



Judicial Service Commission Interviews

03 October 2016 – Morning session

KwaZulu-Natal Division of the High Court

Interview of Advocate F M Moola SC

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Chairperson, Acting Deputy Chief Justice Nkabinde: Good day, Mr Moola.

Advocate Moola: Good morning, Deputy Chief Justice.

Nkabinde: Let me just take this opportunity to thank you and congratulate you for having been given this opportunity.

Moola: Thank you.

Nkabinde: I see from your papers that you started from very humble beginnings as a prosecutor, then became an advocate, and you have acted for about 13 weeks or so.

Moola: I was not a prosecutor. I am sure you are mistaking me for another candidate.

Nkabinde: Oh, I beg your pardon. It might be someone else, but you have acted as a judge of the High Court?

Moola: Yes. I acted for approximately eight sessions.

Nkabinde: Yes, indeed, I confused you with someone else. During your acting stint, which cases did you focus on? Civil matters? Criminal matters?

Moola: I did three sessions crime, and five sessions civil.

Nkabinde: Having had that acting stint for that period, are you satisfied that you have acquired sufficient knowledge and experience to be considered for permanent appointment?

Moola: Yes, I have had more than enough experience I think.

Nkabinde: Yes, Judge President Jappie.

Judge President Jappie: Advocate Moola, I have known you for many years. We've practiced together. From what I know about you, your practice has involved day to day work that is done by advocates. Is that correct?

Moola: That is correct, Commissioner. It is a wide variety of work. My first 24 years was spent in the Pietermaritzburg Bar, which is a small Bar. And there, you have to do all kinds of work in order to survive. I did a wide variety of work. I will say quite confidently, most areas of the law, I have experience in.

Jappie: You say you have experience in a wide variety of work. In your early years, what did you do?

Moola: I did my articles of clerkship in Johannesburg in a firm that did largely civil litigation. I was admitted there as an attorney. I then came to Pietermaritzburg, did my pupillage and was admitted as an advocate. I started off doing civil work. Then the violence in Kwa-Zulu Natal intervened. And for a few years, the majority of my work was related to public violence and other associated matters. Then I reverted to my civil practice. As the years went by, I changed my focus and dealt with personal injury cases. The reason for that was that I found greater satisfaction in acting for indigent people. And I developed a reputation that, whether you had fees or not, if you had a deserving case involving an indigent person, fees were not a question. And then I started doing more and more of that work, and in the later stages, together with my commercial work, I concentrated more on the personal injury cases.

Jappie: Now as a lawyer, outside court, I see you have been a member of various organisations. Can you tell us about them and what role did you play?

Moola: Yes. When I got to the Pietermaritzburg Bar, there was only one other black member of the Bar, who left shortly after I arrived there. During the period I was there, I was the senior black advocate. Those were the heydays of apartheid, and I had to take a leadership role in as far as resisting the problems we had related to apartheid. I had to take the lead, not only for the advocates, but also for the black attorneys that relied on us, and had problems from time to time. I had to play that role as a senior member of the Bar. I had that responsibility. Then in response to opposition to the tri-cameral

parliament, we then established a body known as Lawyers for Democracy, where we gathered all the black lawyers together and united as a force. That was before NADEL was formed. We were an affiliate of the United Democratic Front, and we provided a fair amount of support to the United Democratic Front structures. Pietermaritzburg was a hotbed of political activities. We then took a decision, we dissolved Lawyers for Democracy and became a branch of NADEL. I took a leadership role, I don't think there was a single year I was not on the executive. I was the chairman for one or two years, I think 2 - 4 years I was the chairman of the Pietermaritzburg branch of NADEL. And then when I moved to Durban, around that time Advocates for Transformation was formed, and I shifted my focus and my energies to Advocates for Transformation. I was very active in Advocates for Transformation and currently, I am still an executive member of Advocates for Transformation.

Jappie: Let's talk about your experience on the Bench. When did you start acting in a judicial capacity?

Moola: I think the first time I acted was in 2000 as an acting judge.

Jappie: Who was the Judge President at that time?

Moola: The Judge President at that time was err, Tshabalala JP.

Jappie: Subsequent to that, when did you act again?

Moola: I don't remember the exact dates, but they are in my application. Most recently was the last two months I acted.

Jappie: And your experience on the Bench? How would you describe that?

Moola: I found the Bench challenging. I found it fulfilling. I found that I made a substantial contribution. I noticed that when it came to – especially the civil matters usually in which the senior counsel or junior counsel appear before me, I was very comfortable in controlling my court. I was very comfortable with the decisions which I delivered. I delivered a number of decisions. I've never been taken on appeal.

Jappie: How long have you been a member of the Bar?

Moola: I have been a member of the Bar for 34 years – 17 years of that as a junior counsel, and a further 17 years as a senior counsel. 24 years of that was at the Pietermaritzburg Bar, and 10 years was at Johannesburg Bar.

Jappie: Mr Moola, I have to put this to you. Some of your colleagues at the Bar have this to say about you, that perhaps you are a bit feisty, that you have a sharp temper, that you can be a bit short with people at times. What's your response to that?

Moola: We have an adversarial system of justice, so when you are appearing in a case, the person appearing against you is an adversary. My temperament was forged in the trenches of apartheid. You have to be feisty. You have to adopt an aggressive approach against injustice. That is where my temperament was forged. But there is a big difference between how you behave when you are handling a matter and how you behave on the bench. I have, throughout my career, been very cognisant of the need for transformation, for justice. When I am on the Bench, I bear in mind, firstly, that many of those who appear against you, they are young, they are starting their careers. You don't treat them in such a way that they lose confidence. The second thing I am very aware of is the public. They watch what happens in court. If you treat people who appear on their behalf shoddily, you don't give them an opportunity to make their submissions – because they are all after the voice of the client – if you cut them short, you bring the administration of justice into disrepute, and you bring the administration of - the institution of the judiciary into disrepute. So I am very aware of that. I am very helpful towards people that appear before me. I am very fair. But I must say there are occasions when one must be firm, and on those occasions, I am firm. I had a case where an advocate instructed by an attorney appeared before me. The applicant had brought an application for maintenance for herself and children, and the defence was that the Respondent was not employed. And I wanted to know who was paying the Respondents' legal representatives and stood the matter down and said if the Respondent can afford to pay advocates and attorneys, then he can afford to support his children. That is an example of when one has to do your duty as a judge, be firm, and ensure people get in court what they are entitled to and what they come for.

Jappie: What do you think you can contribute to the Bench in Kwa-Zulu Natal?

Moola: I have a very strong work ethic. I work very long hours. One of the things said about my temperament relates to the demands that I make on people that work for me. Junior counsel who work with me; attorneys who work with me – I require them to work as hard as I work. If I were to go on the Bench, I have the capacity to do a lot of work, and will do a lot of work. I have done a lot of work during my acting sessions. Another aspect which I think is very important is the question of transformation. I have been passionate about transformation. I am still passionate about transformation. I have talked a lot about transformation; I have talked a lot about empowerment. Just by way of example, in 2000 when I acted for the first time, I had to select assessors. There were no black females at the Bar. I made enquiries among the attorneys whether there were any black females that would benefit from sitting at the Bench as an assessor. They pointed me to a particular individual. I approached her and asked her to sit with me as an assessor, and that was in 2002. And I am happy to say she is currently a member of the Bench in KZN. I am not saying that she became a judge because of that offer I made to her to

become my assessor. But I would like to think that that put her on the path to the position that she has now taken. I –

Nkabinde: I suppose the point you are making is that you have made a contribution towards the transformation of the profession and the judiciary, with two of the people now judges?

Moola: That is correct. That was just a few examples. There are lots and lots of other individuals that I have assisted and trained and encouraged. One of the things the Judge President will tell you – one of the first things I raised during this session is why is there a special role for banks and where is the special role for poor people?

Premier Mchunu: Mr Moola, what strikes me is information which I am not sure whether it is correct or incorrect. You have not applied for a judge's position in the past?

Moola: No.

Premier: The thing that strikes us is, what has been the reason for not advancing – you will remember as one of the very senior advocates in the profession, and also – what has changed your mind?

Moola: Firstly, one goes by instinct; one feels this is the right time, this is not the right time. In my case, I have been fortunate to have two very gifted children who have done postgraduate studies. One is in the United States. The main culprit has been my son, who has studied in various countries around the world, and I had that financial responsibility towards him. He then opened a company where he's training people in computer programming for free. I financed his start-up of the company. There was also the question of, there was a need to transform the Bench and give other people a chance – black people. So those were the main things. That is why I had not made myself available earlier.

Mchunu: What motivates you now?

Moola: My financial circumstances have changed. My financial obligations have changed. I no longer have those financial obligations as I had previously. I think, there has been sufficient transformation as far as African people are concerned and I think there is a space now for me.

Acting President Maya: Thank you Deputy Chief Justice. It is quite gratifying to find a resume as wide as yours. I was going through your personal circumstances and I see your age is –?

Moola: I will be 61 later in this year.

Maya: That means that if you are appointed, you will sit on the Bench well into your 70s?

Moola: I am in good health. I must say that with my experience, the work will not be very stressful or very demanding. For example, if you consider a motion court, I've done quite a lot in my career. I am familiar with the work and I think I will cope with it.

Maya: So the prospect does not daunt you?

Moola: No, not at all.

Commissioner Malema MP: Who do you refer to as black people?

Moola: Generally, during the apartheid days, during the struggle, black people included Africans, Indians, and coloureds.

Malema: You are not saying it to me about then, you are saying it now. Who do you refer to as black people?

Moola: I still refer to these three categories.

Malema: What do you mean when you said you stayed away to give black people a chance? You don't see yourself as black?

Moola: I do see myself as black. But I actually – well, I should have made the distinction. I apologise. I should have made that distinction.

Malema: Would this Commission be celebrated if it were to appoint a judge who cannot speak English. If we were to appoint a judge who cannot speak English, would that be a good thing to be celebrated?

Moola: I think, the language of the court is English. I think, on this occasion, I don't think it will work. I don't think it would be celebrated.

Malema: My question is different. Would we be celebrated if we appoint a judge who cannot speak English?

Moola: I don't think you will be celebrated for that.

Malema: Would we be celebrated if we appoint a judge that can't speak Zulu?

Moola: I don't think you will be criticised for that.

Malema: Would we be celebrated if we appoint a judge who cannot speak Zulu?

Moola: I don't understand the question.

Malema: I am asking the same question I asked earlier about English. You said yes, there would not be any problem. If we were to appoint a judge that can't speak Zulu, there will be no problem, isn't it?

Moola: No, there's no problem.

Malema: Because Zulu is useless. It is one of the inferior languages. Even if you don't speak it, it doesn't matter?

Moola: No; that is not what I meant. It is because Zulu is not one of the languages that is used in court.

Malema: Aha. Zulu is not used in court?

Moola: By – in terms of the transcription. That's where the problem comes in. I've always wondered because you've got a Zulu speaking judge; you've got a Zulu speaking prosecutor; you've got a Zulu speaking accused; you've got a Zulu speaking advocate. I've always wondered why the proceedings should not be in Zulu. But the problem now is that the proceedings are not in Zulu because the transcription is not done in Zulu. So, if the matter were to go on appeal, then it would be problematic.

Malema: Can you speak Zulu?

Moola: I speak a bit of Zulu. I understand a bit of Zulu – yes.

Malema: So the answer is you can speak Zulu?

Moola: Well, to a limited extent. I wouldn't be comfortable to question an accused in Zulu. I know a bit. But if you were to look at the judgment – the criminal judgment that I have attached to the questionnaire, you will find that I had to deal with the question of whether the accused could understand the constitutional rights and I relied on my Zulu-speaking assistant to assist me in that regard. And it is mentioned in my application.

Malema: Do you think it is important to speak Zulu?

Moola: It is very important to learn Zulu. Both my children studied Zulu in school. I insisted on it. It is very important to learn Zulu, and I look forward to the day everyone in KZN will speak Zulu.

Malema: So why didn't you learn Zulu?

Moola: As I said, Zulu was not offered in my school. I have learnt Zulu. I associate with Zulu speaking people. I converse occasionally with Zulu

speaking people. Advocate Buthelezi is a member of my group. I greet him in Zulu. We chat in Zulu, then I run out of vocabulary, then it will be back to English. People that work for me, I speak Zulu to them. I love the language. I love the Zulu culture. I am a Zulu from KZN, and I have a king that I respect.

Malema: You almost sounded like 'I am not a racist because I've got a plan for you.'

Moola: No.

Malema: They were not offering Zulu in school. But you have spent 34 years in the profession. Still you didn't learn Zulu. You left school. It's an important language today because you are looking for this position. If it was this important for you, for 34 years, why haven't you taken lessons in Zulu?

Moola: I should have learnt it. If I had done, my life would probably have been different.

Malema: Is Zulu not an inferior language which you never thought important to learn?

Moola: My children have informed me that of all the subjects they have done, Zulu is the most difficult.

Malema: Your children will have the chance one day to answer for themselves. Now we are talking about you.

Moola: Zulu is a very sophisticated language, and not an inferior language.

Malema: Thank you.

Commissioner Motimele: Advocate Moola, you said you had eight sessions?

Moola: That is correct.

Motimele: May I please direct your attention to your questionnaire, paragraph nine? Have you found it?

Moola: What page are you talking about?

Motimele: Paragraph 9.2 on page nine. Can you see the missing section?

Moola: Yes; those are for the last two months.

Motimele: Can you add the two which I am missing there?

Moola: It is around the 25th of July 2016 to around the 25th of September 2016. That's for the last two months.

Motimele: That is for one. We are still missing another one.

Moola: No, that is for two months. There are two separate sections – one section is for criminal and one is for civil.

Motimele: I see. Thank you very much. You acted for three months in 2000 for three weeks. You see that? Your first acting stint.

Moola: Yes.

Motimele: That's where we are. Checking with you the experience in the High Court.

Moola: Yes, yes.

Motimele: The first session there is three weeks. Do you see that?

Moola: I haven't counted it, but if you say it is three weeks, I'll accept it.

Motimele: I am affording you the opportunity to confirm that.

Moola: It looks like 24 days. I must just find out. You know, I never envisaged that one day I would have to provide this information. So these are approximate dates -

Motimele: That's fine, that's fine.

Moola: But the sessions were literally –

Motimele: That's fine. If you look at what you call sessions, the next one was in 2001 –

Moola: That is correct.

Motimele: For a month. And the next one is three years in 2003. And the next one is three years. 2001 to 2004 is three years. The next one is 2004 to 2007. It is a period of three years.

Moola: That is correct.

Motimele: The next one is 2007 to 2010. It is three years.

Moola: Yes.

Motimele: The next one is 2010 to 2013. It is three years

Moola: Yes.

Motimele: The next one is 2013 to 2016. That is two years.

Moola: That is correct.

Motimele: Is there any reason for these dates?

Moola: Well, firstly, I don't believe that a person should seek an acting appointment. The person should wait to be invited. Now, I have a very busy practice. There have been occasions when I have been invited –

Motimele: Advocate, I don't want to interrupt you. My question is this: did you request for these intervals, or you just happened to be invited in these periods?

Moola: Yes.

Motimele: That's how they came? These invites?

Moola: Yes.

Motimele: Very interesting. So it's a month each, we are agreed?

Moola: Yes.

Motimele: So one, two, three, four, five. Five times over the period of 16 years.

Moola: That's correct.

Motimele: An average of three years, you acted for a month?

Moola: That is correct.

Motimele: Do you think you had sufficient exposure?

Moola: Yes; I think so. I think so.

Motimele: Let's look at the questionnaire. The next question is 9.3. 'Did you sit in both civil and criminal?' and you answered 'yes.'

Moola: Yes; that is correct.

Motimele: The extent of the exposure. You were asked to indicate in the court. You said two criminal sessions, and four civil sessions over the period of 16 years. Am I correct to understand that by these two criminal sessions, you mean the two months?

Moola: That is correct.

Motimele: Because you were acting one month, one month over the period of 16 years?

Moola: That is correct.

Motimele: And then the four sessions were four months over the period of –

Moola: That is correct. I just want to point out that during the sessions – after the sessions, there were matters that I heard, and I would go back for three days or a week to complete them. But I haven't kept records of that; so I haven't put it in. So there have been further periods, which are not recorded here. But I don't think it's a big thing because they are short periods to complete matters that were part-heard.

Motimele: And this is the sum total of your experience as a sitting judge over that period?

Moola: Over that period, yes, including the two months.

Commissioner Semenya: Just as an aside, adversaries in litigation are the parties and not the lawyers. Am I right?

Moola: I beg your pardon?

Semenya: Adversaries in litigation are the parties and not lawyers?

Moola: The, the – That is correct, except that the parties are represented by lawyers.

Semenya: They are not acting from an emotional position, but in relation to matters that they are instructed on?

Moola: That is correct.

Semenya: Can I ask you something different now?

Moola: Yes.

Semenya: What's your take on legality and the exercise of public power?

Moola: Well, firstly, the Constitution is the supreme law of the land. Anything done has to comply with the precepts of the Constitution. The rule of law – for society to operate, the rule of law has to be respected and, public power has to be exercised within the precepts of the Constitution and the rule of law.

Semenya: And what is your understanding of the rule of law?

Moola: The rule of law is a philosophical concept. But what it – in our, in our system, the rule of law actually comes down to respecting the Constitution as the supreme law of the land.

Semenya: I am sorry I am asking just for clarification. What do you mean by respect for the Constitution?

Moola: Well, in relation to the Constitution and the rule of law, whatever power that is exercised by public officials must be consistent with the Constitution and justifiable under the Constitution. So in other words, as an example, an administrative act is an undertaking, and it must be in accordance with the Bill of Rights in the Constitution and there must be fair administrative action to comply with that section of the Bill of Rights.

Semenya: And it will be binding on the judiciary as well, no?

Moola: It will be definitely binding on the judiciary.

Commissioner Ntsebeza: Thank you. Firstly, Advocate Moola, I would like to look at sections three and four of the – of the questionnaire.

Moola: Yes, I have it.

Ntsebeza: One of section three seeks to find out or calls upon you to list all directorships which you hold in businesses for the past 10 years.

Moola: That is correct.

Ntsebeza: The second question was seeking to know the steps that you propose to take with regard to your directorships in companies if you are appointed to the Bench. You answered “not applicable”.

Moola: Yes, it is not applicable.

Ntsebeza: Why do you think those questions are solicited from candidates?

Moola: To determine whether the candidate for appointment would have any conflict of interest.

Ntsebeza: In what way?

Moola: Because if you are a director of a company and that company is litigating in your court, you may have a conflict of interest.

Ntsebeza: Now, section four asks you the first question: 'Are there any circumstances, financial and otherwise, known to you, which would cause you embarrassment in discharging the functions of a judge' and you answered no.

Moola: That's correct, yes.

Ntsebeza: But why do you think that question is important?

Moola: Well, I think the Commission need to know when they are considering your application whether there is anything they should be concerned about.

Ntsebeza: Why would they be concerned about it?

Moola: Because they could cause embarrassment to the judiciary if there was something of err, concern.

Ntsebeza: Why would your financial circumstances cause an embarrassment to the office of the judge?

Moola: Err –

Ntsebeza: Can you give an instance of where the financial circumstance or otherwise would –

Moola: I think –

Ntsebeza: I don't disagree with your questionnaire. I just want to get a sense of –

Moola: Yes. I think if you were in financial difficulties, that may impact on your ability to perform your functions.

Ntsebeza: What do you think of being – if your financial circumstances are such that your interest in companies and other revenue generating positions outweigh the emoluments which you would be getting as a judge? Should those be taken into account as significant?

Moola: In such circumstances, yes, it should be taken into account.

Ntsebeza: Why should it be so?

Moola: Because it may be relevant to the question of your independence as a judge.

Ntsebeza: I see. Now, the other question there is: 'have you ever been convicted of any offence for dishonesty or violence, or any other dishonourable conduct' and you replied 'no.'

Moola: Yes.

Ntsebeza: Do you think that it is important that an aspirant to the judge should not have been involved in issues involving dishonesty or any other disreputable or dishonourable conduct?

Moola: I think it is very important.

Ntsebeza: Why do you think it is important?

Moola: Well, people who are dishonest are open to being corrupt.

Ntsebeza: Now the third question is: 'has any professional body ever found you guilty of any unprofessional conduct?' And you indicated 'no.'

Moola: Yes

Ntsebeza: Why do you think that a professional body finding you guilty of professional misconduct is important?

Moola: That is important because it is an indication – it is a judgment on you by your peers, and it is important because it indicates what your peers think about you.

Ntsebeza: Why should that be important for us in considering you for a permanent judicial appointment?

Moola: It is, it is something the Commission – if it is a serious conviction – it is something that the Commission needs to know about.

Ntsebeza: Lastly, I just want to clarify something you said when you were answering a question on your temperament. You seemed to be giving a difference in your temperament as a practitioner and as a temporary judicial officer. I do not want to delve into details of what you said. I just want clarification. Regarding your acting spell as a judge in KZN, there's this remark: 'Some members have expressed concern about Moola's interpersonal skills and temperament.' Now, firstly, what is your reaction to this? Why was this remark made?

Moola: The, the position is that decision was made without my knowledge regarding that concern. At that time, I was on the Bench. Even if I was not on the Bench, I was one of the candidates being considered. I would not have

attended that meeting where those comments were decided upon. Hence I was not present at the meeting, I am unable to deal with why that was said.

Ntsebeza: I understand that one of those incidents related to a junior member of the Bar, who felt that you did not treat him properly when he appeared before you?

Moola: I don't know who that member is. I deliberately would not have asked because I would not want to hold it against him. If I am told who the member is, and the manner in which I treated him, I would be able to comment on it. If I was told that, and if I believed that I treated him badly, I would request a meeting with him. And I would apologise to him, and if I had an explanation as to why I treated him in that particular way, I would give him that explanation.

Ntsebeza: Do you yourself recollect any incidence in which you unfairly treated a junior member?

Moola: I am sorry, I can't hear you.

Ntsebeza: Do you have any incident which you remember in relation to which a junior member of the Bar would have complained about not being treated well by you when you were sitting as a judge?

Moola: I don't remember any particular incident. I discussed this question with a senior colleague of mine, and her attitude was that some of the junior members of the Bar come to court unprepared. When they are challenged about that, they tend to be defensive and they don't realise that in fact, if the orders they seek are not granted or if they lost the case, it was justifiable. What must be appreciated in the context of the courtroom is that people that are disappointed when they lose a case. They are disappointed when they don't get their order.

Ntsebeza: Mr Moola, I am sorry. There is a remark that was made by your own professional organisation. Here is the transcript. You must have received it?

Moola: I beg your pardon?

Ntsebeza: Number 12 of –

Moola: Yes, I saw that remark. Yes.

Ntsebeza: Now, did you pick it up in-depth in the meeting? Who said this? What was the complaint? Because if I am going to the JSC, I may be asked about it.

Moola: Yes.

Ntsebeza: Tell us then what happened –

Moola: Yes, yes, I will tell you that - that what you mentioned is not what happened in court. It's what happened in Chambers.

Ntsebeza: Just tell us, Mr Moola.

Moola: There was one junior counsel that reported that I assaulted him in Chambers with a golf club.

Ntsebeza: With a what?

Moola: With a golf club. There was no one present at that meeting –

Ntsebeza: Where you allegedly assaulted him with a golf club?

Moola: No. There was no one present in the meeting when this statement was made to give my side of the version. And actually, what transpired – Acting Chief Justice, if you will give me a little leeway to explain what happened to you. This individual was a member of my group in, I don't know the exact dates. It was around 2012, 2013. I was in the Bar Council when a complaint regarding me came before the Bar Council. The Bar Council took a decision in view of the fact that he had a drug problem, and they would make him an offer to resign from the Bar and go for treatments. And, then he can return to the Bar. He owed us – our group – he owed the group a lot of money. We wrote off what he owed us. Around the beginning of 2014, he came back. We met briefly. As the leader of the group, he explained to me that he had been taking treatment for his drug problem, that he had been in a mental institution, and that he was now ready to come back. And, no one else would take him at the Bar. Although he owed us money, could we take him back? He appeared to be genuine. He is actually a very nice person. He is a very gentle person. Also he is talented. I agreed to take him back. First in 2014. We gave him a leeway to pay his group expenses for the year. We said at the end of 2014, he must pay his group expenses for the year. He did that. He was very happy about that. He was progressing. He seemed to be off his drug problem. He seemed to have been developing his practice quite nicely. In 2015, he started now defaulting. Again now, I said to him, by the end of 2015, pay up your expenses. Unfortunately –

Nkabinde: Mr Moola, please get to the point.

Moola: I am getting to it now. In January 2016, I could not handle him any longer because he was not listening to me. He hadn't paid his dues. I handed him over to another member of my group, Advocate Buthelezi, who then suspended him. He left the building, but he still remained on the premises. In June, I came to Chambers one day. There was a granite top about two metres wide, half a metre wide that was no longer on the reception counter. I asked

the secretaries why is this granite top lying on the floor. They said that this advocate had been swinging on it, and it had fallen. So I said to them, when he comes in, I will like to see him.

Ntsebeza: Mr Moola –

Moola: Can I please finish this? He came in –

Nkabinde: I beg your pardon. I don't think you must give us a long-winded answer. Please try to get straight to the point. Time is not on our side.

Moola: Yes; he came in to see me and I asked him why he was swinging on this. He got abusive. He was obviously on drugs. He was abusive and started shouting and getting aggressive. At which stage there was a golf club there. I picked up the golf club. And, I didn't hit him [*general laughter*]. I didn't hit him. And he left. Two days later, his sister phoned from Johannesburg to say that he was in a mental institution. Could I assist? So this entire story of his is delusional. If I had been there at the meeting where the decision was taken to comment on my temperament, I would have given them the version I just told you. And I was told that, when I came off the Bench and spoke to senior members, I was told they were not going to demand a report, and that I would have the opportunity to explain to the Commission. But I have never assaulted anyone in my life. I have had pupils for decades. They have all been satisfied.

Nkabinde: Thank you, sir. I think you have given us the answer.

Ntsebeza: Well, I won't take that further. I just want to say, when you saw this coming from the AFT, which nonetheless supports your appointment, if you had indicated to them that they must be more detailed, otherwise you would not have been answering all these questions.

Moola: I just mentioned that I spoke to them and they said 'you can deal with it at the Commission because –' I complained. I asked where's the *audi alteram partem*? Why was I not asked?

Commissioner N. Singh MP: I am covered by Commissioners Ntsebeza and Semanya, particularly the sporadic acting appearances. But I think you have answered that. I will leave it at that.

Commissioner N. Ntlama: Many of my questions have been asked by my colleagues. But I just have two. On your section two, you don't have any list of publications. I am asking this question because I am from the academia. So I am interested in seeing your research and analytical skills in your writing of judgments. So the fact that you don't have publications, would that not impact on your ability to write a judgment? And secondly, as a judge, how do you respond to questions that are considered important in your résumé?

Moola: As far as publishing is concerned, there are very few practicing advocates that actually publish. The writings that we do, the opinions, the arguments, the affidavits, that's the writing that we do. As far as my judgment writing ability is concerned, I have attached three judgments of mine, from which you can establish my ability. And, I don't think publishing of academic papers plays a large part in the practice of an advocate. As a matter of fact, the majority don't publish. There are certain questions that were asked relating to 'How does politics fit in?' As far as I am concerned, politics doesn't fit in any way. You deal with the questions that come before you as you understand the law, and you apply the law. The closest you get to politics is that there are certain decisions you have to make based on public policy, which is very different from politics. Public policy doesn't – and public interest doesn't necessarily mean the same thing as what the governing party thinks or what anyone or the other political parties think. That's the closest, otherwise, I find it very difficult to understand how politics can ever fit it.

Commissioner Hellens: Thank you. Mr Moola, I hear from the answers to the questions asked by Commissioner Ntsebeza that you have read the AFT input to the JSC about your candidacy, and the input from your own society in Kwa-Zulu Natal?

Moola: Yes; I have and I think it is interesting that the society does not follow the view of the AFT.

Nkabinde: Perhaps, you should wait for the question from the Commissioner before you respond.

Hellens: Under paragraph seven of your society's input to the JSC, it reads as follows: 'Moola has the essential forensic skills to be a judge as well as a practitioner. He's been a senior member of the Bar since 1999. But as the list of cases in which he has appeared shows, not many of his cases result in decisions that appear in South African law reports.' They then give an explanation: 'This is probably due to his personal injury practice, as such cases are not often reported and his business interests.' What business interests is this?

Moola: Yes, I was quite puzzled by that. I don't know – I don't know how that crept in. I certainly don't have any business interests whatsoever. I am not involved in any businesses.

Hellens: Did you raise this with your Society to ask them to rectify it in their input to the JSC? That 'you've got the wrong man; I don't have business interests?'

Moola: No; I did not raise it. But the difficulty was that one doesn't want to be seen to be interfering with the process.

Hellens: No, we are not here to judge you on your merits. Your society says one of the reasons for why your judgments are not in law reports is, on the one hand, that you have business interests which are apart from your practice. We know from your questionnaire that you said you have no business interests and have nothing to declare. I would have thought that you would have gone to your Society to say 'Look, you've got the wrong man' or say 'what are you talking about? Please rectify.'

Moola: The difficulty here is that once you start querying what the various organisations have said about you, you can get accused of trying to influence them. So one has got to be very careful and not be seen to be doing that. They've made the report, they've made the report, and I have got to deal with the report as it is.

Hellens: But this is a factual statement that you have business interests, leading to a conclusion. The statement that you have business interests is a factual statement that is either correct or incorrect. And you could have had it corrected.

Moola: Now that you mention it, you are right. I could have had it corrected. Like I said, I had my reasons for the decision why I did not. I didn't approach anyone. I never canvassed for support for this position. I don't think its right. I never canvassed. I never asked anyone to support me or to canvass for me. And I adopted the same approach. At the same time, I was busy at the Bench for this period and all of these reports being prepared.

Hellens: If you were given an opportunity to refill the questionnaire, particularly section 3(1), in relation to whether you have business interests or not, would you change the way you filled it in?

Moola: No. I have no business interests other than my practice as an advocate.

Commissioner Motshekga MP: Advocate Moola, when Advocate [indistinct] was President of NADEL, the late Minister of Justice [indistinct] placed high on the agenda access to justice. Now living in Kwa-Zulu Natal where the majority of people speak Zulu –

Moola: That is correct.

Motshekga: And you say you haven't learnt Zulu in all your life and you are 61?

Moola: No. I've got on my questionnaire that I speak Zulu to a limited extent.

Motshekga: Did you study any indigenous African languages?

Moola: Err, no; I did study it at the university. That's why I said I have limited knowledge

Motshekga: Would you agree that lack of knowledge of indigenous Zulu law would be a barrier to access to justice for a majority of people?

Moola: I disagree because there are interpreters available in court, competent in different cases. I have some - I don't want to go into a long explanation. But I can understand the proceedings. When the witness speaks in Zulu, I can understand what the witness is saying.

Motshekga: Does Zulu language have the same status as the Roman-Dutch Law and the English Common Law?

Moola: Well, in terms of the Constitution, if customary law is applicable, customary law must be applied. Provided it is in accordance - with the Constitution and any legislation on customary law.

Motshekga: So if it arises and it has to be applied –

Moola: Yes.

Motshekga: And you don't know it. Wouldn't it affect the rights of the people – to their access to justice?

Moola: Commissioner, judges don't know many things. They research things; they are – counsel addresses them; they research it. There are many areas of the law which we don't study at the university, but we pronounce on them because we are addressed on them. And we read it up, and we apply it.

Minister Masutha: It is really a follow-up question to the questions that Honourable Malema asked about the use of indigenous languages in courts. To paraphrase your response, I think I understood you to be saying that because the language of record in court is English, therefore, even if all the parties and their legal representatives speak indigenous languages, the language used in court should still be English –

Moola: No.

Masutha: I was just asking the question - because on appeal, the record would need to be in a language that appeal court would understand. Did I misunderstand you?

Moola: I apologise. Maybe I didn't express myself properly. What I said – my view, my personal view – is that the proceedings should be in indigenous language but the bar for us achieving that is that we've got to now consider what's going to happen on appeal with the record and all that. My preference is that the language takes place – especially when the parties speak

indigenous language. I just want to give you one example. I was doing a criminal matter I was listening to the witness speak – I think subconsciously, I was listening to the witness speaking in Zulu and there was interpretation. But I think this must have happened and I was writing my note. Now, the witness says and the counsel for the defence stands up and says: ‘By what light did you identify the accused?’ The witness says ‘moonlight’ [02:17:06]. So the advocate says no, you said, it was ‘full moon.’ So I said no. She didn’t say it was full moon. She said there was moonlight. So we played back the record. The interpreter had made a mistake. When she said ‘moonlight,’ he [interpreter] said it was ‘full moon.’ Now, if I hadn’t picked that up, it seems that I would have found that she was a bad witness and she would have been unfairly criticised. That is the difficulty that the majority of the population – I think 86% of the population in Kwa-Zulu Natal are Zulu-speaking, yet 100% of the proceedings are in a language that is not their own language. I come from a rural area and I know that people are prejudiced. They are not giving evidence in their – they are not comfortable. Judges don’t necessarily understand them.

Masutha: In the circumstances, what really are you saying now? What are you recommending?

Moola: I recommend that we move to a stage where the court proceedings in any Province are conducted in the language of the majority of the indigenous people in that Province. That is what I would like to see. That is what I think is the direction that we should go. We used to make Latin compulsory before you got a law degree. They used to make Afrikaans compulsory before you got a law degree. There’s no reason why –

Masutha: The reason why I asked you the question is because you brought the issue of the record in the process of prosecuting an appeal. But if the record is in an indigenous language, I understood you as saying that there would be difficulty in dealing with the matter on appeal. I thought that was your position?

Moola: No; the judges of the appeal court would not be able to read and understand a record that is in an indigenous language.

Masutha: That is what I am trying to understand. In the circumstances, what are you then saying? Are you then saying that because the judges of the appeal court do not understand indigenous languages, that because of that language barrier, English should be the language of court proceedings?

Moola: No. I am not saying that. I am saying –

Masutha: I am trying to understand what you are really saying.

Moola: I am saying that the ideal situation is the court proceedings must be held in the language of the indigenous people. And I am saying it is not

possible at this stage to do that because you would have to consider what happens if the matter goes on appeal.

Masutha: So because of that, what then happens to the language of court being English? I am trying to understand what you are saying.

Moola: We must look at solutions. What should we do? Should we transcribe the record from the indigenous language to Zulu – from the indigenous language to English – so that the appeal judges can understand it? That may be one solution. It just has to be looked at carefully.

Masutha: I will leave it at that. Thank you.

Commissioner Nkosi-Thomas: Can I direct your attention, please, to page four of the questionnaire, that deals with section four – I mean it is on section four of that questionnaire. That question there – just for context – where it said the following: My question has to do with full and frank disclosure. Whether it is expected of an advocate or a candidate such as yourself to make such a disclosure to a body such as ourselves. With that in mind, there is a question there that asks if there are any circumstances, unusual or otherwise, known to you, which may cause you embarrassment and so forth. And it would appear as though you have not answered that question.

Moola: What page are you on?

Nkosi-Thomas: I am on page 12 – 12 of the questionnaire, section four.

Moola: Oh, mine is different.

Nkosi-Thomas: I beg your pardon? Is yours different?

Moola: It is page 14 on mine – the last page.

Nkosi-Thomas: Page 12. I am trying to – I am talking to the questionnaires that you completed.

Moola: Yes. Section four.

Nkosi-Thomas: Indeed. Thank you. Page 12. Can you put up the page? In the first question there is the one that I read up to you now. And I am asking the question now: Is there any reason why you didn't consider it relevant – you didn't consider it necessary – to disclose here the unsubstantiated allegations of assault involving a junior colleague, that is allegations of assault with a golf club. It sounds to me like an assault with intent to cause grievous bodily harm. Is there any reason why this was not disclosed when an opportunity was afforded to yourself?

Moola: The incident occurred after I submitted the questionnaire.

Nkosi-Thomas: I beg your pardon?

Moola: The incident occurred after I submitted the questionnaire.

Nkosi-Thomas: Very well. It occurred after the submission of the questionnaire but before this session. Is there any reason why a supplementary note was not sent to us?

Moola: Yes

Nkosi-Thomas: To warn us of this, to alert us of this?

Moola: Yes. The reason is this –

Nkosi-Thomas: Yes?

Moola: We got this situation. We've got a practicing member of the Bar making a living off the Bar. In order to provide an explanation, you've got to disclose that he had been in a mental institution, that he has had a drug problem. In the interest of protecting him, because it can have serious consequences on his practice and the way his colleagues look at him, what we did was this: when we realised that he was in a mental institution, I was stuck with my secretary going to his chambers to take all the briefs that he had there. We merely stated that he was in hospital.

Nkosi-Thomas: If I understand – I beg your pardon – I think the gist of my question is: do you realise that there is a duty here vested on you to make such a full and frank disclosure? Do you realise that this is such a matter that requires such a disclosure? You then decided against it because you sought to protect the interest of your accuser as it were? Is that correct – am I paraphrasing your answer correctly? If I am not, please correct me.

Moola: No; you are not correct. The incident never took place as he described.

Nkosi-Thomas: I beg your pardon?

Moola: The incident never took place as he described. The incident never took place as he described. I never knew, at any stage, that he was going to make an allegation like that. The first time he made the allegation is when my society, Advocates for Transformation, had a meeting. And at that meeting, he made the allegation. I was on the Bench. I was informed about this. I spoke to both the Chairman and a senior member, and I explained to them that what he said is not true. It didn't happen. I expected them to amend the report and I was surprised they didn't do. But during the conversation, they told me that I could deal with it at the interview.

Nkabinde: I beg your pardon, Mr Moola, do you understand the question? Do you understand the question from the Commissioner?

Moola: I thought I had understood the question.

Nkabinde: You try to understand the question. Madam Commissioner, just ask the question again, and cut to the chase.

Nkosi-Thomas: The question is really this, Mr Moola. I said it is one of the duties resting on you to disclose – as requested by the question I read out on the questionnaire – matters that might cause embarrassment to you. And I am suggesting to you that allegations of assault with intent to cause grievous bodily harm fall into that category. And the question is: why was that not disclosed to the Commission?

Moola: When – the incident took place after the questionnaire was filed.

Nkosi-Thomas: Alright. Okay.

Moola: That's the first thing. That's why it doesn't appear in the questionnaire. The incident took place after the questionnaire was filled. Then next question arises: why didn't I file, subsequently, my knowledge of the incident? Why didn't I then make a report to the Commission? I discussed it with the chairman of the organisation. I discussed it with another senior member of the organisation.

Nkabinde: I beg your pardon, Mr Moola, the question is why didn't you disclose it to the Commission?

Moola: Because they advised that I could deal with it at the Commission here. That's what they advised. Because it was their duty to clarify. I only got back to Chambers last week. So the time issue was a question.

Nkosi-Thomas: Well, I have another question; but in the interest of time, I will not ask it.

Nkabinde: Thank you. I must apologise to Ma'am Mampuru. I recognise you now, Madam. I am sorry.

Commissioner Mampuru: From all the questions and responses from you, do you consider yourself a popular lawyer?

Moola: I wouldn't say no.

Mampuru: If not appointed, with the interpersonal skills and temperament management, are you able to support the appointed candidate?

Moola: The answer is yes, and I just want to elaborate on it. This issue of interpersonal relationships, I have had pupils that were allocated to me repeatedly year after year, year after year. If I hadn't interpersonal skills, why would they do that? I was – I have sat on the Bar Council on occasions. I have sat on executive bodies on occasions. The question of interpersonal skills was never an issue. It was never an issue. Now all of a sudden, I've got a bad temperament. If I've got a bad temperament, then the Deputy Judge President was my pupil; other judges were my pupils. Why all of these years my temperament wasn't bad that you entrust me with the training of all these new people that are coming? If there's a problem with my interpersonal skills, I've been married for 40 years. There's no interpersonal relationship problems with me. I've got to tell you that.

Nkabinde: Mr Moola, I suppose the answer would just be that you do not have a problem with your temperament. That will be just as short and sweet as that. So you do not have problem with your temperament? That is the question. Yes, or no?

Moola: I have no problem with my temperament.

Nkabinde: Let me just clarify one aspect from where I sit in relation to the remark by the AFT about the fact that you have experience in constitutional and administrative law. Just to get a follow up to the question by Commissioner Semanya relating to your experience in this field, I didn't get a sense of your answer relating to the administrative part of your experience. I just want to enquire with you in the places where you assisted with a matter relating to the determination of the review of executive power – legislatively or otherwise. What would be the test? How would you handle issues of rationality? Maybe just to make the question easier, would reasonableness of that decision of the executive or matter be crucial in determining the rationality of that decision or matter?

Moola: It's a very general question, but there is section 36 relating to legislation – what it has to comply with. But I think your question is different. Yours is on administrative action.

Nkabinde: Mr Moola, this is not really about the executive we are talking about because the Constitution deals with that limitation –

Moola: Yes, the limitation –

Nkabinde: It will only deal with section 9 (1)

Moola: Yes, 9(1)

Nkabinde: Relating to executive power.

Moola: Executive power, yes. Executive power must be exercised, I think – if I recall – in accordance with the Constitution. And, it has to be justifiable in an open and free society. I think that's the text. I haven't read it for a while.

Nkabinde: Well, I suppose it would require you to review rationality decisions of the courts – the test. I don't want to belabour that. But it simply takes you back to the exercise of public power that Advocate Semanya was talking about. And I am picking up on that because a view has been expressed that you have experience in administrative and constitutional law, and I thought that you would be able to guide us with respect to the test –

Moola: Many of these – Sorry. Please finish.

Nkabinde: Test of rationality –

Moola: Many of these things one has to think about them just to get out an answer.

Nkabinde: Is there anything you would like to say before we excuse you?

Moola: No. I would just like to say: thank you very much for giving me the opportunity.

Nkabinde: Thank you very much, and congratulations for the opportunity that has been given to you. You are excused.