



JUDGES MATTER

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Constitutional Court

Interview of Justice S A Majiedt

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Justice Majiedt : (First section missing) As you would have seen I've done a lot of public interest and human rights work as an advocate. I started in 1984, and soon thereafter the state of emergency followed and for the next five, six and more years I did many, many cases all over the country. And so I have an understanding for the needs of our people at the lowest possible level of society. And I have a particular affinity for the people in the rural areas. When I say rural areas, I mean the smaller towns and cities. Because I come from a small town, in the Northwestern Cape. I was born in a place called Kenhardt. It's one of those very small towns, if you drive through, if you blink you miss it. And so my experiences have been shaped by that kind of experience, and too often I think as lawyers and as judges we forget about the common people in the small areas of our country. And though in a nutshell that's what shaped my experience, Chief Justice.

Mogoeng: And in relation to your readiness for the position you've applied for?

Majiedt: Chief Justice I don't know whether one is ever ready enough. But there comes a time when you have to decide whether you want to avail yourself. And I think the time has come. Some colleagues of that court have encouraged me to make myself

available. I think I had a first stint as an acting judge in 2014 as the judgments will show. And I'm one of those people who, I wait until a matter is ready for me to proceed in my life. For example when I had to go to the SCA, I was asked by the previous president of that court Lex Mpati for a while, to make myself available, but I thought I wasn't ready. And eventually in 2009 I thought when I was ready I thought I would avail myself. So I'm as ready as one could be. And that's a relative concept.

Mogoeng: And you have written, during your acting stint at the Constitutional Court, at least two judgments that are often referred to. Are you aware of them?

Majiedt: Yes I suspect that's *Cool Ideas* -

Mogoeng: In particular.

Majiedt: In particular, and I'm not sure if the second one is the torture case, the SALC and Commission of Police case. I think those are the two.

Commissioner Nyambi: Can you share with us your understanding of judicial accountability?

Majiedt: Judges account through their judgments, and when a case comes before you it will concern different issues and different role plays. And often it will concern, especially in the Constitutional Court, tension between competing rights. And how you deal with those competing rights, I think, is how you account. Judges also account by doing the work that the taxpayer pays them to do. Diligently, expeditiously and efficiently. And my philosophy is very simple, as a judge - I call it, when I was interviewed for the SCA position, there are the three H's: humility, hard work and honesty, in no particular order. And I think once you do that, you can account for your work through your judgments, and through how you treat litigants in the course of those judgments.

Nyambi: Your, the current Code of Judicial Conduct, is it fine as is or is there room for it to be improved?

Majiedt: Well I think it is, I think it is adequate. You of course have to read it with the norms and standards which we took a while to develop. And I think within those parameters of the norms and standards read with the Code of Conduct, I think it's

adequate. Of course it's only as good as it is on paper, you must implement it. It's like any policy.

Nyambi: I've seen from your CV that you are the chancellor of the only university of Northern Cape. What is the significance of that name of that university?

Majiedt: Well, it carries the name of an outstanding individual. A man who is from that area, the first Secretary General of the ANC. A man who from nowhere, pulled himself up to become one of the most learned scholars of his time. Also a man who was selfless, he did not seek public office, or he did not seek at that time any position in the ANC. In fact he went abroad, Solomon Tshekisho Plaatje, he went abroad to Europe and to the UK, to spread the message of the people of South Africa who were hungering for liberation at that time. But first and foremost he is a giant of a scholar. And I think those who decided on the name of that university thought that it would be apt to name that university after a man who has done so much to help himself in becoming a very learned scholar. A man much admired. And so I think that is the significance for that university of that name.

Mogoeng: Thank you Commissioner. And before I forget Judge Majiedt, you played a very important role in the crafting of the Norms and Standards. Can you comment on that?

Majiedt: Yes Chief Justice. You will recall Chief Justice, I was on the team who got involved with the case flow management project, and in the course of our work it became apparent that we would have to deal with norms and standards. And so I was part of the task team that drafted those norms and standards. I think we tried to hammer out a document which sets very high goals - and I often get complaints that "you guys in the appellate courts don't understand how difficult it is for us in the trial courts, to meet those standards". But I think it's best to pitch high, so that we strive to end high, than to pitch too low. And we had a great debate about this, about what should, for example, be the turnaround time for judgment writing. And as I say, the targets are stiff, but it sets a norm that we can aspire to. Of course we've had our bumpy rides, we've had a lot of criticism from colleagues, we've even had personal attacks. But you know those things come with the territory. And by and large, I think we have accomplished something. It's not over yet. There's still work to be done. But I think by and large we have crafted a document which is workable and which I think

will meet the needs that are required of us, as a judiciary to serve our people, the citizens of this country.

Mogoeng: And what have you to say about your role in the national judicial case management committee?

Majiedt: Chief Justice, I was the convenor of the task team. Of course it was chaired by the former Deputy President of our Court, Mthiyane DP. And as convenor of the task team I was responsible for the operations of the committee. And so of course we went on a study tour which you led at the time, to the US in 2010 to learn how they do things. Again, there's been a lot of misunderstanding and criticism about that tour. Some senior colleagues who have now retired from our court, criticise it as a useless expense, as a junket to the US. And what people don't understand is that trip was fully funded by the USAID, the United States Agency for International Development. It didn't cost the SA taxpayer a cent. We didn't even charge subsistence and travel allowances, but we learned a lot. We came back and we implemented a pilot project in the three largest courts - Gauteng North and South, KZN Durban and Pietermaritzburg and in the Western Cape. And our philosophy was that if it could work in the largest courts then it must succeed in the smaller courts. And it's been an arduous journey, for the last three or four years that we've run that pilot project. We've had terrific support from first the Department of Justice and then of course the office of the Chief Justice. We did an audit of all the courts. We had to check what the inventory is because we were told there are x amount of cases languishing in the basements of the courts, in the archives. And so the Department of Justice allowed us to appoint staff on a casual basis or on a part-time basis. We supplied the resources to the courts such as computers and printers etc. And we did an audit, and we came up with remarkable results. Whereas you would think that, let's say there are 5000 cases waiting to be heard, it turned out that many, many of them are dead cases. In some instances in some courts as many as 60% of the cases turned out to be dead cases. Either because the parties have settled, they are no longer interested in proceeding, or for whatever reason. And so after the pilot project, we've drafted draft rules to amend the current rules of court. To implement case flow management so the judges take control of the proceedings. And we have submitted that to colleagues all over the country to judges, they've commented. It's come back to us, we have refined them. And they are now at the Rules Board, where you know I also play a role. And in the Rules Board we are

hoping to finalise them before the end of this year. It will be a drastic change to how things have been done previously. It will indeed be radical transformation of civil procedure as we know it.

Mogoeng: And lastly, having been involved in judicial training as you have been, do judges still need training in this country?

Majiedt: Absolutely. I am one of those who firmly believe that you learn in life, and particularly in law, until the day you die. I was fortunate to sit with many senior judges, and very learned judges, very smart judges, in our court. And one that comes to mind is Louis Harms, and Louis Harms always told me that you never stop learning, and I am a firm believer in that. And that is why I'm a firm proponent of ongoing judicial education, and that is why I am involved in judicial training, and we're having lots and lots of training. And Chief Justice, it's not because you're chairing this committee that must make a recommendation for appointment, but I want to just place on record that nothing was happening until you became Chief Justice. You will recall in 2011 when we opened the new wing of our Supreme Court of Appeal building, when you attended you asked Fritz Brand to assist with judicial training because there was nothing happening. And Fritz wrote me in, and that is how we became involved. He is still coordinating judges, permanent judges training. And I coordinate the training for aspirant judges. So it's a resounding yes, we do need it, and I must say Chief Justice - I think we are seeing the fruits of those labours, as we proceed with training, especially of permanent judges.

Mogoeng: Colleagues just before we continue, there have been few preambles... I didn't want to interrupt because we're still connecting with the reality that preambles are to be avoided, and long questions. Please please please. Professor Doctor?

Commissioner Motshekga: You use me as an example of the -

Mogoeng: No, no, no....

Motshekga: Maybe it's part of how I was trained to lead into a question. Judge, I learned that you're a chancellor at a university. The universities today have a problem of identity crisis. And the reason -

Mogoeng: Doctor -

Motshekga: I am leading to the question.

Mogoeng: I thought we agreed that you just put a question to him?

Motshekga: The question is, there is identity crisis at universities because there are no role models. Don't you think Sol Plaatje, and others like Abdul Rahman, are the embodiments of the values that are needed at universities? And that therefore history and language should be taught at the universities? Secondly, that Sol Plaatje wrote in Setswana, wrote novels, and therefore that Setswana should be introduced as a compulsory subject in the law curriculum at the university. And that the courts in the Northern Cape should follow the example of Sol Plaatje and run in Tswana? I tried my best Chief Justice.

Mogoeng: You have.

Majiedt: Thank you Dr Motshekga. I think that firstly, that is why when I was asked that question right at the beginning, I thought that Sol Plaatje is a very apt name for that university. Because he was a man who from very humble beginnings became an outstanding scholar and made use of every opportunity without seeking the glory of higher office in the ANC, to get where he got to. On the question of history and language I fully agree with you. I often said that instead of teaching us Latin at university they should have taught us a local language. Like for example I went to the University of Western Cape, where they teach us isiXhosa, or in the Northern Cape, Setswana. And of course, Sol Plaatje is a niche university. It will have courses - because it is going to be a small university it's going to have courses that are not offered anywhere else in South Africa. For example, science courses related to the SKA project in that province, it will have courses on archaeology, which again is nowhere offered in South Africa. I agree with you that history and language is important. And can I just say that I personally regret that we haven't had that opportunity to learn languages such Setswana and isiXhosa. I attempted it while I was in Kimberley in the High Court. We were a group, we paid a tutor to learn Setswana. But after the first term he disappeared with our money so that went down like a lead balloon. And just coming back to language in the courts, it's a very difficult subject because, you know there was a task team put together and my colleague Judge President Kgomo was on that team, and in 2005 I think they brought out a report. I can remember that report because it dealt with this question of English and Afrikaans as

languages of record. And the minority report of which Judge Kgomo was one, suggested that the local language in a province should be one the language of record. So for example you would run a trial in Setswana and all of it will be translated into English to appear on the record for further appeals. And so on and so on. In KZN isiZulu. The majority went for English as a language of record, as the sole language of record. And unfortunately those recommendations, nothing became of it. We've had many ministers of justice, and unfortunately those recommendations were never implemented. Hence we are still stranded with English and Afrikaans as language of record. It is an unsatisfactory state of affairs. But it's something that must be dealt with on a policy level, at the highest level I think.

Motshekga: And lastly, before the Judge comes back, Judge President thank you. You know today, the students are saying "decolonise the curriculum". Now the courts say "make English a language of record". Isn't it better that before we are told by students through violent acts, that we must make an indigenous language a record of language, you should take Northern Cape, it's Afrikaans and Setswana. Can't you make Afrikaans and Setswana records languages of language, rather than English which is so far away from our shores?

Majiedt: Well, like I say there has been that study, and I mean there are arguments both ways. I think the majority of that task team went for English as a matter of practicality. Because if you're going to do it the way the minority suggested, for example Afrikaans and Setswana in the Northern Cape, you would have to have very accurate translation services and it'll cost a lot of money. But I agree with you. You know there are areas in the Northern Cape such as Namaqualand, one attorney jokingly said to another - and I think Judge Kgomo will remember - one attorney jokingly said to one of our colleagues who went there on circuit, he said to him "here in Namaqualand we only speak English in self-defence", because he meant to say that everybody there speaks Afrikaans. And so I think you make a valid point Dr Motshekga, but again you know it's a policy matter, it's a matter which we must deal with because you are absolutely right. I think English is being seen as a colonial language, and I think we must try and find a via media, as in all things in this country I think we must get to a settlement where we get a workable solution that satisfies most people, not everybody but most people.

President Maya: You've exhausted your quota Doctor. Commissioner Msomi?

Commissioner Msomi: I am going to pose a question that I have posed to another candidate. And that is, there is one vacancy in the Constitutional Court, and there are five applicants, why you?

Majiedt: Well that's for you to decide, but let me say that I think that when you make an assessment, of course you'll have to consider the requisites that the constitution put. First and foremost the constitution wants people on merit, they must be able people, and you make that assessment, I can't tell you whether I have enough merit for your recommendation. But of course there's also the question of race representation and I must immediately say before I get misunderstood, I don't want to be misquoted, when I say 'race' I'm not talking about 'coloured', I'm talking about 'black' and 'white'. Because too often people say to me, there are no coloureds in that court. I must say I detest that. I'm not coloured. I'm a black person. If you want to classify me, I am a human being, but if you classify me, I'm black. But just to move on, then you consider gender, and of course there not enough women in that court and we're acutely aware of that. But the problem I think is that Chief Justice has pointed out previously, women are not making themselves available. And unfortunately in this country we still see skewed briefing patterns. And it's very regrettable that women don't get enough proper work in the courts where it matters. We see very, very few women appearing in our court, and I think even less so in the Constitutional Court. And I'm not talking about a token woman counsel who's there as the third counsel, I think that's patronising. To get a white silk and another white senior junior, and then you get a black woman there just to make up the numbers, almost like a quota appearance. And so until we have proper briefing patterns - and I must say Government is also to blame - we see many cases where Government come before the courts where we don't see women, and to a lesser extent we don't see black counsel. Now you can only do so much with the skills that's available. And I think when you make that assessment at the end of the day, you'll have to comply with those constitutional imperatives. But I want to suggest to you that first and foremost, you'll have to look at ability and see who will enhance that court, who will add value to that court. Of course if there are two candidates of equal merit, one is a woman, one is a man, I have no hesitation in telling you you must appoint the woman. Because we know that the numbers don't gel in that court. Having said that, how does a male judge

like me decide, when is the right time to proceed? I mean I said, and Chief Justice you will forgive me I never forget these things, when Justice Skweyiya, the late Justice Skweyiya left that court, retired and we sat, Chief Justice made no bones about it, correctly so, and he said he would like to see that vacancy being filled by a woman. And of course there were four women who made themselves available from our court. But now this time around do I stand back and say well "I gotta wait until, you know, we reach five or six women" - it's a very difficult exercise. But I want to suggest to you with that long-winded answer that at the end of the day, all things being equal, you need to look at merit and look at the constitutional imperatives.

Msomi: Thank you. The second question is, you are where you are - is it a happy place to be in now? Has it always been a happy place to be in? If not, why?

Majiedt: Well, you know, yes and no, I'll tell you, that court has changed a lot since I got there in 2010. It's not only changing faces, black as opposed to white faces, but also about attitude. And I saw in the legalbrief that Justice Maya spoke about the diversity seminar. I must say that was a brilliant idea and it worked out very well. The problem is, when you have a diversity seminar, the problems are always, it's like being in church, you're preaching to the converted. The people who are not there, you must ask why are they not there? And I'm not going to blame my colleagues. I'm not going to wash dirty linen here, but I think there's a long way to go still in that court. There are attitudes of superiority and of inferiority. Those who know me will tell me despite what you may read in the newspapers, what's happened and so on, I get along with everybody and I think people who know me around this room can attest to that. And it makes it easier to mix with all kinds of groups in that court, and unfortunately we do have groups in that court. I don't want to call them 'cliques' because it sounds a bit harsh. But there is a problem in that court and I think we're addressing it, we've taken the first step in the diversity seminar. It's not only about race, it's also about people's attitude that you don't belong there. That you are not as good as I am. And it becomes particularly prevalent when you have to write judgments. In that sense, the Constitutional Court is a different place, it's a much better place. But that's not the reason why I want to go to the Constitutional Court. I believe that you must sort things out where you are. Change is from inside not from outside. But I think there's a long way to go in that court. It's not a bad place, but it's got some work to be done.

Msomi: To be done, ja. My last question basically then is, I think you have covered it partly because you have made a comparison between the two courts. Having been to the Constitutional Court and now basically availing yourself to serve there, what were your observations? What needs to be fixed, if anything, in that court? What role do you see yourself playing in augmenting the team that already occupies that court? Thank you.

Majiedt: Sorry, you mean the Constitutional Court? Augmenting that court?

Msomi: Yes, ja.

Majiedt: Well you know, institutions are never perfect. And I say it with great respect. The way the Constitutional Court is working at the moment, it's becoming unworkable. In the sense that, as the constitution is written, all the judges must read everything. In other words, they don't sit in panels like we do, so we can actually divide up the work. In the Constitutional Court everybody must read all applications for leave to appeal. And everybody must read all records for all cases. In the UK Supreme Court and in the US Supreme Court, there is a filtering system where trained lawyers work as clerks in the general office and they filter the stuff there. It never gets past them because it doesn't have merit or it doesn't belong there. And we need a filtering system. That's the first point. So I want to suggest that the modus operandi in the Constitutional Court is unworkable. I came there in 2014, just after the amendment of the Superior Courts Act which was the 23rd August 2013. And my colleagues told me that from the time the Act was amended to make, to give that court general jurisdiction as opposed to constitutional jurisdiction only, the work load had already increased by 60% in terms of applications for leave to appeal, and it's getting worse. I mean a lawyer being a lawyer will say to you his or her client "We've lost in the High Court, we've lost in Supreme Court of Appeal, let's appeal to the Constitutional Court". And so when I got there, all the cases without exception that I've seen in the SCA in the civil cases, the civil appeals, were there at the Concourt, for applications for leave to appeal. And a tiny fraction of them had merit. And so what I would, you ask what I would bring to the Constitutional Court, it's a court that started from scratch and so there's not that attitude, there's not that paradigm of, look I've been around like in the SCA for a long time in this court, we've always done things this way and it'll be continued to be done this way. And it's a paradigm that is unworkable. I mean change is inevitable in all

institutions. And so I would hope that I would bring to the Constitutional Court a sense of - I mean I saw in one comment from the Johannesburg Society of Advocates, that I had four or five cases where judgment took longer than three months, I was shocked. And then I looked and I saw it was Constitutional Court cases, it's the way they work, they have to make comments, set deadlines, all the time. And in the SCA we don't work like that. We get our work done, we send out the judgments in draft form, come back from colleagues, and we try and finish our work in that very same term. It's not always possible in the bigger cases, but we try and do that. And so, there's not much to change in that court. I think it's a very good court, it's a court that's working, and as I say, it carries no baggage, it doesn't carry any attitudes of superiority because I've been around for a long time. It's also a court where your stay is limited, which is a good thing, I think.

Mogoeng: Well you have a choice really between the German system and I think the American system, isn't it? It was in Germany, the Federal Constitutional Court you take judges from say the equivalent of your Supreme Court of Appeal and the High Court to be your researchers, as a Constitutional Court judge. That is why it's easier to sift things through, and they draft judgments for you, and there are panels. Now - and we've applied our minds to that but, at a practical level, what panels if any do you propose, and for which matters?

Majiedt: Chief Justice, I'm hesitant to say -

Mogoeng: Do you increase the number of judges for instance like the Germans to sixteen, and have panels of three or four and have chambers, what do you do?

Majiedt: I was going to go that route because you would have seen when we visited the European Court of Human Rights in Strasbourg, how they work.

Mogoeng: Yes.

Majiedt: And, I think we must start looking again in chambers in certain matters. And I'm going to suggest to you, particularly those matters, and I don't want to denigrate those cases -

Mogoeng: Sure.

Majiedt: But those cases, where there's no constitutional point really involved, it's almost like the lawyer is appealing as a solatium to his client, he's saying to his or her client "Look let's try one last time". And you know there's no merit, and send it to a chamber and they will get rid of it quickly. I'm saying 'rid of it quickly', it almost sounds insulting to the litigants, but there are really cases that don't belong there. And then the real serious cases where there are constitutional issues involved, or matters of common law principle, which require revision, and require reconsideration, you would have a full court sitting. So I think, I wouldn't want to say to see judges sitting as five and six, I'd like to see chambers being instituted as they do in the European Court of Human Rights. And I'd like to see a sifting system Chief Justice, in your general office, where cases who really shouldn't even be there, not even go into the Chamber, should be stopped right there and then, as they do in the US.

Mogoeng: Yes.

Majiedt: I must say I haven't applied my mind to it, but just off the top of my head it sounds like that should be the way to go.

Mogoeng: Yes, now I know and that's fine. It is something that is being worked on. We've established a committee and if appointed, you will join the committee and throw in your views then.

Commissioner Notyesi: Thank you Chief Justice. Judge, I must commend you, for instance I attended the Aspirant Judge's Training and the Advanced. And the energy you demonstrated as a ...

Mogoeng: Commissioner if you could speak up a bit please?

Notyesi: Oh thank you. I mean the energy you demonstrated as a trainer in that training, really it worked out a lot. Particularly in judgment writing. But I want one question from you. There is still a tendency around this issue of superiority, particularly in the SCA, when you deal with appeal referring to the High Court as court below. What are your views in terms, when you are writing a judgment, when you are sending out such messages? What do they impact on these questions of superiority and the question of seeing all the other courts as just small courts or junior courts there?

Majiedt: Well I started writing and referring to the High Court, which I think is what they should be called. And then the Act got amended and we were told, in our court, you can't refer to them as the High Court, because now there's only one High Court with several divisions in the country. And so we've been told that you should refer to them court as a court below, which I don't like, I agree with you, or the court a quo, now it's six of one half a dozen of the others, because 'a quo' in Latin means 'below'. Court from which it came. And so ja, I agree with you but there is that technical difficulty with calling it the High Court. And I must say for myself I'm uncomfortable to referring to a 'court below'. I mean if I, when I wrote in the High Court on appeal, I would refer to the Magistrate's Court or the Regional Court, not the 'court below'. And that appellation in the SCA is troubling, I agree with you.

Mogoeng: But while you are there, why can't you, you mention the name of the High Court, define it, or mention the name of the Magistrate's Court, define it, say 'Magistrate's Court'. And from then, as we do in the Constitutional Court, then refer to either High Court or Magistrate's Court. Everybody would know which court you're referring to. Instead of saying 'below'.

Majiedt: Chief Justice I agree with you -

Mogoeng: Or 'Lower'.

Majiedt: I think I agree with you. I think that's what we should be doing. What is of course useful is when you have an appeal which comes from the Magistrate's Court which has been to the High Court and then comes to our court, I simply refer to the Trial Court and the Appeal Court, which is the Magistrate's Court and the High Court. That's easier. But I agree with you, we must look at something like that. I have been very uncomfortable about it.

Notyesi: Lastly Judge, with unfriendly terminology, that is used in court, particularly in the High Court, of referring to judges as 'My Lord' 'My Lady', don't you think that it is time to do away with those terminologies?

Majiedt: I agree with you. That's why we've done away with it now in our court.

Mogoeng: Well on a lighter note, if you visit some of the jurisdictions in Africa, they actually insist. Judge Maya would say to me “My Lord would you like a cup of tea”, so that in turn I can address her as ‘My Lady’, and it’s only the two of us.

Commissioner Didiza: The question I want to ask relates to education and training. I mean it has been canvassed, and your own views about your passion about continuous learning. From where you sit, do you think there is anything that needs to be done in the profession of lawyers, particularly from university level? What are the things you think would better prepare the legal profession today? That’s the first question. Secondly, it relates to Section 25 of the Constitution around property rights. Do you think, the manner in which that clause is crafted, would enable us to deal with the issues of land reform and land redistribution, as a means of redressing the imbalances of the past? Thank you.

Majiedt: Commissioner, the first one, I think, when I got out of university I understood very little about a court room. So I work, it’s not on the CV or anywhere, but I work rather closely with my alma mater, with the University of Western Cape, with the Dean of the Law Faculty. And what I’ve encouraged him to do is to send the university, especially the final year students, to court rooms, so that they can see how trials work. So I think that the difficulty is with advocacy, you teach university students, and I know there’s mock, there are moot courts and there are mock trials and so on. But there’s no learning like seeing it in practice. And what I mean by that is, you don’t just take them to court, you actually let them read the papers. You as the lecturer you would show them the summons, the plea, the request for further particulars, and so on, show them the discovered documents, and get them to start thinking about that case. What are the issues? And how will you as a lawyer for the plaintiff or for the defendant would approach that case. And then when they go to court they see it in action, let them follow the whole trial until the judgment is done. And so I’d like to see a more practical level of training for students coming from university. As far as lawyers are concerned there are good programmes on the go, the Law Society, I’ve also given presentations for some of the bar councils at the Johannesburg Society of Advocates and so on. I think the emphasis must be on advocacy training, to get lawyers to be able to discern what are the real issues. Because I see in our court that often cases come to us, and the parties haven’t really discerned for themselves what the real issues are. As to the second question, section 25, that is a tricky one. But I am a firm believer in the ‘willing

buyer willing seller' principle, and that expropriation must take place within the parameters of the constitution. It's my impression, and I speak only as a judge, I have no personal knowledge of what's happening on the ground. I must also add, that when I was working in the Premier's office, you would have seen I worked in the Premier's office for two years in Kimberley, I saw a little bit about the land redistribution and land claims cases. And the difficulty there is that I think we, and I say it with great respect, I think with the best intentions Government lacks the capacity. Because there are a huge number of these claims, and they are meritorious claims. And let me give you an example, what we found in the Northern Cape, you know it's diamond-rich, we found that poor communities were exploited by unscrupulous people, who would take somebody or a small group out of that community. Make them all kinds of promises of riches to follow, where there are diamond resources involved. And that splits the community. And those cases take an endless amount of time to get to court. And you know the people in that office, in the Land Reform Office, they battle endlessly, mediating between the groups. And you never get to proper land redistribution when groups are fighting about what they think was going to be mineral riches where there are actually none. And the *Richtersveld* case is a good case and point. We in Kimberley heard about four or five cases in that court before it eventually found its way to the Constitutional Court. Simply because there were factions in the community who saw that all these diamonds of the Richtersveld would accrue to this faction or to the other faction. And so, Government lacks the capacity to deal with that kind of thing. It can't get its core focus because it's got to mediate between these opposing groups all the time. And I'm a firm believer, I think section 25 is a good clause, I think section 25 was well debated at Codesa. I think there's a reason why Section 25 is there. Speaking as a citizen for the moment and leaving aside the fact that I'm a judge, I wouldn't want us to see the way of going expropriation without reasonable compensation within the constitution. Now I'm trampling on certain politicians' toes here, forgive me Mr Malema, but those are my views.

Didiza: Just to follow up. Do you think the principle as you said of 'willing buyer willing seller', would be easily applied, in the context where historical acquisition may not be available, as well as developments on the land may not be accounted for? Particularly where such land was either developed through government subsidy which was given by your different boards, and therefore there may not be any available data that could

help determine what is the just prize. And also the fact that valuers don't necessarily use productive value, in valuating the land in terms of what it is used for, but rather use valuation standards of real estate, as opposed to productive value if it's a farm. That's why I am asking you, whether you think the applicability of that principle would be fair and just?

Majiedt: Well I like the concept as being brought in now of a national land valuer. And you would have a national land valuer and you would presumably have land valuers in the various provinces. That valuer wouldn't simply look at it as if this is just real estate, he would look at the historical use, acquisition and use of the land, he would consider what improvements have been made on the land, from where did the funds to do those improvements come? And so all those things would be considered. And I like the idea of a national land valuer. Again, we must capacitate that office. Because it's good to have it on paper but implementing is always the challenge.

Mogoeng: I don't know if you were still in the Premier's office, but '94, '95, '96, I used to be shocked, because huge farms were by far cheaper than moderate houses. Suddenly it changed, I think it went up to ten, twenty times more than what it used to be. Have you picked up that trend?

Majiedt: Ja Chief Justice -

Mogoeng: It was a sudden and radical, skyrocketing of prices.

Majiedt: Yes Chief Justice, I came there in 1997, and as I said I stayed there for two years until the '99 elections. But you are absolutely right, I mean, again and I say it, one doesn't want to generalise, but I think farmers saw an opportunity to milk the government and to milk the tax payer, and suddenly the farms became exorbitantly expensive. And people were trying to make a quick buck out of the taxpayers. And that's an unfortunate, that's why I say a land valuer would lend balance to that kind of equation. But you are absolutely right.

Commissioner Malema: Chief Justice, I wanted to follow up.

Mogoeng: Oh is it a follow up? Yes yes yes. I suspected you would want to follow up.

Malema: So because you are a fanatic of 'willing buyer willing seller', what happens if there is no willing seller but there is a willing buyer?

Majiedt: Well, I think as long as there's reasonable compensation you can expropriate. You don't need a willing buyer and a willing seller all the time. I mean, the constitution says you can expropriate with reasonable compensation, and again that's where the land valuer would come in. That is what I want to suggest.

Malema: So you agree that we can expropriate the land?

Majiedt: With reasonable compensation.

Malema: If there is no willing seller?

Majiedt: Yes.

Malema: Thank you.

Majiedt: But I did say so Mr Malema, .I said willing buyer willing seller and expropriation with reasonable compensation, both of them.

Commissioner Nkosi Thomas: You know, I'm not allowed to make a preamble so I'll go straight to the point. But we've heard about the racial, not racial issues, but perhaps what one could call lack of - diversity issues at the SCA, if I could characterise it that way. So part of the documents that were given to us, there's a document here that suggests that there was some encounter that had racial connotations during your tenure as the Northern Cape High Court Judge. I don't want to talk about the merits or demerits of that because I trust that you know about it, you know what it's about, and so do the commissioners. My question flowing from there is: What did you learn as a person firstly? Secondly, as a judicial officer? And thirdly, as a team player, from that experience?

Majiedt: Well can I just say that, it was an unfortunate incident. The Judge President and I both agreed that we were at fault. The matter got settled. We apologised to each other. And now we are the best of friends. You can ask him when I have left. But what I have learned is that there are certain ways of doing things. Let me first say - and I want to make no bones about it - I will always assert my right to be treated as a human being, as a citizen of this country, as a descendant of one of the first peoples of this country, the Khoisan. I will never allow myself to be trampled on, because people perceive me as not black enough, and again I'm not a coloured. So I would have done the same thing, but I would have done it differently. I used the wrong method and I

learned a lot from it. And as I say, the Judge President and I are good friends. I refer to him as 'my Judge President', still today. And as a judge I understood that one must control your temperament, you mustn't lose your temper. It's very difficult sometimes, especially as a trial judge, when people really provoke you and provoke your litigants, sometimes even lawyers that appear before you. That can even happen in the Appeal Court. But I have learned to be temperate. And I think those who appear before me you know that I try to be as temperate as possible. So that's what I've learned from it. It was an unfortunate incident, we both apologised to each other and I must say the previous Chief Justice, the late Justice Langa, and the JSC Committee did an excellent job of getting that matter settled. But as you say, one learns from your mistakes, and that was a huge mistake, and I've learned from it.

Nkosi -Thomas: As a team player? As a member of a team? Any lessons?

Majiedt: Absolutely. I think we've worked well in that court, until that unfortunate incident. And you can ask both the heads of the courts where I am now, they're sitting across you, whether I am a team player. And when I've left you can ask them, I won't tell you. I'm not going to blow my own trumpet. You can ask them.

Nkosi - Thomas: Well, Judge Majiedt, now just a last question now. Those lessons that you learned from your tenure at the Northern Cape High Court, as a judge there, did you - I didn't quite understand what it is exactly tangibly that you've learned but you have learned from that, from a diversity perspective - now you go to the SCA. Did you put those lessons in place in order to foster diversity?

Majiedt: Yes absolutely. If you say you haven't learned tangibly, what I've learned tangibly, and there are certain ways to handle contentious matters, and I handled it wrongly. That's what I've learned. And going to the SCA, I almost want to say I straddle the divide. I have friends in all the groups in that court, let me put it that way. And again you can ask my colleagues if that is so or not. And what I have learned about diversity is we must respect each other, as human beings, as persons from diverse backgrounds. Because that's what makes us great as a country. I think it's this unique diversity. And yet we all pull together in one direction. And that's forward. And so I try to be a team player in everything I do. I get along well with all my colleagues. And I try to respect people as far as I can. And even sometimes when I feel I've been wronged, I would go to that person and say "You know, I think you could have handled this

differently". And in turn, when I feel I have wronged somebody I will approach that person. So, indeed I have learned a valuable lesson. And that is that I must be approachable, and I must be able to approach colleagues on a one-to-one basis.

Mogoeng: Thank you Commissioner. Is there a follow up?

Malema: A follow up. ... Judge, I don't think you are helping us. She's asking you a question. And you are referring her question to people who are not here for an interview. We are not interviewing your colleagues, we are interviewing you. And she's asking you if you are a team player. And we really would want to get that answer from you and not from anyone else. Because they are not in an interview and we are not going to be asking them that. So I think it would be, it will do justice to us if you are to speak to that point. Interviews are about that, 'blowing your own horn'.

Majiedt: Alright, well I think I am a team player. I try to help as far as I can. When I was for many years the most senior Judge in the High Court, I always offered my services to the JP and to colleagues to help where I can, the more junior colleagues. And I still do the same in the court where I am now. That I offer to help and I, and as I say we pull together, despite our differences in some respects. And so yes, I am a team player. I don't know how to answer it beyond that.

Judge President Kgomo: I would also have raised this issue because DGRU raised it, and I did not want anything lurking. I'm going to just refer to these issues and then you'll agree with me. I agree with you that the two of us met at the Kimberley Club, we spoke like adults, and we sorted out this issue. Consequent to that I recommended you for appointment as Acting Judge President when I went on leave. Thirdly, when President Mpati approached me for you to come and act in the SCA, I duly obliged. And then lastly, when you were appointed to the SCA, this issue never cropped up because it's dead and buried. And I must just say, I have the greatest respect for you. I just want this to be placed on record publicly. If you have any comment to that you may.

Majiedt: I can only confirm it and I must say the respect is mutual JP of course. You know and as well as I know that we've become very good friends and that's all I can say. I can just confirm what you've said.

Mogoeng: And it's fair to assume that even with Judge Tlaletsi, all these things were resolved?

Majiedt: Absolutely.

President Maya: I'm not going to ask you a question, I just want to say something in support of the attributes and the lessons which you tell us you've learned from this incident, and the attributes that you possess as a judge. During my interview yesterday I complained about poor collegiality in our court, amongst other things, and I saw in some of the media this morning that the soundbites just focused on that, and they didn't mention the positive things I say exist in the court. And I just want to place on record, take this time to place on record, that the court is not completely devoid of collegiality, and in that regard I just want to thank you. Because over the past six months, I have worked very hard juggling court sittings, acting as the head of the court with no deputy. And had it not been for the help of senior colleagues such as yourself who jumped in to help whenever I asked for help, I would not have coped. So I just want to thank you for that, and confirm that you are one of the most easy going, hardworking and helpful judges at the SCA today. That's all.

Commissioner Norman: Thank you. Listening to your answers on the issue of collegiality, perhaps you don't want to call them 'cliques', the groups within the court, and also the fact that you say that there are people who believe that some people should not be in that court, I just get a sense that in dealing with those questions you have now adopted a survival mode. That as long as somebody doesn't trample upon me and my rights personally, then I'm fine. Am I correct in summing up the attitude that I've gathered from the answers you've given?

Majiedt: No. I don't agree. I am very assertive. Like I said to you before - you see there are two sides to the coin. There are those people who think they belong there and therefore that they can always do better than you. Now I don't know where I fall, but I think I may be in the group that say "You're not too bad". But there is a responsibility, a grave responsibility, on those of us who are perceived to be inferior in terms of our background, our experience and so on, to work hard. I said in the diversity seminar, that we must make sure that we do our work diligently. And I try to do that as much as possible. We must go the extra mile to show people who think that we are not worthy of being there, that we actually belong there. And in some instances it becomes

patronising when a colleague comes to you and he pats you on the head like a good little blackie and he says “You’ve written a good judgment”. That’s patronising. But I must emphasise the point that we must work hard. And with great respect, sometimes some of us don’t pull our weight in that court. Where really, work that has been done cannot go out as the work of that court. And people must say “Well we have to revisit this judgment”. There are such times. And many times it’s because the colleague - and it’s not only black colleagues - a colleague has not put in enough effort. I’ve also been guilty of that once, or twice maybe, maybe more. But the thing is we must work hard. Like I’ve said we must work hard. We owe it to our people, not only to the litigants, but to the country. Because we’re a court of precedent, we owe it to the country, to perform the best we can. And I think, it’s no use saying that “as long as nobody offends my rights”. I think we must make sure that that court maintains a certain standard of work, which I think has been acknowledged through the years. That to say that people keep on saying the standards are dropping and this. What are we doing about it? And that’s where ongoing judicial training comes in. That’s where it comes in for peer support. I believe in peer support, that senior judges should help junior judges. Without going around their backs and saying “you know I had to help Stevan Majiedt with this and that and the other”. You help each other because we build each other. And it’s for the good of the institution.

Norman: Thank you. Justice Majiedt, what troubles me is a court of that level, where we have to be dealing with issues of subtle racial undertones, it makes me wonder whether really, by simply brushing these off, by saying “no it’s not that bad, but it is bad, it can get worse or it’s not that bad”, isn’t it really that attitude, the attitude that’s actually causing those subtle racial undertones to survive up until now? You’ve been, you were appointed around 2010 if I’m correct? Now that’s a long time. In an environment, in a court that is a senior court. Where we as the people who litigate in that court, the members of the public get to know yesterday that in fact this is what is happening in that court. Is it helping the court if we brush it off, and you say “No it’s not that bad”?

Majiedt: We’re not brushing it off. I think we’ve taken the first steps in the diversity seminar to get there. But you see, like I said before, I’m going to repeat it, you can only have a diversity seminar if everybody buys into it. So like I say again, you’re preaching to the converted like in church. The real people you should be preaching to

are outside. Now, we're going to have a follow-up in May when the next term starts, to deal with these issues head on. Because I think it's been subliminal for too long. People don't come out and say, nobody will come and say "Well you know I'm a racist and that's why I treat you like this". Subliminal. And you've got to deal with it head on, and that's going to come in May. So we've taken the first step. This is, we're not in denial mode. In fact that is why I think the diversity seminar was good. And the vast majority of judges bought into it. Now it's a small thing, and I saw again in the legal brief that Justice Maya made the example of seeing white colleagues and black colleagues sitting next to each other. You know a colleague said, and I corrected him, a colleague said "when you sit on this side of the room, of the tea room, on the other side you only see white faces". And then I said to that colleague "but you must remember, when they sit on that side they only see black faces". It's a two way street you understand. And so, we must reach out to each other. We've taken the first step. It's a journey. It's not an event, it's a process. And I think we've taken the first real concrete steps, and we will get there. But again, it's no use having a group of people, albeit the vast majority of the group, buying into the thing, and those who, I won't say they're the real culprits, but those who are part of the problem, don't want to become part of the solution. So I think we're on our way, and it's a process that must continue.

Mogoeng: Do you know why this was left to linger on for this long? To the point where we're now celebrating a diversity training in 20 - was it 2017 or late 2016? Over twenty years into a constitutional democracy now, we're celebrating a thing like a diversity training. Why has it taken so long? Why did some of us never hear, why have we not heard about it?

Majiedt: Well Chief Justice, I think, its human nature. You sort of -

Mogoeng: Mind your own business.

Majiedt: Ja and I don't want to look at the problem, maybe it will go away. And please, I'm not criticising the previous heads of that court, but I think it comes from leadership. It's leadership that says, it's leadership that says in Afrikaans "Tot hier en nie verder nie". This is the point where we draw a line in the sand. And you confront the problem head on. For too long it's been lingering, and you know it's like a wound that festers, and before it bursts and becomes really infected you must lance that boil and deal with the problem. So it's a question of leadership. That's all I can say.

Minister Muthambi: Thank you Chief Justice: I think it's Good Day - No? Not yet? I'm looking on your response to the questionnaire. Paragraph 17, where you are referring to what you regard as your most significant contribution to the law and the pursuit of justice in South Africa. You say your goal is to contribute towards the proud tradition of a strong, transformed, widely- respected, independent South African judiciary. It's a follow-up on the question with regard to these issues that we are discussing it, to say, taking the tune from the Constitution, that South Africa belongs to all who live in it, united in our diversity. I want to actually, like Judge Maya said, that you've been one of the senior judges that has been assisting her a great deal. But there is this issue that the Chief Justice has just raised, to say, on this issue that has been raised, essentially for social cohesion in the court to say, as a senior judge, what have you actually contributed to make sure that instances of this nature don't occur? Because we are calling that we were supposed to have found each other by now. We are twenty three years down our democracy. And then, say for instance you are appointed to become a constitutional judge, Constitutional Court judge, leaving the current status quo, what do you think needs to be done? In respect of that court?

Majiedt: Well you must understand that seniority comes with years, and so it's only recently that I can call myself a senior judge. We've had a lot of senior judges retiring in that court, so for, up until last year I was in the lower half of seniority. And so it's difficult for a junior judge to call colleagues together and say "Look", or to go to the head of the court and say "Look, I think we must sort this out". There have been grumblings and there've been mumblings, and nothing has really been done. And I think there, if I may stick my neck out and say, the problem was at a more senior level. Because that's what's happened in any organisation. I think those who have been there for years say "You newcomers are not going to come and change things and tell us how to do". So it's been very difficult for me to come forward and to say to the head of the court "I think we must address this issue". I must also say that, we have on an informal level, tried, where colleagues differ, for example if you sit in a panel and there are differences of opinion, we ask senior colleagues to deal with those differences in a civil way. And those of us who are more junior, have suggested to senior colleagues, that you've got to be more understanding of junior judges. Because junior judges come there - and I myself was one - you're overawed by the stature of that court, by the traditions of that court. And that's where the Constitutional Court has got a huge

advantage. It's a court that started anew. And so, long inbuilt traditions have settled there. And as I say, we're changing it now with the help of new leadership. But as I say, it's been difficult for me, as a junior judge, to address that through the head of the court to say "I think we've got a serious problem here". I'm not making any excuses. Maybe we should have done more. But as I say, we are doing something now.

Mogoeng: Thank you. Yes Professor Doctor.

Motshekga: It will disappoint you Chief Justice.

Mogoeng: There won't be any preamble.

Motshekga: Yes. Would it be helpful, Judge, to replace diversity training with Ubuntu botho values and principles embedded in the Xhosa and the Bantu [indistinct]. If so, would you agree that the conduct of some black and white judges in our courts has not internalised the constitutional vision of the founders of our democracy, which say we have to strive for the creation of a non-racial, non-sexist, united, democratic, and prosperous society, in which the value of every citizen is measured by our common humanity, Ubuntu botho. Thank you.

Majiedt: Philosophy is one of my weaker points Dr Motshekga. But I'll try to answer it like this. Of course I agree with you. I think, when we come here - and I'm not saying 'They', I'm saying 'We', I'm including myself, for appointment. We try to portray an image of being committed to the new South African vision, as encapsulated in the Constitution. But it's for you to judge us on our track record. And it is so that there are some our colleagues, with great respect, who haven't really embraced all those values. And as I say, sometimes they do it subliminally. They never do it overtly. And I think my philosophy has always been - and I've said that many times - I think the Commissioner here can attest to that. Whenever I start the aspirant judges' training, I explain to them how we work. And I say to them: all that we can do in the training, is to say to the heads of court - because that's where we account - to the heads of court - we can say that candidate X is not ready in terms of aptitude. There are other factors like race and gender and so on. But in terms of aptitude, candidate X is not ready for appointment as an acting judge. The candidate needs further training, I say to them, I never say a person is useless, he can never be appointed, because I don't believe that in life there is such a thing as a useless human being. We've all got talents and

we've all got potential - it must just be developed and nurtured. And some of us have been practice and able to develop in some areas of the Law further than others. I mean I never saw a patent case in my life, I never saw a tax case, as an advocate in my life. The first time I dealt with a tax case was in the High Court in Kimberley when I was acting as a judge. And so yes Dr Motshekga, I agree with you, we must get people to understand what Ubuntu means. Not just saying the word as a buzz word, as a throwaway line when you come for an interview. You must understand what it means to respect people for what they are. And I don't that we've reached that point as yet. It would also help if people understand that this is all of our South Africa. South Africa doesn't just belong to certain people, like it used to belong to other people in the past. It's all of our South Africa and therefore it must be a united team effort, to get the spirit of Ubuntu. Not just through mere words, but through our actions. But again it's a journey that we have to travel.

Mogoeng: Justice Majiedt, I just need your help here. Looking at the statistics which I receive regularly, particularly in relation to cases that are not finalised or reserved judgments, I've had occasion to query some colleagues where there are far too many reserved judgments beyond the acceptable period. And they said "Look, you JSC people are pushing people our way who are not yet ready to be judges, the result is they are struggling to do their work, and the public is complaining to us". Also, I've heard somebody complain about some of your colleagues, and it was not an official complaint, that there are those who are really struggling to produce acceptable judgments for that level, because they were recommended for appointment and appointed when they were not ready for SCA work. What has been your observation? Because we would want to assist every court to administer justice, not to delay justice, because as the expression goes, 'Justice delayed is justice denied'. What has been your observation? Let's for now just confine it to the Supreme Court of Appeal.

Majiedt: Chief Justice, that's a curveball as they say in the colloquial language because, I don't want to go to the court in May and colleagues say to me "Ja, you see, you go to an interview and you put other people down because you think you are better". But the reality is this - and I'll take the heat when I get back to the court in May - the reality is that there are some colleagues who are struggling. And that is why I emphasised at the diversity seminar, exactly the point that I made earlier when one of the other commissioners asked me, is we must work hard. If I for example know I've

never sat, I did a customs and excise case in 2010, it's not reported but it was difficult case. I knew that I knew nothing about customs and excise in practice. I knew what the legal framework was, then I have to go and do extra, it's almost like I have to go do homework at night. And unfortunately some of our colleagues are not doing that. Now again, I can point the finger back at the JSC and say well the JSC must assess people then better to see if they are really qualified. There are some colleagues who are struggling - I think we need to be trained all the time. Something that we have to look at again because I want to mention again for example, Louis Harms. It's just a do peer training right there at the court. He used to give us peer training in intellectual property law, patents and trademarks and so on. And you don't use SAJEI and, I mean you use SAJEI but, you can do it right at the court without formally establishing we're going to have a seminar and so on. We book Wednesday afternoon, after four, we leave our chambers, we come sit in the tea room, and we do some training. And I think that's the route we must follow to help colleagues. Even with something as rudimentary as judgment writing.

Mogoeng: I was just looking at the law that everybody has done. I was told, even at that level, those who are struggling are not very few. Is that the position or is that an exaggeration?

Majiedt: You mean there are many struggling? Is that what you're saying, Chief Justice?

Mogoeng: Yes. I've heard that there are many struggling. Is that a fair assessment? Let me tell you where I am coming from. If we have been rather superficial in the way we are approaching our interview for candidates for the High Court and the Supreme Court of Appeal, then we need to be more robust. If colleagues at SCA level and at High Court level, have been rather too economical with words in their endeavours to articulate their concerns relating to certain candidates, "I don't want to look like I'm against transformation", then your response will help us to encourage colleagues to be more forthcoming, because they see these people when they act, whether they are ready for elevation or not. Rather than look like we have transformed or we are transforming the judiciary, when we are throwing in people who need more assistance to ready them for elevation.

Majiedt: First Chief Justice, I think, it's somewhat exaggerated, I don't think, I think the people who are struggling is in the minority. And it's a small minority, I want to suggest. But having said that, I mean, one doesn't want to always use the US as an example, but let's see how their Supreme Court judges get vetted. And when I look at a bundle like this, this is for one vacancy in the Constitutional Court, and you've got all the courts, most of the courts in the country, except our court and one or two of the High Courts where there are vacancies. I wonder how commissioners can get through all of this meaningfully? So maybe one of the things that need to be done is to consider, when you are appointing people in these two higher courts but in the Constitutional Court particularly, but also in the SCA, whether you shouldn't have a more extensive vetting process. And what I mean by that, you may need to have to separate these interviews. And I understand that we are all busy people around the table. And that is why I am saying, we need to consider this very carefully. If you're going to have a candidate come to the Constitutional Court, and I think the public out there is very, very much aware now of the vast powers of the Constitutional Court has. As the ultimate guardian of the constitution. I want to suggest to you Chief Justice, that you almost need a whole day for five candidates. Because you need to be able to say "On Monday we are only going to these five candidates, for the whole day". And people need to prepare for it. And you may need to say that "Next week, from next week onwards, we are going to do the High Court. We may do the SCA in between". Because - and I say it with great respect - I don't know whether all commissioners are all able to read these documents as they should be read. You should be in a position where you can say to a candidate, to assess the case, let's take *Cool Ideas*, I read somewhere that my colleague Malcolm Wallis wrote a critique of that case. That's good. As lawyers we differ. And I take it in good spirit, it's constructive, although I don't agree with him, with great respect. But you need to be able to say to the colleague "Well let's look at your case, let's look at this judgment that you wrote", and analyse that judgment, and tear it apart or say "I agree with you here and I agree with you there". At the moment, with great respect, and I say it I really mean it, I mean I've sat in JSC cases and I understand the difficult work that you do. But I think at the moment, especially for the Constitutional Court, it's almost too shallow an assessment process, to consider who must go to that very powerful institution.

Mogoeng: Can I tell you how, well maybe just ask you, maybe the process could be helped and we could even have interviews for a shorter period. Had those who have worked closely with these people, been in a position to give us information that we need to do justice to our interview process. I'll give you an example. We recommended someone to the SCA, and I obviously can't mention the name, and the person was appointed. Thereafter some senior colleague from the SCA said "How can you recommend this lazy person for appointment". We said "But why didn't you tell he was lazy?". And laziness is not something that you can easily detect from a judgment. Especially when you have colleagues to help you expedite the finalisation of the judgment. So you need somebody to save us time, to say "But this one is lazy", "But this one has been struggling all along to produce a judgment". Then we would know that this person is not ready. Even if the person comes from the High Court, applying to the Concourt, both heads of court could make life easier for the court system, by volunteering information that is critical for the interview process. Sometimes advocates and judges know that a particular colleague or applicant is dishonest. All they have to do to help the process is "But this person has got a scandal that does not show here", this and that. Knowing the essence of this interview, it will be a whole lot easier to get to the bottom of suitability. But if it is a judgment we're going to look at, some dishonest person can write a scholarly judgment. Before we know it there is embarrassment. Or can be helped to produce a judgment. Only when the person is already there "... we never get judgments on time from these people". And people start writing judgments for them because they are fed up, they don't want to be party to the delays. So I'm saying, help from the SCA, help from the High Court, help from the organised profession. Not detail, just help about critical issues, could make this process more meaningful.

Majiedt: Ja. You're right Chief Justice. And adding to that, I want to suggest to you that, let's say the head of our court for example, Acting President Maya now, we know who the presiders as we call them in that court, are, the top five or six, I don't want to call them 'the top six', just now you get the wrong idea. But the top five or six senior judges, they know who they are, they preside in all the cases. So at some stage or another they would have sat with acting judges of that court and with permanent judges. And let's say an acting judge wants to come permanently into that court. I think the head of that court must, there must be a system, not a formal system, but there

must be a system where that head of court say “Presiders, senior judges, what do you say about person X ?”, and debate it robustly. And say “Do you think this person is able, is ready for appointment in this court?” And the same for permanent judges who want to come to the Constitutional Court. First of all, I think there’s a tradition now, a convention, and I don’t want to call it a rule, but there’s a convention that you invite people to act in the Concourt. So that you can check their ability and their aptitude. And I want to suggest to you, that that should be telling. That should be a huge consideration to see how that person has fared in your court. And then you would ask the head of the SCA and say “Consult your senior judges and tell us whether you think this person....” Of course we are human beings, there are favourites and there are people who are not such favourites. If I have a thing against this colleague, I would say “Ah that colleague can’t make it” and so on. But by and large that should be the system that you use because, you can’t come afterwards as you say and throw up your hands and say “Hey but how did you appoint this person? He’s a lazy person”. You know after the fact it doesn’t help you.

Mogoeng: No it doesn’t. But maybe not senior colleagues in view of what we have learned from both you and Judge Maya, as many judges as possible should express their views on suitability.

Commissioner Nkosi - Thomas: Thank you Chief Justice. Justice Majiedt, just to follow up on the technical suitability or technical qualifications and just sharing ideas. Would it assist perhaps if candidates were to be subjected to a practical exam, in the sense that we expose them to a case study, when you come here for an interview, part of that includes a case study, and you then are expected to produce a judgment, which we as commissioners will look at to see whether it measures up or - is that the sort of thing that we should consider?

Majiedt: Well I don’t know how feasible that is going to be for the higher courts. But I want to suggest to you again, I think it’s going to present difficulties. I want to suggest to you again, that when people come and act in the High Court for example, the JP and his or her senior judges must really assess that person. Because there’s a reason why you invite that person to come and act. You want to see if this person is able to do the work. And it’s no use shielding that person, you must give that person difficult work. You know when I got to the Constitutional Court, I was invited by the Chief

Justice, but he disappeared, when I came there he wasn't there and I still hold a grudge about that.

Mogoeng: No, you must explain it properly -

Majiedt: No, he was on leave.

Mogoeng: It mustn't look like some AWOL or something.

Majiedt: No the Chief Justice was on leave. And the Deputy Chief Justice who allocated the work, gave me the Zimbabwe torture case. And I remember, I said to him, and I know him well because I was -

Mogoeng: Well I'm the one who gave that case.

Majiedt: Oh I'm so sorry. But I did say to the Deputy Chief Justice: "You are throwing me in the deep end". Because we were on that level, we could talk like that, him and I. "You are throwing me in the deep end here with this case. This is a case of international law which has never come before the Constitutional Court". And he said to me "No no no". And I said to him, by the way, I said to him "The court where I come from, I would never get this case. Because how it works there, the seniors decide who's going to write what and they take all the cream to themselves", which by the way is a weakness in the system. You know, candidates come here and you ask them "How many reported judgments have you got?" Well it's not up to me, it's up to the head of the court. If I don't get judgments which are reportable, those usually get taken by the senior judges. It's a very unfair question, by the way. But having said that, the Deputy Chief Justice said to me "This is a case where you can make your name, where you can establish yourself as a judge to be taken note of". And that to me is a positive attitude. You must give people difficult cases. Don't try and shield acting judges. Because if you're shielding acting judges, you are not helping the whole system of assessment. And I must say in the aspirant judges' training, I think, we've been guilty of giving them work that is too easy. And I see you nodding your head. And we've decided to change that. I mean you can't give people a collision case to write judgments on. And so people complain and say "You know this case is difficult" and I say "But this is the kind of work that you must be able to do. Otherwise I can't assess you properly". And so I must say I want to express my reservations about giving people case studies. Because they will do what other people do, I mean, they will go home

and say to a colleague who is more senior “Can you write this judgment for me? I must take it there for a case study you know”.

Mogoeng: I just looked at that judgment, I was on the panel.

Majiedt: You were there?

Mogoeng: Yes, here it is.

Majiedt: Then I withdraw Chief Justice.

Mogoeng: Anyway. Thank you very much, Judge Majiedt. Thank you.