



JUDGES MATTER

Judicial Service Commission interviews

4 October 2016 - Morning session

Constitutional Court

Interview of Judge L O Bosielo

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Chief Justice Mogoeng: Welcome Judge Bosielo before the Judicial Service Commission, are you comfortable, relaxed under the circumstances? I urge you to feel relaxed. You were an attorney for how long before you became an Advocate?

Judge Bosielo: For fifteen years.

Mogoeng: And then you practised as an Advocate for two years?

Judge Bosielo: Yes, for two years.

Mogoeng: You were a judge of the High Court from 2010 or 2011? No no no, 2001?

Bosielo: Yes, since January 2001.

Mogoeng: Until?

Bosielo: Until October 2009.

Mogoeng: Is it 2009? I looked for the date of your appointment to the Supreme Court of Appeal, I only saw the High Court one, January 2001.

Bosielo: Yes.

Mogoeng: So you have been a judge for how long, all in all?

Bosielo: Fifteen years and a couple of months.

Mogoeng: At the High Court for how many years, by the way?

Bosielo: For High Court, I was there for eight years.

Mogoeng: For about seven years in the SCA?

Bosielo: Yes, that is correct.

Mogoeng: And you've had two acting stints at the Constitutional Court?

Bosielo: Yes, it is indeed Sir.

Mogoeng: Why two when others have one? I know I'm the one who invited you, but please explain.

Bosielo: You would recall Chief Justice that in May 2013, I was on long leave.

Mogoeng: Yes.

Bosielo: There was an emergency at the Constitutional Court and they asked me if I was willing to interrupt my leave and come and work at the Constitutional Court, which I did, without hesitation. The same thing happened this year. You would recall that I was called again in January; I was on a long leave. I was asked "are you willing to forego your long leave and come and help us". Understanding my commitment to this country, I graciously accepted the invitation. So, I acted under the circumstances.

Mogoeng: Ok, you were called in for the second time.

Bosielo: Yes.

Mogoeng: For the record, it was for a different reason unlike your other colleagues you served two terms not one and that is why. So now why do you believe you are the right person for this position?

Bosielo: Let me first thank you for having given me an opportunity to act in the Constitutional Court. My stint from January to May this year was a very important one for my development as a judge in this country. I had the privilege to sit and participate in matters of great importance in this country. I sat in the DA/EFF matter. I sat in the Afriforum matter. And I sat in other matters that are affecting the socio-economic rights related to the people. I think I am ready to be the judge of the Constitutional Court. But I think having been there at the beginning of the year up until now, I have grown intellectually. I have matured, in my understanding of the Constitution, the promises to our people in the Constitution and the transformative projects that the Constitution compels all of us to undertake has now been deepened. I think I have the skills, I have the tools, and I have the passion to add my weight to this ambitious transformative project that the country has undertaken since we adopted the Constitution.

Mogoeng: Let's deal with the inevitable. I don't normally lead in this line of questioning. But because it is the Constitutional Court you are applying to, I have no option as the head of the court but to lead in this regard. You're aware that we have received an objection, stroke complaint about you?

Bosielo: Yes, I am aware Chief Justice.

Mogoeng: Now let's deal with it. Let me be upfront about what is it that concerns me in this regard. There is an allegation that in the course of discussing, or exploring the

possibility of the community benefiting from the Mpilo's operations at Northam Mines, you were deeply involved in that process. Are you in a position to confirm or deny, just clarify whether you were as intimately involved with the chief and your brother and other people as it is alleged?

Bosielo: Chief Justice, let me thank you for raising the issue. Let me put context to the issue. I read the complaint very thoroughly. You will probably see that at the centre of the complaint is an ongoing war about chieftainship. Regrettably, your name is been mentioned as having participated in one of the [indistinct]. It's not a new thing. Happened in the 80's, it's happening now. It is a village where I am born and where I am raised, in the 80s I witnessed people killing one another because of chieftainship. It died for a while. And recently, it raised its ugly head again. Mokoka Ramokoka is a new entrance into the debate and he claims, that his grandfather was defrauded of what belonged to him. You must have seen in all my exchanges with him, I was very clear to him, I take no role and I have no interest who the chief is. I will respect anybody is properly appointed and who has a certificate of appointment. Currently, Mr Kgosi Ramokoka is the chief in my area. When people come to me and ask "who your chief is?" It is him. Can I explain the involvement to Mpilo?

Mogoeng: Yes.

Bosielo: Chief Justice, I do not know whether at the time of a commission you have had the privilege to go to my village?

Mogoeng: No. You mean when there was a dispute about the Boss Ramokoka? I was an advocate then leading evidence in that commission. I didn't go to your village, but I think there was trouble still in your village. I do not even remember who we recommended as a rightful chief back then, because I am not familiar with the happenings in Ramokoka.

Bosielo: I am just trying to give context to the debate. It is one of the poorest of the poorest villages that you can ever find in this country 22 years into democracy. We do not have a library. We do not have a quality internet cafe. We literally have nothing. But as fate would have it, my community has a pending claim on Northam Mine, which is being considered by the Land Claims Commission. If you recall some years ago there was a BEE deal that was concluded on Northam by Toyko Sexwale. Northam is about 30km away from home. My people benefited nothing in terms of development. Things did not turn out good for them and the shares were taken over by Public Investment Corporation. Mr Matjila who is mentioned in the report is my big brother; we come from the same village. In the 70s, he went to exile and came back and he found the village worse than it was. He is at the forefront of trying to develop that village.

Mogoeng: You mean Mr Jerry Matjila the Director-General? Oh ja, now he is the UN Ambassador?

Bosielo: Yes, Mr Jerry Matjila. He then heard that there was a new group looking for BEE partners in the new deal at Northam. Then he called me and said "this is what is happening, are you able to assist?" Realising the sensitivity of the matter, I went up to my President, Judge Mpati, and said to him "this is what is happening", and I gave him the story. Just to lighten the moment. I actually accused him of having cost my village people to use the piece of land you will recall a case that went to

Constitutional Court I think it is *Mphela v Haakdoornbult [Baphalane ba Ramokoka Community v Mphela Family and Others, In re: Mphela Family and Others v Haakdoornbult Boerdery CC and Others]* [2011] ZACC 15; 2011 (9) BCLR 891]. I said to him I saw that you sat in that matter. It is again this matter. He said to me “our village and community invest in us and educate us in order to help them”. I got involved in the whole process with the intention of assisting in the uplifting of people in my community.

My involvement was to speak to Mpilo and say “you not going to do what the previous BEE partners did, you have a community right behind you, what are you doing for them in terms of development?” They put up two conditions. You bring the chief who is the chief, and then profile of the village that you are talking about and a properly registered trust which is going to handle this money. The profile of the community was provided. There is a trust, Batlatse Development Trust. They made it very clear to me that they are willing to accommodate Baphalane community, as a historically disadvantaged community. We will give them money but that money would go to a trust and it is for development. I am proud to say to you Chief Justice, I am speaking to you, my involvement ensured that my people got a meagre R14 million to the Batlatse Trust. I am not a trustee.

Mogoeng: Is it R14 or R40 million?

Bosielo: It is R13 million. Let me put it clear. There were seven Historically Disadvantaged (HD) beneficiaries. All of whom is sharing a payout of R400 million with a ten year locking period. The other part of the money was used to secure them shares in Northam. As I am speaking to you now, my community has shares worth about R60 million in the Northam community. The cash payout was R13.8 million that went to them. I am proud to announce to you that because of my involvement, as I am speaking to you today, I have ensured that 37 young bright students from a village that nobody knows about had been deployed in various universities in the country, thanks to that injection. Those students would never, ever have been able to access university education. That’s my involvement.

Mogoeng: Yes. Well, this is a real issue I need clarification on. The affidavit says that you’ve indicated over and over again, even in the SMS’, that all you want to do is help this poor community. You are not interested in the money, you do not want any stake in it. Now, the first issue that calls for clarification is the following. One of the directors of Sentlaga Investment that is said to be a shareholder, I don’t know whether it is Sakhumnotho or Mpilo itself, is reflected as Judge Peter Bosielo. Now I ask this question knowing that according to the affidavit, it appears that Mr Peter Bosielo is your elder brother.

Bosielo: It is indeed so.

Mogoeng: But the reason I am asking this question is this. The credentials reflected there from practice as an attorney, advocate, academic qualifications up to LL.M, advanced diploma, judge of the High Court, acting judge president of the Northern Cape division, judge of the Supreme Court of Appeal, acting judge of the Constitutional Court are yours. And the deponent seeks to make the point that you are the one who is in fact a director or who was the director, not the one who was reflected as Judge Peter Bosielo. What clarification can you provide there?

Bosielo: Chief Justice, let me start first by saying I hope that it will come through in the reading of your affidavit that you are dealing with someone who is paranoid. You are dealing with someone who is very bitter. You deal with someone who would go to great length to say bad things about me. I felt seriously offended, and defamed and denigrated when he stooped to the level of saying "I am conspiring to kill him". You will recall Chief Justice that Sakhumnotho belongs to a man called Siphon Mseleku. Siphon is running a very important global institute and the last time they invited you to go to speak. You remember I met you there?

Mogoeng: They invite me almost every year, not their business meetings, but their annual conference where government officials and everybody is invited to come and speak.

Bosielo: I have a relationship with Mr Mseleku and I have been invited to speak at one of the meetings in that capacity. So he knows me very well. But if you look at the documents of Sentlaga, I appear nowhere. I am neither a shareholder nor a director of Sentlaga. I saw that letter, and I stood up and I said to them "please correct this, it is wrong". My brother Peter Bosielo is the current chairperson of the CPA, Communal Property Association and he was attending that meeting in that capacity with the chief. That is where the confusion came in. But I am putting it now unequivocally before this Commission, that I have nothing to do with Sentlaga. I am not a shareholder in Sentlaga. I am not a director at Sentlaga. My involvement was to secure some financial injection for my poor community at home and that is what I did.

Mogoeng: The other suggestion made here is that you were all this enthusiastic to secure a financial interest for your family, because according to the documentation attached, I think it may be page 54 or 55 of the affidavit, there is your wife reflected as a director with effect from either the 7th or 8th of September 2016. Mr Mokoka is now saying "you see now, this was not just for the community, this man is benefiting through his wife". Is the Judge permitted to participate in business activities in this manner?

Bosielo: Chief Justice, you would see from the documents that the deal was clinched and sealed in 2014. It begs the question, why only now?

Mogoeng: I didn't hear after 'begs the question' -

Bosielo: You would see that the deal was made in 2014. The announcement of the deal to the Baphalane community was made by Mr Mseleku on the 20th of December 2014. Mr Mokoka knew from 2014 what was happening about Sentlaga. Begs the question, why only now? But I will tell you why only now. In the month of, late last year, people at home went on a rampage. A faction belonging to Mr Mokoka they burned the tribal office, they burned the communal office, and home of a chief. They also burned the home to chief's mother. Recently, I sent him a message and said to him "what is happening at home? You have turned these villages into a warzone". And I pleaded with him, can't we meet as the two of us to offer leadership to the people at home. Early this year in September an attempt was made to petrol bomb his house. Once again, I sent him a message and said "what is happening at home, we are going to be sitting with blood of our people in our hands, can't we transcend our differences?" On the 19th of September, Mr Mokoka sent me a message through his lawyers and invited me to a meeting. I welcomed the invitation I thought we are

going to find a solution. He insisted in that letter that he wanted the presence of a retired judge. I responded and said to him “why a retired judge?” He arrogantly said to me that “if you don’t come with a retired judge then there is no meeting” I had to frantically look for the retired judge because I wanted to have an engagement with him. I got retired Judge Maluleke, and we went to the meeting on the 23rd. I thought we were going to sit in a meeting like two educated, responsible people and find common ground. We didn’t. All I got from him is on Wednesday he sent me a letter intimating that after much reflection, he has decided to come up with this complaint. That is a background to the whole thing. In the middle of everything is a perception from Mokoka, which is wrong, that I am blocking his way to chieftainship. I’ve said it to him, in all my correspondence with him, I made it clear that I have no interest who the chief is. I respect the law. I said to him Mr Mokoka there is a recent commission of inquiry. The report is lying with the Premier, why do you allow people to undertake these criminal acts. Why don’t you go to court and compel the Premier to release the report, so that we know who is recommended? If you are not happy with it then you can take it on review. His answered me and said “you are the last person to give me a legal advice; I would go to my lawyers.”

Mogoeng: Well, my question was, company documents have been made available to us as part of the affidavit reflecting the names of your wife as a director of Sentlaga Investment, that has just been added in. So if your wife is there now, the man is suggesting that you have been working so hard to derive benefit out of this economic opportunity. Why is your wife there now, because you just want to serve the people? You want to alleviate poverty. The suggestion from him as I understand is that if your wife becomes a millionaire, then the Bosielo family becomes millionaires. She benefits, you benefit. Why is your wife there as a director?

Bosielo: Let me explain it this way, my wife is not a shareholder of Sentlaga, she is just a mere director of Sentlaga. How it came about is that Mr Matjila was deployed to the UN, his wife was going to run ... Sentlaga on his behalf. Upon being deployed to the UN, his wife then requested my wife to become a director in Sentlaga to oversee the interest as away from home. She not a shareholder at Sentlaga, she is just a director. As you correctly said, it only happened recently when Mr Matjila was deployed to the UN.

Mogoeng: Well, I think it’s only proper that I afford an opportunity to other commissioners to ask you questions. Commissioner Malema?

Commissioner Malema: Thank you very much, CJ. Judge, let us canvass this thing of director versus the issue of community upliftment. Matjila’s wife asked your wife to be the director in a project where you’re involved to help the community. Do you see anything wrong with that?

Bosielo: I can hear the nuances, but at the time I thought by merely being a director and not a shareholder, there was nothing with that in a sense that my wife was able to pursue whatever business she can pursue. She does have other businesses. But, the connection now as you said it; I could see it and I would concede, yes.

Malema: So you concede it is actually a problem for your wife to become a director, do you agree? And it confirms the suspicion that you are there for yourself and nothing else but yourself. You know very well judge, and you are very good with dates and that, that there has been a problem in the community and your name is

being tarnished, but you still allow your wife to be a director in a project that you're saying you're just there for the community. The allegation of your wife's involvement is actually an evidence enough to confirm that you are actually in it for yourself. Would that observation be correct?

Bosielo: With the greatest of respect, I would love to differ with you. My involvement in this project, I am saying to you, I have not received a cent from it. The money that I received that came in through this project went to a trust, the development community, there are trustees that are running that trust. It has absolutely nothing to do with me.

Malema: Your wife received money from it.

Bosielo: My wife has not received any money.

Malema: No, there are director's fees. Your wife received money from it. She is entitled to that money. There are director's fees. Hasn't she received money? As a director?

Bosielo: She will get entitled to the director fees. I don't know now as it only happened recently in September.

Malema: And when your wife receives money from this project, you also benefit because she is your wife. If she buys a car you are going to drive in that car, and bought the car with the money from this project, you are benefitting from this project. Do you agree?

Bosielo: Yes, if she gets the director's fees.

Malema: The judge is benefitting from a project that is supposed to uplift the community, is that not creating a bad image for the judiciary?

Bosielo: Mr Malema, let's not confuse issues. We have two separate institutions here. You have Sentlaga standing on its own, you have got Batlatse Trust standing on its own. Batlatse Trust was promised some money from Mpilo. There is a distribution account available, I hope it is made available before you. Where money was paid out, the chief, Mr Ramokoka, attached the minutes, by the chief when he addressed ...

Malema: Do you agree that you are a beneficiary in a way in this project where your wife is involved?

Bosielo: Yes, as in Sentlaga, which is separate from Batlatse Trust.

Malema: I'm not talking about Batlatse Trust; your wife is not a director there, I'm talking about where your wife is a director.

Bosielo: Certainly, I agree with you Mr Malema.

Malema: And therefore you are, and Sentlaga company thing is involved in this community project. Do you agree?

Bosielo: You missing the point, I am trying to draw the distinction. The community initiative is under the Batlatse Community Development Trust. Sentlaga is a separate

entity that belongs to different people. I was involved with Batlatse Development Trust.

Mogoeng: Is Sentlaga completely divorced from Northam Platinum, from Mpilo, from Sakhumnotho or is there a connection?

Bosielo: It is not, it is one of the beneficiaries in the distribution.

Mogoeng: I think that is that point that Commissioner Malema is pursuing. Continue Commissioner.

Malema: That is what I'm talking about. By virtue of it being involved in any of the transactions there, you are a beneficiary because your wife is a director there, who is entitled to director's fees.

Bosielo: I think I've admitted that and I will admit it again.

Malema: Now we are at one that you benefited from this project where you were going to help the community.

Bosielo: I think I've admitted that.

Malema: Thank you. Now let must just deal with this director shareholder thing. Why didn't you judge, respond to this allegation in a written form prior to this interview?

Bosielo: I remarked earlier on about the timing of the complaint. I received this complaint yesterday at eleven o'clock, only yesterday at eleven o'clock. I had no time to respond thereto, and I want to emphasize that the Commission should take note of the timing of this complaint. Mr Mokoka only reported the complaint from the 9 September 2016, where he knew that I must come to the interview. And I repeat he is a bitter man who hates me because in his conception I'm a stumbling block to him becoming a chief.

Malema: Well, I like his timing. It is a very correct timing because we were going to appoint you without knowing your shenanigans which you are involved in with your family in the community development project. So, this timing is perfect for me because I would have made a terrible mistake recommending you as a Constitutional Court judge without knowing all these things you have just admitted to. But I'm not sure on when did you receive the complaint because we did not get it at eleven o'clock, we got it almost prior to this meeting. And ordinarily, we would have expected, like all applicants do, when there is an objection or complaint to their names, they write the response to afford us an opportunity to research more about the complaint and the response to the complaint. Now I've got a difficulty because you even say you asked for the permission from your principal, President Mpati, and had we received this type of a response from you before, we would have had an opportunity to verify with President Mpati if you were indeed given a permission to get involved in a manner you got involved in that community.

Bosielo: Mr Malema, I reiterate what I said to you, I received the last notification on Wednesday from the attorneys of Mr Ramokoka that finally after our meeting on Saturday, he said he has finally decided to lodge a complaint. As to when and how I did not know. I sent an e-mail to Mr Chiloane I think on Wednesday, to find out if he had received anything, and I got the latest report about what he'd received then.

Only yesterday, I got a report from my secretary in Bloemfontein to me, to say that she's sent things to me that came through my e-mail. I got this thick report yesterday at eleven o'clock as I was preparing to go to the airport. I never even had the time to read it yesterday, I read it when I arrived here.

Malema : Are you friends with the Premier of North West?

Bosielo: Mr Malema, I am no friend with the Premier of North West, I have never been in his company. The first and last time I saw the Premier of the North West was before he became a Premier at an event or party held in honour of the current Chief Justice at his home town, where I was invited to deliver a speech. That is how far I came to him. I don't know him.

Malema: Have you ever been involved in any transactions or dealings that seek to give this or that person an opportunity to do business in those activities that are happening in the village? Have you sat in meetings where you even offered, I think the complainant, to be a director in one of the companies? I think there is something to that effect in the complaint.

Bosielo: Mr Malema, I am not here to paint any person black, but that shows the character of the person you are dealing with. I said to Mr Mokoka in the meeting we had last week Saturday, part of these Northam deals was that the community was allocated a directorship at Mpilo, are you aware of that? You've got to be looking at the interest of the community at Mpilo. That's all I said to him. It is a fact that they offered the community a directorship at Mpilo. That's all I said to him.

Malema: Did you offer him directorship?

Bosielo: No. I just made him aware of that, I can't offer him directorship, I am not in that company.

Malema: Judge, do you think judges must be involved in the manner you are involved in the community project? Do you think it is in the good interest of judiciary? Does it give the good image of the Judiciary, your involvement in the project there? I know you went to help the community and all that, but look at what is happening now. Do you think your involvement there helps to enhance the good image of the Judiciary?

Bosielo: Mr Malema, it pains me to try and figure out an answer to your question, but let me first start by saying I was born in that village. I grew up in that village, I have seen the poverty in that village. At some stage, I had to do soul searching. Now that I am who I am, am I going to go into the ivory tower, and cut ties with my village? And I said to myself if I can be of assistance, and help the young, the youth coming out of that village, to be where I am, if not better than I am, I would do it. If I have to lose this chance to become a judge of the Constitutional Court, because I went out of my way to raise money for people, the poorest, the poorest community, I would go out with pride. That's what it means to educate a person in a community. I have a role to play.

Malema: Look, you have to choose, you have to choose to become a politician, then you can give those good political speeches there in the village. Here, we are looking for a judge, and if you think you can make a very good community developer who changes poverty and all those things because of where you grew up, don't you think

it's time you choose to go and be a community developer, and then leave our position at peace because we are not going to be answering such things on your behalf, because your involvement then comes to us. It becomes our responsibility to try and clarify your involvement in what is a community development. Do you think your noble course of helping the community is helping enhance the good image of the Judiciary? You know what you are doing, I can do that every day, that is my job, to battle out with people who are fighting for this and that in the community, that is my job, that is what I do every day. And no one can say to me "do you think that enhances the image of your political organisation" It does, because I'm fighting for the noble course. But for the judge to be involved in that dirty work that is happening there, does it help this good office of the Judiciary?

Bosielo: Mr Malema, let me start by saying I appreciate your questions. I really appreciate them, because you are putting a very important issue for national debate on how far can judges get involved in uplifting their communities. Are judges different from other professionals? I – having had my interactions with Mr Mokoka, I went back and read rules on judicial ethics, what judges can do and what judges can't do. And I'm doing a lot of lecturing on judicial ethics, and I know the constraints. But I did not see anywhere where it says judges cannot get involved in uplifting the community. Appreciating the poverty at home, going home ... There was a time this year when these 37 students were chased away from the universities because they could not pay their fees. Now, should I sit back in the comfort of my home and say it nothing to do with me; I am not going to get involved? Should I get someone who is going to help them? I take your point on whether it enhances the profile, the image of the Judiciary or it undermines it. I appreciate your question and I think it is the question for national debate. I did what I did because I thought it was a laudable cause to assist where I can.

Malema: Judge, I don't want to go there, because using the concept of community upliftment has been undermined by your wife's appointment as a director in a company that has got business interest in the whole project of community development. So to suggest that you are in it for community development, I also disagree with that. But nevertheless, let me ask the last point, do you think we will do an honourable thing to recommend you, and I'm happy you made that point because I'll use it in our deliberations, if it means you losing the position of the Constitutional Court for community development, you will rather lose it, you said that yourself. You are so ready to lose the Constitutional Court position because you are passionate about community development, did I get you right?

Bosielo: Mr Malema, you have read my documents. You have seen the length which I have gone to reach out to those who are disadvantaged. That's my passion, you have read my documents. That is what I do, that is what gives meaning to my life.

Malema: My question is, did I hear you right when you said, all of which you were canvassing me and you, if it means losing the position of Constitutional Court for you to pursue this, you are so prepared to lose the position of the Constitutional Court?

Bosielo: I cannot be a judge in my own cause, Mr Malema. I am here given an opportunity to try and persuade the commissioners that I am fit and proper person. You are privileged, you have the right to judge me. I told you what I did and why I did it, you have the ultimate say.

Malema: You are a sitting judge, and I will want you to respond to my question in a manner that I will not distort you in the deliberations and it would help everyone else when we go into the deliberations. I am trying to repeat what you said so I don't distort what you said. Did I hear you right when you said you are prepared to lose the position of Constitutional Court if it means, these issues we canvassed, me and you, are going to cost you that position, you are so prepared to lose it?

Bosielo: I am not so prepared but I will accept it, it's the judgment of this important, august body. You have a right to decide on issues before you.

Malema: Do you think this Commission will do an honourable thing, which is in the best interest of the Judiciary, if it was to recommend you to the President as a potential Constitutional Court judge with all of these allegations, with all of your involvement and your family involvement in this project. Don't you think that you should have, on your own, withdrew your candidature until some form of a process is undertaken to try and clear these things, before you come and avail yourself as a judge of the Constitutional Court. Remember, that is the last line of defence in the judiciary and therefore the people we put in that Court should not have these types of allegations against them. Why would you, if you love this country, you love the judiciary, you love the people of this country, still want to avail yourself with these serious allegation against you, some of which you just conceded indeed they are problematic?

Bosielo: Mr Malema, let me say this to you. I said to you I had a meeting starting from eleven o'clock until five o'clock in the afternoon last week Saturday with Mr Mokoka. He never indicated anything to me. I was with him, his lawyer Mr Mabunda, with his PA and Judge Maluleke. I left that meeting not knowing what Mr Mokoka was going to do. Up until Wednesday, I received an e-mail from him which says I have now finally decided to lodge a complaint. I regard being a judge in this country as a privilege. I said to you I teach a lot on Judiciary ethics. I spoke to my senior colleagues, I solicited advice from them. I have this sword hanging, I don't know what this man intends to do. Should I withdraw now? And the debate was, you know it's the second time around that you've not been able to fill up that position at the Constitutional Court. If I withdraw now, you may not be able to make the required numbers. There is no complaint yet. I even thought about the cost involved in getting me here, and everybody here. I only got this report, I repeat, yesterday at eleven o'clock. I would have loved to have an opportunity to respond to this report. And let me tell you one thing about whether I would be a proper person to be appointed to the Constitutional Court. Mr Malema, I want to assume that you had an opportunity to read my application. I want to assume you have seen what I have done in this country. I have been privileged to be a judge in this country for fifteen years, and I've said earlier on I'm grateful to the Chief Justice for having given me an opportunity to act at the Constitutional Court. I have no doubt in my mind, not an iota of doubt, that I would add value to the Constitutional Court. I've written judgements in the Constitutional Court that I'm proud of, and I think I will add value in the enterprise, the project of transformation we are undertaking in this country. That's my take on that.

Malema: Well, that was not my question, and you've got that tendency of answering the questions which are not being asked. My question is, and I don't doubt your credentials, you're a sitting judge and you've acted in the Constitutional Court and

that's why you were shortlisted, otherwise you wouldn't be sitting there. Given this, you didn't know, you only heard yesterday and all that - now you know. Now you know. Will it be advisable, the passion within which you express yourself for the love of your people in the village, for the love of the country, for the love of the Constitution, will it be advisable that now you know of the allegation, would it still be advisable for this body to recommend you to the President? These are serious allegations. A man of honour will say, you know, what I've got nothing to fear, I've done nothing wrong, and since these are serious allegations, let me stand on the side and some process to clear my name, because it is not about me at all cost. It is about that good office which must be occupied by people who don't have this type of cloud hanging over their head.

Bosielo: Mr Malema, you have added another nuance to the question and once again I'm grateful for having done that. My name has been dragged into the mud, and I think I deserve an opportunity in an appropriate forum where I can confront Mr Mokoka, and these things can be investigated. I came here well aware that this forum is not an appropriate forum to deal with the merits and the demerits of this complaint. To that extent, I agree with you.

Malema: It will be inappropriate for us to recommend you, since there serious allegations before us, don't you think? I mean, for the country, for the good image of the Judiciary. Let's forget about our ambitions, we all have our ambitions but sometimes as a patriotic South Africans, let the good image of the country and the standing of the country among the nations of the world be important to us. So, given these, don't you think it's not too late for you to just say I withdraw my candidature, I didn't appreciate the significance of these allegations, since they were brought by this leadership here, I withdraw and I want to get an opportunity to deal with these matters. Whether we are short of four or not, that's our business, leave that to us.

Bosielo: Mr Malema, I explained to you why I came here, I explained to you the difficult moments I had to go through to weigh the pros and cons and what could happen. I think it is for this commission. If I had had my way, I wouldn't have come here yesterday. But I understood that preparations had already been made, expenses had already been incurred, I understood that. If I had been aware, I would have sent a letter yesterday, and said I am not coming. I agree with you.

Malema: Chief Justice, I just want to put this very simple. Should we recommend you to the President to appoint you. All this – your colleagues, you know what it takes, all of them – should recommend you to the President, and the country, or you to be a Constitutional Court judge – not a High Court judge, not a magistrate, not a Supreme Court of Appeal, a Constitutional Court judge. Should we recommend you with all these allegations still hanging, is that what you are saying?

Bosielo: Mr Malema, in all honesty, do you really expect me answer that question? It's the Judicial Service Commission's ultimate duty to decide that. You are asking me to be a judge in my own cause. I did my best to give you an explanation, it is for this Commission to weigh them, and find out if they have merits. I cannot be a judge in my own cause.

Malema: Thank you, honourable judge.

Commissioner Motshekga: Judge, in the 80s when we were building an organisation called the Democratic Lawyers Congress and later the National Democratic Lawyers Association, I think I worked with somebody called Bosielo. Could that be you?

Bosielo: That is me, Mr Motshekga.

Motshekga: Would you recall that at that time we were activist lawyers, who were committed to facilitate community development but also to selflessly empower our communities with skills, knowledge and not anticipating in any benefits.

Bosielo: That is a training that I received, and I value that training to this day. The role that I need to play in this new society we are trying to create.

Motshekga: But do you remember that during that time, although we were not judges, we were mindful of the fact that we should avoid the conflict of interest?

Bosielo: Yes.

Motshekga: You've told this Commission that your wife was approached by the wife of Jerry Matjila to serve as a director in a company. Was that company not established by the Trust?

Bosielo: Not at all. It had nothing to do with the Trust. I am trying to keep the two entities separate. I was involved in the Batlatse Development Trust, which is a community trust. Perhaps, I should be correct, I did not set up the Trust, and the community was the one that set the Trust.

Motshekga: Is there any relationship between the Trust and that company?

Bosielo: No.

Motshekga: Ok. Now, are you married in or out of community of property?

Bosielo: I am married in community of property.

Motshekga: Now you said you had no financial interest or other interest in the whole matter, was that correct?

Bosielo: In Sentlaga and neither in Batlatse Trust, I had no financial interest whatsoever.

Motshekga: But if you are married to the community of property, doesn't that make you a beneficiary in the business deals that your wife may be involved in?

Bosielo: I think I conceded that, indirectly it does.

Motshekga: You were also involved in chieftainship dispute in one way or another. Is that correct?

Bosielo: Mr Ramokoka requested a meeting with Ntate Matjila; I was present at that meeting. Mr Ramokoka said we have three factions that are fighting at home and requested that the Premier to appoint an administrator because we are fighting. This was a suggestion that came with them and they even went to an extent of approaching the Premier, who agreed to appoint the administrator. I welcomed it, as

that would end the killings, arsons and wanton destruction of property. I was worried about that, I am still worried about that as I'm speaking to you.

Motshekga: But don't you think those interactions with Mr Mokoka could create the reasonable impression that you also had an interest in who becomes a chief?

Bosielo: Mr Motshekga, I've said in many times, I'm living in this country; I come from a village and respect a system. I had no interest in who was to become a chief.

Motshekga: Without belabouring anything, don't you think what you had been saying and also answering to some of the questions that had been asked by Commissioner Malema, there is cloud hanging over your head?

Bosielo: With my involvement in the chieftainship thing or other issues?

Motshekga: Both the chieftainship, mining, trust and companies.

Bosielo: Mr Motshekga, I would not deny the fact that I'm worried about what is happening at home. I would not deny that, I would be dishonest. I have seen this happening in the 80s, I've seen it happening now. It's there in the *Sowetan*, it's there in the *Mail & Guardian*. I'm worried when I see people's houses going on fire. I would not deny that.

Motshekga: Lastly, wouldn't you agree that type of a cloud has a serious implication to the image of the Judiciary and also the image of this process?

Bosielo: I would not deny that might create that perception, but as I said, I cannot be a judge in my own cause. I have given an explanation as to how I got involved and how far I got involved and why I got involved.

Commissioner Singh: Firstly, I must say I really respect your passion that you have for community development and community upliftment and I hope more people would have time and expertise and take an interest in their respective communities. Well done to that. I just want to refer to you to the document you said you received it yesterday. On page 54 of the document is a headline: profile of consortium participants. This is where there is a name of trusts and other groups. On page 55 of the document is the profile of Judge Peter Bosiello, director is narrated.

Bosielo: I am aware of that.

Singh: You did say to us earlier on that Peter is your brother.

Bosielo: Yes, he is my brother.

Singh: But the profile and narration here is your narrative of your background and your CV. What would you say to this? This is a public document.

Bosielo: This is not a published document. I corrected and said you must expunge it, it doesn't say the truth. This was a mistake and I said it should be expunged from the minutes.

Singh: You said your wife is merely a director and not the shareholder of the company.

Bosielo: She is not a shareholder but a director of the company.

Singh: But anyone who is listed as a director in a document that comes from the company that is in the intellectual property commission had fiduciary responsibility in the company. Don't you think she has fiduciary responsibility in the profit and loss of the company?

Bosielo: I'm not too sure about sharing the profit or loss, as she is not a shareholder. Yes, she does have the fiduciary duty as a director in terms of the new and old Company's Act. The sharing of the profit or loss is something different.

Singh: Finally here, through you Chief Justice, some of us commissioners are of the view that you should be given an opportunity to answer to these allegations even before you presented yourself for interview. The Commission thought otherwise, that maybe you should be given an opportunity to be interviewed. Don't you think it would be a fair thing to allow you to go through a process where all these allegations are tested before you make yourself available for the appointment in the Constitutional Court? And it's not too late for that to happen, as indicated by Commissioner Malema.

Bosielo: I already said to Mr Malema, I feel terribly denigrated and defamed by spurious scandalous allegations, but I'm convinced that this is not the proper forum to discuss that. I said I want the day where I can see Mr Mokoka and answer to these allegations.

Singh: But you still feel that you it is still within your right to be interviewed by this JSC for the position in the Constitutional Court despite all this cloud hanging over your head?

Bosielo: It is not within my right to decide, I was nominated and shortlisted and I had to honour my right to come here. The JSC had spent money, so it is not within my right to decide that.

Mogoeng: Let me try and contextualise what Commissioner Malema and Singh are saying in this respect, they are saying nobody is saying you've done any of the things you're accused of having done. We are not going to be passing judgment on those things because it is not for us to do so. You are not the one who is going to decide at that right forum whether you've done wrong or not. There is a possibility that the JCC may just say he's done this and the risk that at that time your name is submitted you might already be sitting on the Constitutional Court. Bearing that in mind, what is in the best interest of the Judicial Service Commission and the Judiciary as an institution to appoint someone who is ethical. What is it that you consider as the right, correct judgment to be made on this matter after the engagement you have had with the commissioners?

Bosielo: Thank you Chief Justice for the explanation. I think I said earlier on, that from Wednesday up until yesterday, I was agonising about this matter, on what is the appropriate step to take. I couldn't take any step up until yesterday at eleven o'clock when I became aware that there is this complaint. What would I have done had I known before, I probably would have called you and say I have this problem and I'm sorry that this has come out as it might destabilise the process but I think the honourable thing to do is to withdraw my nomination. I said I'm here now cognisant

of what is happening now. Given the debate here, I agree that this matter is serious; it has to be properly ventilated. And I offer to withdraw from the interview.

Mogoeng: Is that what you are doing now?

Bosielo: That is what I'm doing now.

Mogoeng: There can't be any objection from anyone, is there? Thank you very much Judge Bosielo. You are excused.