



JUDGES MATTER

Judicial Service Commission Interviews

5 October 2016 – Morning session

Gauteng Division of the High Court

Interview of Professor TS Madima SC

DISCLAIMER: These detailed unofficial transcripts were compiled to the best of the abilities of the monitor. However due to capacity constraints they have not been fully edited. We have therefore made the video recordings available that were taken during the interviews available. Those wishing to cite or quote from the transcript are encouraged to check accuracy with reference to the video file.

Chief Justice Mogoeng: Tell us about your academic qualifications.

Professor Madima: Chief Justice I hold a BJuris from Turf, an LLM and a Phd from Essex, and an MBA from UCT.

Mogoeng: And an advanced diploma from where?

Madima: That is human rights diploma from a university in France.

Mogoeng: When did you begin your practise of the law? We will come to the lecturing part later.

Madima: The actual practise I started in 1996 after doing pupillage.

Mogoeng: Where did you do your pupillage?

Madima: I did my pupillage in Johannesburg.

Mogoeng: When did you become a member of the Cape Town Bar?

Madima: I became a member in 2004.

Mogoeng: Tell us a bit about your practise, what does it entail primarily?

Madima: As of late my practise entails medical law, procurement law, and whatever is thrown at me by the attorneys.

Mogoeng: When did you get involved in the academic world?

Madima: It started in 2008 whilst I was here in Cape Town, I was approached by one professor at UCT who said that they would like me to come and assist as and when required, and that is when I got appointed as an adjunct professor. I present seminars to post graduate students, I co-mark assignments and research papers and there was an occasion where I co-examined a Phd.

Mogoeng: I noticed that you had a stint, you were a journalist for the Bua Times. What did you do, just in passing?

Madima: Yes, I worked for the Bua Times, I just wrote general stories and that is where I developed what I might call now some ability to write, and it wasn't a job really, it was a freelance position where I submitted stories when I was required.

Mogoeng: Why do you want to be a judge?

Madima: I am sure this committee has heard this before and it may sound like a cliché now, but I wish to pay back what I have learnt over the years, I wish to contribute to my country and the judiciary, and most importantly this is a promotion for me. I have been a Silk, and I cannot go any higher than where I am now, and I have learnt certain things, and I think it will be important to impact and make a contribution from the bench.

Mogoeng: How long have you been Silk by the way?

Madima: This is my 6th year, and it's been a rewarding experience.

Mogoeng: I will not ask you anything about your acting stints, I think that will be better asked by the JP.

Judge President Mlambo: Advocate Madima, you acted in quite a number of positions in the Cape High Court. Am I correct?

Madima: Yes, that is correct.

Mlambo: In the Gauteng division, I don't know if I am correctly reflecting your acting stints, you have 18 weeks there. Does that accord with your own stats?

Madima: Yes it does.

Mlambo: And in fact the last one was a term long allocation which we discussed to say you had two short ones, and for you to have a feel of how it's like to be a judge you will need to be in the division for the whole term, and you gave me that. So how did you find that term, was it heavy, daunting? How did you find it?

Madima: The first three weeks were very difficult, and I kept on saying to myself will I be able to do this and do I want to do this? I remember in my first week I was on unopposed motions and on Monday I had about 75 files, and by Wednesday I had another 75 and on the Friday. I spent the weekend in the office and I remember saying that I don't think I will be able to do this. The second week I was on opposed motions and I had 15 files, and in the third week I was back on unopposed. It was very, very difficult and had it gone that way I don't think I'd be sitting here, but what I can say is that in my third week I started getting the hang of it and I was quite happy. It is good that I acted in Pretoria other than being appointed without having acted, because I would not have had any appreciation of the amount of work that Pretoria and Johannesburg judges go through.

Mlambo: I have also asked you to do a list of judgments that you penned whilst an acting judge, the list shows about 42 judgments. You know the issue of reserved judgements is a problem, now judgment number 20 appears to be a twelve month reserved judgement, is that correct?

Madima: Yes, it is correct.

Mlambo: What was so particular or different about that one that it took you so long?

Madima: There was nothing particular about it, and I have apologised profusely to the DJP for that, and I will tell you what happened there. When my acting stint ended I had four reserved judgments and when I was back in my chambers writing those judgments, with this one in particular, I could not find anything in the file and I returned it to the office of the DJP in Pretoria because I could not remember why I had the file because there is nothing in there. The DJP called me nine months later, and asked me when am I delivering this judgment and I said what judgment? And then he told me about it and I had already returned the file, so I drove back to Pretoria and I went and looked for the file but we could not find the notes. What had happened JP is that I had made an order on that file, but it was never put on the court file, that's why when I was back in the chambers and I was writing the judgments I could not understand why is this file here and empty, so when I returned it, I returned it in that light. I can tell you when the DJP called me I did that judgment over a week, and I went to him and I apologised and I told him that this is not me, and had I known I would have dealt with the judgment just like the others.

Mlambo: Yes, it worried me when I saw that, but you've given an explanation why it took 12 months. My first discussion with you to avail yourself I said to you as JP I've never

appointed a black male Silk, in fact I said I've never appointed a black Silk, not because I am not inviting them, I invite them and they are not available, and you took the bait. Now you are a Silk, have you led any teams either in the Con Court or SCA?

Madima: No I have not led any teams in the Con Court, but I have been in the SCA.

Mlambo: As lead counsel?

Madima: Well, I was the only counsel.

Mlambo: You have quite an impressive list of writings and exposure in terms of the labour law, am I correct?

Madima: Yes that is correct.

Mlambo: So you are very well developed in terms of labour?

Madima: I would think so.

Mlambo: I am not trying to restrict you, I know that you are a general practitioner, but that was your early part?

Madima: That was my early practise, yes, if I may share with the commission, my first brief came from my JP before he became a JP in 1996, and that was the first labour brief I got in the industrial court in Pretoria, but unfortunately as counsel you can never really decide the type of work you want, your practise is shaped by the type of work you get from your attorneys.

MEC Lesufi: I am keen to know your interest in gambling, and you chaired the gambling board and you also have a gambling company and you have also chaired the gambling indaba. Do you want to be a gambling judge?

Madima: No not really, I served two terms as chairperson of the Western Cape Racing and Gambling Board, when my second term ended I think in 2013/14, I was invited to some consortium to participate in this gambling indaba company, and it had its first expo last year and its second one will be this year. There are no rewards, because it is a new company, and I must say I do not want to be a gambling judge, I will resign from that company not only as a director but both as a director and a shareholder.

Lesufi: Maybe I should have started by wishing you a best well teacher's day today, since you are a teacher by profession. I want to congratulate you and thank you in the spirit of #feesmustfall that you personally support students from your own pocket to study in the University of Venda, and the support that you have provided to your school in that area.

Madima: Thank you MEC.

Commissioner Hellens: Matter number 20 that was raised with you by the JP, it looks like trial matter, because it's an RAF case?

Madima: Yes, it was a trial matter.

Hellens: I understand that you had the file, but no papers in it, but did you not have your bench book, and your notes of the matter which show all the cases that you did, and would have readily shown you that you have an outstanding matter?

Madima: Yes it would, and I can explain that, when I left the acting stint I left my book at the court, and that could not be found as well as the file.

Hellens: Well, did you find your book where you wrote your judgment?

Madima: No, I didn't.

Hellens: So how did you write the judgment without any notes about the matter that you heard?

Madima: I went back to the pleadings and I could remember, but maybe not all of it, but most of it.

Hellens: I've acted as a judge and I don't understand this, you need your bench notes because that is your impression as the matter unfolds, I don't understand how you could have forgotten that you ever heard the matter, even the empty court file would tell you you've got it for a reason, how could you not connect the court file with the fact that you've heard live evidence in the matter? And how could you write a judgment without your notes?

Madima: I didn't have the notes, I could remember when I was going through the pleadings, I could remember what unfolded then, and that's how I got to write the judgement. And I may add that if the judgment was faulty, if I may use that word, I think either party would have asked for leave to appeal

Hellens: I'll leave it at that, but I am troubled by this. Can you tell us what your judicial philosophy is?

Madima: I think that is the philosophy that each and every judge must have is to uphold the law, adequately look into the facts, and marry the law and come up with a fair decision.

Hellens: We recognise that it is wrong to delay judgements, I am not talking about your matter number 20 specifically but delayed judgments are a bad thing, can you tell us why it is a bad thing to delay the judgment for a long time?

Madima: Simply because justice delayed is justice denied, if you take too long to hand a judgment, the parties are in limbo they do not know what is going on. Maybe I should provide a little of explanation, as an acting judge it is really difficult for me without speaking about other acting judges, when I am sitting there as an acting judge half my mind is in my chambers because it is inevitable, you can't do much about it, you still get calls from your attorneys and you tell them you will deal with things when you come back. But I want to believe that as a judge now I will not have those problems of your mind being elsewhere it will be focused one hundred on what you are doing

Commissioner Notyesi: Do you believe in judicial accountability and if yes, how should it be navigated without offending judicial independence?

Madima: I believe that judges should be treated like everybody else, and I believe that judges should disclose their financial dealings and I don't see how that interferes with judicial independence. I don't think that judges should be treated any differently than anybody else.

Notyesi: In relation to the list of judgments that you have given, for instance if you go to the first judgment, the date of hearings is not indicated, in fact the majority of your judgments you do not indicate the date in which the matter was heard, we only see the date when judgment was delivered.

Madima: When I was searching in, especially the judgments that I did when I was here in the Cape High Court, when I was writing them then in 2008 and 2010 at the end I was supposed to write when the judgment was delivered, but when I was going through them I could only find the date that I delivered it, but I can assure you it was never more than a term.

Notyesi: In relation to the delayed 12 month judgment, number 20, can you please provide an explanation in relation to judgement reflected in number 22 of your list, where you took nine months to deliver that judgment, and it was more than a term now as opposed to what you are saying.

Madima: Now that you say that, I think that number 20 is not the one that I was explaining earlier, now I recall that's why I said I made an order I could not have made an order in a trial, so I made an order in that application. I think that is what happened. That is the only one judgment that I took more than a term, so if that's the one that took more than a term then it should be it.

Notyesi: In fact counsellor I will take your word, because in most of your judgments you do not reflect when the matter was heard, but I will take your word for it, that it is only that one, and I picked that up.

Commissioner Singh MP: I am a bit concerned about the response that if one sits even as an acting judge your mind is elsewhere, because you said your mind is on your practise. I would imagine that if one is an acting judge you should apply your mind fully to the matter on hand that you're dealing with, because that is the only way you can dispense justice in a fair and proper manner. Having said that, I also note Professor that you have a number of financial and proprietary interests that you have listed, and you do not say whether you're a director or founder of these companies or a mere shareholder. There is Bashabi Ba Sena Investments (Pty) Ltd, there is Bashabi Ba Sena Projects (Pty) Ltd, and there is Bashabi Ba Sena Procurement (Pty) Ltd, and there is also Hamisi of Sena Investments Ltd, and they deal in mining, property, oil and others. You say you shall resign. I think we just need to be told a little more as the JSC, what is your involvement in these companies and how long have you been involved. I think it stands to reason that one would have to resign to give up your business interest, but I just want to know what is your involvement in these businesses?

Madima: Well, I am the founder especially with the Bashabi ones, and I am the founder with other Bashabis in these businesses and they are not trading, the one that is actively trading is Hamisi of Sena which is my family business, and when I say that it's got interest in mining and across the board, it has got 300 000 shares in the JSE, so it's a diverse portfolio and it is a family business. Remember that the question asked for companies you've been involved with in the last ten years, and that's why I listed them. Bashabi Procurement is not trading, Bashabi Investment is not trading, and Bashabi Projects is also not trading.

Singh: What is your influence in these businesses, particularly Hamisi of Sena with 300 000 shares. And you have also presented some papers on SOCs (State Owned Companies) and served as chairman of Autopax for two terms, but you don't say when, because from reading of Autopax in the media, there was this whole business of buying buses that are parked for the 2010 World Cup, there was the business of the conflict with other operators in Gauteng areas, there were also allegations of harassment. So during what time were you the chairman of Autopax?

Madima: I was chairman of Autopax when I was at Transnet, and I left Transnet in 2003/4, so the 2010 World Cup story I was not involved, I had already left. And commissioner, I need to at least maybe respond about my acting stint, and I am telling you my truth when I say that it is not possible not to think about your practice when you're acting, because you still get calls from your attorneys and other attorneys who don't know you are acting, and they would call and say can I give you this work, if it's after your acting stint you accept it. Like I say, there is a difference between an acting judge and a judge, when you are a

judge that is your full time job, you don't have to worry about what happens in the chambers.

Commissioner Malema MP: I am also Mshabi CJ, I am a shareholder in all these companies [Laughter]. Mshabi, can you take us through each company that is listed and what do they have, as well as what do they do, so that tomorrow if they are exposed somehow then you are not accused of not having said one or two things.

Madima: Thanks Commissioner, Bashabi Ba Sena Investments comprises of four cousins. I have resigned from that company and it never traded, what we used to do here every month, the four of us we used to put R5000 into an account every month, and what happened was that for 18 months we've been putting in the money, one of our cousins defaulted for 3 months and we decided that we cannot work like that, therefore, we disbanded the company. Bashabi Ba Sena Projects and Procurement are subsidiaries of Bashabi Ba Sena Investments, they never traded, they are just there in the organogram. Gambling Indaba as I explained, it started last year, it had its first expo in gambling here in Cape Town, and the next one is now in October in Emperor's Palace. Now I think the company that really has value is Hamisi of Sena, where I said that it holds 300 000 shares in companies in the JSE, the directors are my wife and I, and the shareholders are my wife and I with equity of 50% each, and that's it.

Malema: So because your wife is not going to be a judge the good thing is to leave her in Hamisi of Sena Investments, what do you think? Isn't it you said you are going to resign? So ideally you are going to have to leave the wife there?

Madima: Ideally, yes.

Malema: Since we are going to appoint you, are you going to leave her there?

Madima: It will depend really Commissioner, if it's going to cause some conflicts we will have to sell it and shut it down and walk away, if it's going to cause some conflict. I would need to take advice from sitting judges, and ask if they have any shares in the JSC, actually I will ask my JP, but not now and here. I will ask him if he has one share in the JSC and if he says yes, then okay fine but if he says no or it is not advisable to do that, then I can understand that, you can't shift this thing Commissioner to your wife or children because they are still yours really. If you need to shut down, just shut down and become a judge.

Malema: I am asking a simple question, since you are going to be a judge, this is a matter you should have thought about before you came here. Are you going to resign, you and your wife? Okay let's ask it differently, is it correct for a JP's wife to have shares in any trading company, in fact, any other judge?

Madima: The short answer is no.

Malema: So judges wives must not have shares in companies or partners?

Madima: Like I said, if it's going to cause a conflict they must not be.

Malema: I want us to help each other because by virtue of being Mshabi I am already conflicted, so when we deal with other things later we must be able to take a Mshabi perspective, we need a clear and definite answer from a potential judge. We, me and you now agree that it is not acceptable for partners of judges to have business interest in of the companies.

Madima: Yes, I agree.

Malema: Secondly, you said there is a difference between an acting judge and a fully appointed judge, maybe you should take us with your confidence, what is the difference between the two?

Madima: Well the difference is not fatal, when I said that there was a difference between an AJ and a judge, I was referring to when an AJ is in the chambers performing the functions of a judge, he has another job, commissioner, and so it is inevitable that half the mind will always be there in his other job. Now with a full time judge, there is no other distraction because it is your full time job, there is nothing else you do and there is no other side jobs, it's the only job. So that is the only difference I meant, I didn't mean the difference in the execution of their duties.

Malema: I think the CJ will allow me to just spend some time with you, because I have a problem here. Now, why do you accept things that you will not apply your full mind into them?

Madima: When I perform my functions as an AJ I apply my full mind, when am in the judge's chamber, as an AJ inevitably I still have to think about my practice, I don't shut down my practice when I become a judge. I suffer great prejudice when am an AJ, because I cannot take the work, but it doesn't mean that I cannot think about the work

Malema: We have a half-minded judge listening to me with a half mind, and going to apply a full mind when you make a judgment, because when you make a judgement, you are still not in your practice, you are still acting, so this half mind only applies in court, when you leave the court to write you all of a sudden have a full mind, you all of a sudden forget about your practice and you all of a sudden don't receive calls from other attorneys, because now you are writing a judgment.

Madima: Commissioner when I say that half the mind is in my chambers, I don't mean that half mind is occupied all the time, otherwise it wouldn't make sense.

Malema: Mshabi, lets agree you made a terrible mistake here, because you cannot apply half a mind in a matter that when judgment is passed, which carries that same weight as the judgment of a full time judge.

Madima: I concede.

Malema: Now the last point I want to make, you see, we agree that you have made a terrible mistake. Here is a judge that comes into a court room, and I have seen it in your court in Gauteng, a judge comes in the court room and pretend like he or she has read the document and the counsellor advises the judge and he even makes mistakes of saying I know this matter talks about 1234, and they say no that is not what the matter is about, its different, confirming that the judge did not read the matter before hand. So what happens in this case? Do you abandon the matter or do you proceed with it now that you have been exposed that you have not read the document, because the case you refer to is not the one in the document?

Madima: Well commissioner, most often than not the judge would have read the papers, it is only in civil trials where the judge gets the file for the first time in the morning, of course the judge would not have read that, that's how it works, but where a judge makes a mistake about what the case is about, it could be a mistake because he could be having a whole pile of files and he could be referring to another case.

Malema: No no no, we are not talking whether the judge makes a mistake or not Mshabi, a judge has made a mistake already in court, and he says this matter relates to the following matter and takes ten minutes explaining what the matter is about, and when he or she finishes they say that is not the matter before you, and they begin to explain what the matter is about. Now it's clear that the judge made a terrible mistake, leave those things of saying there are so many cases, I am appearing before you, am not interested in so many cases, I am interested in my case and whether you know my case and this is a trial, it is not a first appearance, and the judge he/she still proceeds after being exposed that this matter before you, you have not read anything about it.

Madima: I would proceed.

Malema: You would proceed to listen to a matter you do not know anything about?

Madima: I would proceed and listen to the parties, remember commissioner this is not me, it is a hypothetical case, so I don't mind that.

Malema: I am asking so that I can judge your judgment, because you are going to be a judge, a judge needs to have proper judgement. So if you are going to proceed listening to a matter that you have not read what is the significance of filing papers before?

Madima: Commissioner, as I said hypothetically I would listen to the matter, at the conclusion of the matter I would ask the parties to provide me with heads of argument, and then when I write my judgment. I would have the whole spectrum of the facts and the law that I need. Remember commissioner, it is hypothetical.

Commissioner Ntlama: Since 2008 you have been appointed as adjunct professor at UCT, but I am looking at your publications, that there are no publications post 1994, so my question is where are they now? Your scholarship has not been limited in terms of how you infuse the values of the new dispensation in your judicial resume and application of the law, because you have not touched anything about the constitution since 1994.

Madima: There is an explanation for that, all my publications are pre 94 because I was in academia then, I was at Wits and that was when I wrote, and when I left academia it was very difficult to write. I concede I have not written anything post 1994, and as you may know an academic environment demands of you to publish.

Ntlama: Maybe we have different requirements as institutions, because as an adjunct professor you are still required to publish on behalf of the institution where you are appointed, hence I was referring you to 2008 being appointed at UCT as an adjunct, because that is one of the requirements to publish for the institution, but let me leave it there. Thank you.

Minister Masutha: You do not appear before the JSC for the first time, can you remind us when last were you before this body seeking appointment here?

Madima: I was here in 2008 for a position in the then TPD

Masutha: Yes, and it was quite a hectic interview and you would agree with me?

Madima: Yes I agree with you, because in retrospect I think that the Committee made the right decision.

Masutha: Yes, since that interview and drawing from the lessons of it, what is it in your opinion that you did between then and now that you are again seeking appointment to put yourself in better stand or enhance your prospects of appointment or generally to improve your career prospects in whichever way?

Madima: When I was not appointed in 2008 I had 8 years to reflect, there is a saying in Venda which says that - basically meaning that everything really happens for a reason, I was not appointed in 2008 and 3 years later I took Silk and a year later I was appointed at the competition tribunal. So I had occasion to gather experience in other areas, which now I believe should stand me in good stead.

Commissioner Didiza MP: I just want to follow up on the question raised by Commissioner Malema, but in a different way. I must say that the issue raised about acting while you are still running a practise does pose difficulties. In your own view, I think some may not have stated it the way that you stated it, but it might be a challenge, do you think there is something that needs to be done by JP's to give support to ensure that worry of the other half does not become a barring factor in the work that you have to do as an acting judge, because there is no other way that you can be asked to act, you'd still have to run a practise while acting? I just want to get your view on what needs to be done to assist acting judges who run practices.

Madima: I would really ask that we be given two days in a week to write judgements whilst we are acting, just to give us some breathing space. Commissioner, in Pretoria and Johannesburg there is no breathing space, I realise that if appointed from the first week of my appointment until the last week of my retirement I will always have reserved judgements if am in Pretoria or Johannesburg, that's how difficult the space is.

Mogoeng: Is it because of the work load, and what is the reason for that?

Madima: CJ, it is because of the work load.

Mogoeng: You need more judges?

Madima: Yes, we need more judges, and I know that it takes time but in the meantime the JP's can give us a day or two to write, but then again CJ in all fairness in our last week of acting we do get that time to write our judgments.

Commissioner Ntsebeza: In the New Reclamation Group case in the competition tribunal, I see that you sat with one of the Commissioners in this body, they wrote concurring separate ruling in which they sought to clarify aspects which they felt had not been dealt with sufficiently clearly by you. Did you accept that clarification to have been well made? You know the judgment I'm referring to, or the finding?

Madima: Yes, on page 129?

Ntsebeza: Yes it is, the reasons for their decisions is stated on page 130, and they've got half a page of concurring but separate ruling, in which they say in paragraph 1, but for the sake of clarity and further guidance to Mr Jacob who had the following. I don't think it was a violently different point, but I don't know if you still remember, and to what degree you felt that their clarification was apposite, or did you disagree with their clarification, but you accepted it for what it was?

Madima: Yes, as you put it commissioner, this was in 2011. I was happy that they concurred with the judgment.

Ntsebeza: Second thing, you don't seem, despite your having sat on the competition tribunal for a number of years, you don't seem to have attracted, as a private practitioner, work in that area as one would have expected you should have done. I'm not blaming you. Do you think there are reasons for this, or what do you think are the reasons for this. Black counsel do not seem to be very much engaged in that area of the law, including people like you who have sat in the tribunal.

Madima: Thank you commissioner. Your fellow commissioner who sits with you now, and who sat with me in the competition tribunal will tell you that in the 5 years that I was at the tribunal, I've not seen more than 3 black practitioners appearing before us, at any given time. That is the story of my country. When I came to practice law in Cape Town, I was naive thinking that I will come and do maritime law work. In the 12 years I have been here, I have had just one matter with a Silk, we did an answering affidavit and that was it. I left the competition tribunal 3 years ago. In a normal country, who better to brief than a judge who sat at the competition tribunal? I am still waiting. In the first year I thought maybe there is a cooling-off period. I am still waiting

Ntsebeza: Is it so that the competition commission is a commission of the republic's democracy?

Madima: You know commissioner, I don't complain about work not coming to me from the commission, the commission has so much work. I complain about work that should be coming from the parties, and that is the work that is not forthcoming.

Ntsebeza: And where the commission is the party?

Madima: Where the commission is a party, the commission does, those are the three that I was talking about, black Silks, black practitioners, and I've got no problem with that.

Ntsebeza: And the private sector?

Madima: That is the one that I am complaining about, in my country. I've not seen black practitioners appearing before the tribunal emanating from being briefed by private parties. Yes, the big law firms will come there with their attorneys who work in the firm, but I have not seen practitioners representing private parties to any significant degree.

Mogoeng: For what it is worth, that is what I have seen in the Constitutional Court in relation to these competition matters, you hardly ever see a black person there.

Commissioner Nkosi-Thomas: You spoke about transformation as a story of my country in response to a question from Commissioner Ntsebeza, in relation to your exposure to work in the competition law space, I want to just probe you, because State-owned companies and government those are the target markets, if you like, for addressing skewed briefing patterns. Now you were at Transnet for 7 years, and I must say that I have

been fortunate to receive good work from you, but let's just find out from your learnings and experience as general counsel, what it is that we can do to address this very issue that you refer to as a transformation story of my life, that sees that we not getting enough people into the competition law space, and so on.

Madima: I think the people charged with this type of responsibility must want to do it, you must want to empower. What I have noticed is, black counsel don't get the work, white counsel get the work, they still lose. So it can't really be about competence.

Mogoeng: The few blacks that have appeared in competition matters in the Constitutional Court were so exceptionally good, has that been your experience as well?

Madima: Yes, when we sat in the competition tribunal, they are very, very, very good, and the question we kept on asking ourselves is, if this guy is so good whilst acting for the commission, why is he not getting work from the other side? That is the question, that's why I say you must want to do it, whenever I have a chance to talk to attorneys from the big firms, I say why don't you adopt this black female junior, give them unopposed work and grow them, and one day you will look with pride and say she is Silk today because I am responsible for that. You sit in court today and you find white counsel with 10 files, and they could have given this black junior one file just for experience and for the little stipend that they should get there, but again as I said it must come from the heart, if they don't want to do it it will not happen

Nkosi-Thomas: Did you get it right during your tenure at Transnet in your 7 year period?

Madima: I would like to say yes I did get it right, in the sense that you have ten instructions and 40 practitioners. The 30 will complain, that's inevitable, but I am happy actually, this morning I got a call from a judge, recently appointed in KZN, and she said tell them about what you did for me in KZN. I took it upon myself to empower her with Transnet work in KZN.

Maya: Arising from questions put to you by commissioner Hellens regarding matter number 20 or 21, am not quite sure which one, did I hear you say that you conducted a civil trial then it slipped through the cracks and you forgot about it, and a year later you prepared a judgement based only on the pleadings and your memory?

Madima: Yes, that's what I said.

Maya: What about the evidence that was heard in that matter?

Madima: I worked with what I had, and as I said I apologised profusely to the DJP for that, and as I said the mistake that I made was that the order that I had given was not attached to the file, otherwise I would have written it together with the rest, the other 3 that I did. Big

mistake, I concede it should not have happened and I am not blaming the fact that I was an AJ, but I can assure you that I am not like that and it will not happen again.

Mogoeng: It must be extremely embarrassing. I know of one SCA judge that had forgotten a judgment while she was at the High Court for 2 years until it surfaced in the media, you must be very embarrassed aren't you?

Madima: Well, is it about me? Yes, it is very embarrassing

Mogoeng: And if you are appointed it will never happen again?

Madima: Never ever, and my JP is here and he will keep on reminding me.

Mogoeng: We will discipline you if goes beyond a particular time, we are very strict. You are excused.