was wrong to discuss it with him and as I have said I have learnt a lesson –

Malema: And therefore it is dishonourable?

Allie: It was incorrect –

Malema: And therefore you are dishonourable?

Allie: I can't say that I am dishonourable.

Malema: Judge, you want us to lower standards.

Allie: No, I would say that my remarks were intemperate.

Malema: Whatever you call it, it is unacceptable conduct of a judge who has applied for a senior position which has got everything else to do with leadership. You should have on your own withdrawn just from this, up until you have communicated and apologised to your colleagues, and re-worked on your temper and your conduct, and then only then come back here. You don't think that was an honourable thing to do?

Allie: I can't agree.

Malema: You think we with our high standards here – we pitch very high here, we don't play, we pitch very high – with our standards here, we must compromise and appoint a person who discusses Chief Justice, who discusses colleagues, with his friends and say this is leadership which can control its temper, and it is honourable and behaves in a manner that is acceptable in the judiciary? Should we say that? After going through everything here? Which you didn't deny.

Allie: I do believe that I am not a person that is incompetent, I'm a capable person with strong ethics and a passion for advancing the judiciary, and transforming the judiciary.

Malema: My last point is that, do you accept that what you say in private you must be prepared to say in public? Do you accept that, as a leader? Because you cannot take leave from yourself. You are a judge. Even when you retire, you are a retired judge. You can't take leave from yourself. So, as you sleep or wake up, the posture you take in social activities, every conduct you display, private and public, you remain a judge. Therefore in your conduct, throughout, you should display such quality.

Allie: Yes I agree.

Malema: And here you took leave from being a judge.

Allie: Yes, I became angry and tried to defend -

Malema: And you failed as a judge.

Allie: I failed to contain my temper.

Malema: No, the judge failed to, judge, failed to control the temper. Let's not run away from that, you are a judge. The judge failed to control the temper. The judge behaved in a dishonourable manner. You took leave from yourself. There are days where you just take off the gown and want to become an individual and your profession doesn't allow that.

Mpati: I think you've already placed that, Commissioner Malema, and she has responded, even if you are not satisfied with that response, I think she has.

Malema: Let's end it there President.

Professor Ntlama: So are you still going to sue Professor, since this document has been made public?

Allie: No, he said he was going to go to the media with it. He didn't go to the media with it, he presented it to this forum. I have no intention of engaging in litigation with the Professor or anyone else.

Ntlama: Okay it's fine, let's come back to your office. If we do forgive you and give you the opportunity to become a judge, what is your opinion regarding the use of indigenous -

Allie: Sorry?

Ntlama: To become a DJP. What is your opinion regarding the use of indigenous languages, both as languages of records and communicating languages in the courts?

Allie: I think it is certainly something we should be implementing. Currently we use interpreters, and unfortunately a lot of meaning is lost in translation with interpreters. I myself do not know or use an indigenous language, but I would encourage myself and others to learn one. Certainly it ought to be a language that can be used in courts.

Advocate Ntsebenza SC: Judge Allie, just for the record, six days ago you asked the Secretariat to place before us the communications between you and Professor Motala, in an email on the 31 March 2016. Do you remember that?

Allie: To place the emails between Professor Motala and me... oh, the email which he had already sent to the JSC?

Ntsebenza: You wanted the JSC to have sight of the communication between you and Professor Motala.

Allie: The letter he had already sent, yes, I referred to that letter as an explanation as to my view on the communication.

Ntsebenza: The answer is yes?

Allie: Yes.

Ntsebenza: And you expected, or you anticipated, or you should have anticipated, that the members of this Commission would want to get into the details of what it was that gave rise to what you said. 'Please would you be so kind as to ensure that the Commission receives this response.' You must have anticipated that we would want to know what it is, the full context and the full picture. Is that right?

Allie: Yes.

Ntsebenza: Now, I know you have apologised, and I know that up to this point you have not conceded that you should not continue to make yourself available for the position of DJP. Now, I am just asking you, as a person whom I have known for a long time - do you think you should continue to make

yourself available for our consideration for this position in light of what has happened in the last hour and a half or so?

Allie: Yes I do.

Ntsebenza: Because you have apologised?

Allie: And made concessions that many of the allegations I made were made in the heat of the moment, and in anger, and were incorrect.

Ms T Didiza MP: I want to just ask you two questions in relation to your answer on the questionnaire, point 17, which asks you about your contribution to the law and the pursuit of justice in South Africa. You have mentioned a number of things there that as part of a collective, namely NADEL together with civil society we lobbied, for succeeded in achieving the following, and you mentioned a lot of things there. Maybe let me finish that. How did you do it? What was your specific contribution in those collectives? And the second question relates to 6, which is the subsection of 17, where you say 'I addressed and attended several Women's Day events as a judge.' I would want to know, how does addressing meetings at Women's Day events as a judge contribute towards law and the pursuit of justice in this country?

Allie: Firstly as part of the collective, I think my CV, which was attached, also sets out the various positions I held within Nadel and other civil society organisations. I have always worked in NGOs to achieve justice and equity for all of the people in South Africa to achieve access to justice, and I was referring to a time which was prior to 1994, when the lawyer's organisations such as Nadel were lobbying and making representations for the inclusion of certain rights and freedoms in a proposed constitutions. I was part of workshops that were organised at the University of Western Cape and elsewhere, with the ANC's legal and constitutional committee and Nadel, to debate the content of what the democratic lawyers at the time felt should be included. I was part of lobbying for the abolition of the death penalty through Nadel. This is obviously all in a pre-1994 era. Also we made representations to the Law Society and other organisations and to the Legal Aid Board to extend judicare, to ensure that legal representation is available to every accused person in our court. It's many issues we now take for granted in a post-1994 era which were not in existence then. As part of this NGO and other organisations, we actually lobbied for these changes, and of course many of these changes are now taken for granted as law, but they did not exist then. When it came to the recognition of customary marriages, I remember going along with a Nadel delegation –

Mpati: I am sure that is sufficient.

Allie: Then turning to the issue of the addressing and attending Women's Day events as a judge, when I arrived at the Western Cape High Court in the year 2004, I was only the second woman judge of colour. The other woman judge of colour that was there some of the time, but she was also working in the Land Claims Court, so I was primarily the only woman working in the division full time. And so when there was a need on Women's Day events to go and address, for example, the candidate attorneys of the Law Society, I would address them on how they ought to advance women in the profession and how they ought to, in fact, apply the law in a way to give access to the rights of women. I addressed the National Prosecuting Authority's women, also on Women's Day, on how they can best advance women's rights and women's rights as human rights. I considered those addresses to be contributions to the law and pursuit of justice as to how one could in fact encourage other role players in the legal profession to in fact advance gender equality and transformation.

Didiza: Thank you very much. The reason I raised the first question in particular, is because a majority of people in this room could claim the same, because they were part of the activist's call prior to '94. I thought maybe there was a specific thing that in your response to your question you could have cited – either maybe you drafted a paper, made a presentation, or you were serving in a committee in the negotiations process in CODESA, or maybe you were part of the drafters of the law that recognised customary marriages. So it was in that context that I was asking you specifically, when you talk about contribution, something that you would have pinned down for me, which is not part of what a majority of people in this room would have been part of those activities, as part of the collectives.

Allie: I accept that, paragraph 17 says as part of a collective, namely Nadel with civil society we lobbied for and succeeded in achieving the following, there's a semi-colon and there's all these sub-categories. So it wasn't meant to convey that I individually did it. I'm sorry if it came across that way.

Mr Schmidt MP: I would like to put to you three comments made by the National Bar Council of South Africa, because it creates a negative impression and I would like the benefit of your comments. Paragraph 10.1 it says that the candidate is at times fair and at times impartial. With regard to the candidate's independent mindedness, it says as a judge the candidate has indicated a degree of independence. And then thirdly, with regard to your ability to conduct court proceedings, it says the candidate has presided over many proceedings as a judge of the High Court and has demonstrated that she is at times able to conduct proceedings. Now that creates a negative impression, because it doesn't say at all relevant times, or at all times, which one would have expected it to have said. So it creates a negative impression to the utmost degree, which I would like you to comment on.

Allie: Okay, firstly none of my decisions or my proceedings that I presided over have been taken on review or appeal on the basis that I acted unfairly in proceedings in court. So to the extent that that perception is created by that organisation, they have not followed through with any complaints to that effect. When it comes to my temperament in court, I, like all other judges, would have a certain temperament in court proceedings. In fact, I would consider myself to be firm but fair, because I don't take lightly any attempts to derail court proceedings. So I support the idea, and I conduct my proceedings in a way which does not allow for the misuse and abusing of the system. However, the temperament one has in court proceedings is very different to the temperament one must have as a deputy leader of other judges. There, one is required to deal with highly independent colleagues of different temperaments and styles, and one has to in fact deal with them in a way where one tries to gain their cooperation. And failing that, if one has to make management decisions, I will not squirm from making management decisions that are hard and difficult, obviously in consultation with the Judge President.

Schmidt: Just to conclude, I don't want to juxtapose it against competing candidates, but in another instance it is said that the candidate is known for fairness and impartiality. Of another candidate. I'm just juxtaposing it because that candidate, I suppose, finds himself or herself in the same environment as you do, and therefore I'm asking you this question, because it does create a negative impression.

Mpati: I'm not sure that you'd like to comment, or that a comment is expected of that?

Allie: I'm not sure either.

Schmidt: It is fine, thank you.

Kgomo: Just one aspect, and I am going to your questionnaire. Page 8, paragraph 18, that's section 3, general. 'Are there any circumstances known to you which may cause you embarrassment when seeking the appointment for which you have been nominated.' Now these things have come out and you had not disclosed them. Is that a mistake on your part, these things that have come out in the WhatsApp, the smses, the emails? Should you not have disclosed them?

Allie: Judge President Kgomo, at the time when I completed this questionnaire, two years had lapsed since Professor Motlale and I had our heated debate and argument. I asked him not to disclose it in the media he didn't do so. I assumed the matter had been laid to rest. I did not consider it to be an issue that ought to have been in the public domain. I thought it was a private argument, and so I did not disclose it for those reasons.

Kgomo: Sorry judge, I didn't want to go there, because you see my problem is that if you did not disclose this thing and you were appointed, and then they come out – that is the reason. Then you have to be hauled before us with all these things. That's why if you belong to a secret organisation, you have to disclose. Now I'm just asking you, I'm going to not follow up, Should you not have disclosed this? Is it not an error of judgment on your part not to have disclosed this on your own? As this form says, this form says disclose. Anything?

Allie: Yes, in view of the questions and the way it was dealt with, I ought to have disclosed it.

Mpati: Thank you Judge Allie, you are excused.