



JUDGES MATTER

Judicial Service Commission interviews

05 April 2017.

Northern Cape Division of the High Court (Deputy Judge President)

Interview of Judge M V Phatshoane

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

CJ M. Mogoeng: When did you become an attorney?

Ms Phatshoane: I became an attorney, I was admitted as an attorney in 1999.

CJ M. Mogoeng: And practised for how long?

Ms Phatshoane: I've practised for a period of about 10 years.

CJ M. Mogoeng: Yes.

Ms Phatshoane: Right.

CJ M. Mogoeng: Before we come to your judicial experience I noticed that you got involved in the CCMA as well?

Ms Phatshoane: Indeed, Mr Chair.

CJ M. Mogoeng: Tell us a bit about that experience.

Ms Phatshoane: I took an oath of office to be a commissioner of the CCMA. I think that was in the year 1998, it was a wonderful experience to conciliate matters, to mediate disputes between the parties; you are basically in touch with the litigant, on a table, around the table set up. An amazing experience.

CJ M. Mogoeng: How can that experience work for the court system?

Ms Phatshoane: It can in ...[interjects]

CJ M. Mogoeng: The mainstream court system?

Ms Phatshoane: I believe that it can. It can work in a sense that if we've got mediation in our court's system that would reduce our workload tremendously. How it would work, I believe, if it was at all possible that some of the judges who are attending to case flow management, case management judge, were to approach a particular matter that's before him or her and deal with it in terms of that process; mediation or arbitration, I believe that most of our dispute would be resolved through the mediation process.

CJ M. Mogoeng: Are you aware that it has been introduced in the Magistrates' Courts?

Ms Phatshoane: I am aware that there was a Court-Annexed Arbitration. I think was at some point initiated by the Department of Minister back then, if I recall well. Yes, I am aware. I am aware.

CJ M. Mogoeng: Have you paid attention to whether it yielding the fruit it was expected to yield, or not?

Ms Phatshoane: Regrettably not. Regrettably not.

CJ M. Mogoeng: Yes. If it were to be introduced at High Court level, as some of us had proposed in the past, to which cases do you think it could more meaningfully be applied?

Ms Phatshoane: I am of the view that the Road Accident Fund matters, we usually would find that the settlement rate is quite high. Apart from that, I believe that mediation works successfully with the divorce matter.

CJ M. Mogoeng: With?

Ms Phatshoane: Divorces.

CJ M. Mogoeng: Yes. And custody issues?

Ms Phatshoane: Custody issues.

CJ M. Mogoeng: Yes. To reduce the stress that comes with such a painful experience.

Ms Phatshoane: Indeed, Mr Chair.

CJ M. Mogoeng: Yes. Now you have a Master's degree it's in Labour Law, isn't it?

Ms Phatshoane: In Labour Law Mr Chair.

CJ M. Mogoeng: And I notice that you have been involved in teaching, at the University of Free State. Why are you interested in being a teacher, while being a judge at the same time?

Ms Phatshoane: To me, it was more of a question of - well, at the time, when I was teaching at the University of the Free State I was still a practising attorney. I was not a judge, yet. And indeed, when I became a judge because Chairperson would notice

that I was appointed in the Northern Cape the lectures were in the University of the Free State. So it became difficult for me to carry on with my lecture, and I have since stopped lecturing as at that stage already.

CJ M. Mogoeng: Yes. What about fulfilling the role of an external examiner? For LLM programmes are you still involved in that, or not anymore?

Ms Phatshoane: No. Not anymore Mr Chair.

CJ M. Mogoeng: Now before we go any further there is something fascinating that I saw. And that is being a finalist in the Business Woman of the Year Awards. How did you qualify for Business Woman of the Year Award, or participating in that programme? Which business were you conducting?

Ms Phatshoane: Well it's running a law firm. That was the business.

CJ M. Mogoeng: Oh, that is the business.

Ms Phatshoane: I was, yes.

CJ M. Mogoeng: Okay, that is the business that they were referring to?

Ms Phatshoane: That's the business they were referring to Mr Chair.

CJ M. Mogoeng: Okay. Tell us about your judicial experience now. You've been a judge for how long? About 7 years?

Ms Phatshoane: About 7.

CJ M. Mogoeng: Including your acting stint?

Ms Phatshoane: About 7 years including my acting stints.

CJ M. Mogoeng: Now, in your own words, what are the challenges that relate to court performance; which areas need improvement as regards the High Court, as regards the Regional Court as regards the District Court in the Northern Cape?

Ms Phatshoane: The areas that would require improvement Chairperson, the Magistrate Court, the High Court I believe that if we could expedite the finalisation of our cases through the case flow management system that will help us tremendously. We are already doing that and we are seeing improvement, already Mr Chair.

CJ M. Mogoeng: How does that system work?

Ms Phatshoane: The case flow ... [interjects]

CJ M. Mogoeng: In the High Court and in the Magistrates Court, how is it been implemented?

Ms Phatshoane: Chairperson, I am happy that you are asking that question because I am assisting my Judge President with the implementation of the case flow management in our division. And I am also in the national judicial case flow management system. What we do is as soon as the proceedings or the pleadings have closed the Registrars Office would contact my office and forward all those files where the pleading had closed and what we would then do is we will allocate matters to the judges and prepare our own list of matters that had been allocated to the judges to case manage. The judge would basically manage the particular matter up until such time that it is ready for trial and would certify it trial ready. Once it is certified trial ready the matter will be forwarded back to the Registrar Office and the trial date will be allocated. Basically, that is how the system works in the High Court.

CJ M. Mogoeng: What does it mean: manage the case or manage the trial as you have just said? What does the judge do?

Ms Phatshoane: The judge would, once the pleadings have closed, the judge would for instance request that the matter be set down for a pre-trial conference. Would have to go through the files to find if the discovery affidavits had been filed. All those

other outstanding issues in the file, the judge would have to deal with and inform the parties to comply. In a way that helps to resolve matters expeditiously other than leaving the file to the litigants and it gathers dust and pleadings are not following so in that way, Chairperson matters get finalised and are certified trial ready and forwarded to the Registrar's Office.

CJ M. Mogoeng: We set up a committee Judges Presidents to look into ways through which delays in the court system could be cured. And last week Friday, a draft report was presented to us. And one of the solutions is not to set any matter down for hearing until it has been certified trial ready. That extends now to criminal matters. How can we ensure, in your view, through that system that no criminal matter is set down and postponed over and over and over again because it is not trial ready? No criminal matter is set down until it is certified trial ready. What processes must one embark upon to achieve that outcome?

Ms Phatshoane: Chairperson, what we have done in our division we've got the practise directives in respect of the criminal trials, is to call both parties; the legal aid with the defence counsel including the Director of Public Prosecutions together; also in a form of a pre-trial conference. Include the accused. So that at that stage already many of the issues can be ironed out. The plea itself, what is to happen in a criminal trial. All those, Chairperson, will help indeed to expedite finalisation of criminal trials.

CJ M. Mogoeng: Yes. Now, one of the challenges that confront South Africa and many countries is gender representation because the reality is there is bias against women, there is prejudice against women. There still is. We have but only one High Court of South Africa, if appointed to this position how can you use your position of influence to ensure that women are properly prepared to assume responsibilities of a judge at entry level, High Court level and Specialist Court level. What can be done? What need to be done more than what is being done. What needs to be done differently?

Ms Phatshoane: Chairperson I believe that we have to act proactively. We must identify from the University stage itself the students that should be trained to become judges, at that stage already. Chairperson the other difficulty that we are faced with

in the legal profession is that at entry level we find that a lot of work is not channelled to the women in the Bar to capacitate them. They are not exposed to such matters where they can gain enough experience. I believe that we, as a nation, should change our briefing patterns, ensure that the advocates at that level, entry level, gets enough briefs. In the alternative, they should be paired with senior counsel to gain the necessary experience. That is my view, Chairperson. If you can do well there we will be able to have a crop of good judges in the future.

CJ M. Mogoeng: What must be done for that to become a reality. It is all of our desires, as soon as I became Chief Justice I think the first public address I made was on exactly that point; it is not happening. Government Departments don't brief women; they don't brief black persons. Black people, generally speaking, there are a few, the private sector hardly ever give instructions to black attorneys, woman and the same applies to the advocates. They hardly ever get work from that end. What more needs to be done to ensure that that desire is translated into a reality?

Ms Phatshoane: My view Chairperson, would be that it must be legislated. Perhaps if Parliament could legislate it we could see changes, because as you say, Chairperson you and I can sit and have discussions but that can only be discussions sir if discussions don't yield into anything I am afraid that is going to be that.

CJ M. Mogoeng: Then the law will work?

Ms Phatshoane: Perhaps the law will work. We saw with the BEE the law in a way worked.

CJ M. Mogoeng: Yes. Over and above the law? Because I mean there is this Employment Equity Act, but I was addressing one business meeting and I was saying to them I've seen figures of data captures a black man would earn R8,000.00 his white counterpart who is doing exactly the same work is R30,000.00 per month. A white woman would earn R8.000.00 a black woman would earn about R6,000.00 for exactly the same job, same qualifications but the law is there. What more should we do to translate the desire or the policy into reality? What can a judge do? What can others do to help people understand that it will benefit everybody, it will benefit

the country if women and black people were to be given the opportunity to realise or to free their potential as law practitioners? So that when elevated to the Higher Courts they are equipped for that responsibility?

Ms Phatshoane: Chairperson perhaps maybe, if we can communicate also through our judgements, as judges. If a matter such as that is placed before. Because as a Labour Court Judge as well, you do get matters of that nature from the employment equity perspective discrimination on the basis of unequal pay for work of equal value. If we communicate through our judgements that the position be improved. That might well work.

CJ M. Mogoeng: Have you said all you want to why you consider yourself to be the right person for this position.

Ms Phatshoane: Have I, Chairperson?

CJ M. Mogoeng: Have you told us all you need to say about why you consider yourself to be the right person for this position? Or do you still have something more to say?

Ms Phatshoane: I believe that I possess the necessary qualities of a judge as provided for in terms of Section 174 of the Constitutional. I consider myself fit and proper. Chairperson, I took an oath of office when I started as a judge to administer the law without fear, favour or prejudice and I continue, and I reiterate that today that that is what I am going to do.

CJ M. Mogoeng: Yes. And as a leader? Before you comment, let me tell you, my experience is that if you are a leader of people who not only enjoy constitutional independence, but they also understand their rights and they know you did not employ them, so you can't fire them, you can't redeploy them. You can't do anything, you can only report. It is very difficult. How are you going to lead those kinds of people?

Ms Phatshoane: Come again Chair?

CJ M. Mogoeng: Vocal ...[interjects}

Ms Phatshoane: Just come again.

CJ M. Mogoeng: All right.

Ms Phatshoane: I didn't hear.

CJ M. Mogoeng: Broadly, this speaks to your leadership capabilities.

Ms Phatshoane: Right.

CJ M. Mogoeng: It's relatively easy to lead people that you wield disciplinary power over; people that you have employed; people that you have some possibility of dismissing when they underperform or when they misbehave. Or when you can shift them from one position to another, you can redeploy them for want of a better expression. That does not apply to judges. They are not only independent. They know that they are independent, and they will tell you that they are independent and they quick to say that they are independent. How are you going to manage them?

Ms Phatshoane: Chairperson...

CJ M. Mogoeng: What, in other words, what leadership skills have you gathered throughout life that you can apply as Deputy Judge President should you be appointed?

Ms Phatshoane: Chairperson, we do have court managers in our courts that are supposed to institute discipline on the employees and more importantly, firstly as a leader I believe that you have to sit with your employees and be able to guide them and tell them how to do things. I hear what the Chairperson is saying; that it is sometimes difficult to do that but the other approach to it is if one works through the court managers and assist the court managers with the experience that I have on how to handle particular matters that may well help, Chairperson.

CJ M. Mogoeng: Yeah, I am sure I did not make myself clear. I am talking about fellow judges.

Ms Phatshoane: Oh, fellow judges.

CJ M. Mogoeng: Yes. How are you going to lead them?

Ms Phatshoane: Thank you Mr ... [interjects]

CJ M. Mogoeng: They are not your employee, they are not my employees. How are you, you have no power really it is moral authority more than anything else that you have over them.

Ms Phatshoane: All right, now I hear what you are saying, Chairperson. Thank you. Again, it is a question of speaking to colleagues. You can only talk to them and explain to them the respect of if it is about performance, how they not performing according to how they are supposed to be performing and delivering. And Chairperson if at all they do not head the call let's make an example, perhaps maybe of a judge who does not, who has a judgment that has been outstanding for quite a lengthy period of time. You firstly speak to the judge concerned to deliver the judgment. You give them time. Failing which in which they have to deliver the judgment. And you also have to ensure they must firstly tell what - you why are they delaying with the judgment. Because there might be a variety of reasons why. Give them time to hand down the judgment and Chairperson if you have tried all and had failed the only way is perhaps before you could even go to the Judicial Conduct Committee contact the Chief Justice, find out from the Chief Justice about this judge that is giving me problems. I've tried this and that means perhaps the Chief Justice might give me some or other way, you know, how to handle the situation. If it all, all fails the matter must be reported to Judicial Service Conduct Committee to finalise.

CJ M. Mogoeng: JP?

JP F. Kgomo: Thank you, Chief Justice. Judge let me take you a few steps back. The Phatshoane Henney Firm, can you just enlighten the commission how big it was and what part you played and in particular how did this, how could this have help you in your leadership qualities.

Ms Phatshoane: Thank you JP. Phatshoane Henney Attorneys the firm was founded around 2006. It was three of us as directors in the firm. It was fairly a large firm in Bloemfontein. What happened is Chairperson, we then got involved with other firms and established the association of independent firms. I was the chairperson of the Phatshoane Henney Group of Associated Firm of Attorneys. The association itself had about 215 attorneys involved; they were about 800 thereabout of number of employees that it employed. It was about 23-member firms that were in about 8 provinces. So I was the chairperson of that group and for leadership qualities, Chairperson, that I am bringing in is not only about my involvement at the Phatshoane Henny Group of Associated Firm. I've been a leader in other institutions as well; I've chaired the Human Resource Committee of the Bloem Water Board. I chaired the Human. Resource Committee of the Manhung Society for the Care of the Aged. I also am chairing the Human Resource Committee of the University of Sol Plaatje, I am serving in the executive committee and Chairperson, I was also in the executive committee of the IAWJ as the Vice-President programme of that organisation. And apart, quite apart from that, Chairperson in my division itself there are a number of administrative functions that I am assisting my Judge President with. As I had said earlier, I am serving in the National Judicial case flow management committee, I am serving in the National Efficiency Enhancement Committee in the Northern Cape and ... (interjects)

JP F. Kgomo: Under who? The National one?

Ms Phatshoane: The National Judicial Case flow committee is under the chairmanship of Deputy Mthiyane and I am also serving in the, I am the chairperson of the Library Committee in our division, the National Library committee is chaired by Judge President, JP, and I must also add that at the MEEC, not the ME, the PEEC, the Provincial Enhancement Efficiency Committee I report on matters of case flow. When my Judge President is for any other reason not present I chair that, with his

permission, that committee as well, Chairperson. And I have to see to it that the minutes of that committee for all the meetings are in order prior to the meetings Chief Justice.

JP F. Kgomo: The IAWJ that you have referred to in the Northern Cape are there outreach programmes? How often and what do they do? And what they do does it help the community?

Ms Phatshoane: Indeed, Chairperson. The IAWJ as the Vice-President programme during the time, 2012-2014 I was responsible to develop the guidelines to the member on how to be involved in our social responsibility programmes. In the province, in particular, we have had at least 2 family dialogue programmes running where we imparting, and it is not only us, we would call the advocates; we would call the attorneys profession; we would call the state attorneys; members in the legal fraternity including the magistracy to this meeting where we would impart our knowledge to members of the community on the ground level, Chairperson. And they have worked well. I am quite a part from that, we also involved in the mentoring of the students. There is that mentoring programme for the students but at the moment Chairperson what we would do is, and pupils at school. What we have done so far was to take part in the schools we have got competition Chairperson, yes.

JP F. Kgomo: How do you see your responsibilities vis-à-vis the Judge President and your relationship? Sorry, let me say a Judge President if appointed and if Judge Tlaletsi, for instance, is appointed how do you see your working relationship with him? And how have you been working with him?

Ms Phatshoane: I have worked well with Judge Tlaletsi, as I said JP although supportive role that I have been playing in the division if Judge Tlaletsi is appointed, or recommended if I am recommended eventually appointed I see myself continue carrying on with that supportive role. Management of the judicial functions and continue with the duties as assigned to us in terms of the Superior Court Act, JP.

JP F. Kgomo: Yes, tell the commission about your acting stint in the Labour Appeal Court. Since when have you been acting, and when is your term there terminated?

Ms Phatshoane: I have been acting from the Labour Appeal Court, from last year. The third term I think it was about ... (interjects)

JP F. Kgomo: Was it continuous?

Ms Phatshoane: It is continuous up until the 3rd of June 2017.

JP F. Kgomo: Yes. And something has escaped me now, but it does not matter much. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you JP. Acting Premier ShuShu.

APREM N ShuShu: Thank you, Chief Justice. Good morning madam.

CJ M. Mogoeng: It is still morning?

Ms Phatshoane: Good morning Commissioner.

APREM N ShuShu: Good day. Good day, it is twelve. Judges are supposed to at all material times to act impartially, free from social political and probably also economic as well as private interest. Do you agree on that?

Ms Phatshoane: Indeed, I agree.

APREM N ShuShu: In light of the complaint that has been raised against you as well as the negative media publicity that complaint generated how confident should the people of the Northern Cape be that you are able to dispense justice impartially?

Ms Phatshoane: Chairperson, as I had said earlier I took an oath of office to apply the law without fear, favour or prejudice and Chairperson the people of the Northern Cape should not be worried. Chairperson would remember that that complaint was filed in December from the pack Chairperson, Commissioner would have noted that I have attached that to the pack. And that complaint was before the Judicial Conduct

Committee. That complaint had been dismissed. I had also dismissed that complaint as, in my view, was an abuse of the court process. Those were unfounded allegations, in my view, because they were not based on anything. And the people of the Northern Cape should have confidence in me. I cannot see how that should destroy the confidence that they had in me, I believe, over the years. I don't know if that answers your question Mr Commissioner.

CJ M. Mogoeng: Are you done Acting Premier, or do you still want to follow-up?

APREM N ShuShu: No, I just want to follow-up ... (interjects)

CJ M. Mogoeng: Please feel free.

APREM N ShuShu: And ask an additional question.

Ms Phatshoane: Right.

APREM N ShuShu: It is not much about the processes. That why sometimes the public perception is that courts aloof to what is obtaining on the ground. I don't, that why I am raising out to you; how do you deal with that? Because the, whatever processes might have been followed here are more internal processes. Process that have never been communicated to the public to set them at ease. By virtue of having taken an oath of office, does not necessarily translate into impartiality. So we need you to, there is a context at which I am asking that question. You are referring to the internal processes that are only known to yourselves and to those who are in your field of practice.

Ms Phatshoane: Right.

APREM N ShuShu: What about the public that must not only think so but must see that justice is dispensed impartially?

Ms Phatshoane: Chairperson, the only way in which the public would have to see that justice is dispensed impartially is through how the judge conducts herself in a

courtroom. That is the only way. I can not put it any better than that I took an oath of office and I am prepared to continue without fear, favour or prejudice and the complaint was in December. It was finalised, I believe, in February. Surely the public would have to, through my engagement and through my judgment I don't think that they should have any reason to doubt that I will compromise that oath of office that I took.

CJ M. Mogoeng: Are you ... (interjects)

APREM N ShuShu: Can I proceed with my second question?

CJ M. Mogoeng: Please, please.

APREM N ShuShu: Do you think that the judiciary in our country is sufficiently transformed?

Ms Phatshoane: Chairperson, that is a good question. And it all starts from 1994, we look at what happened from that period on up until now. As I understand in 1994 women constituted just about 0.7 percent representation in the judiciary. If you look at it now, we are about 30 percent represented. And you look at what happened in the recent past, the appointment that were made by the commission for women. Just about the other day, I learned from the news that the JSC recommended that Justice Maya be appointed the President of the Supreme Court of Appeal. We have got Deputy Judges President who are woman and quite a number of judges who had been appointed. I think that we are making some strides in so far as transformation of the judiciary is concerned. And to me transformation included a variety of things as well. It is not only about gender representative or otherwise, it also involves capacitating personnel in your area of operation. It includes quite a number of things and you look around and you see what has been put in place since the advent of our democracy to apartheid now. I think we have made some strides. We are doing something. Slowly but surely, we are getting there. I think I believe, thank you Mr Chair.

CJ M. Mogoeng: Thank you Acting Premier. Acting President Maya?

APRES M. Maya: Thank you, Chief Justice. Good morning Judge.

Ms Phatshoane: Morning Justice Maya.

APRES M. Maya: Sorry, it is afternoon, my goodness.

Ms Phatshoane: Good afternoon.

APRES M. Maya: Good afternoon. I have heard very good things about you. Those colleagues that have worked with you speak highly of your work ethic and character and your CV is as impressive and it shows you have diverse experience but just to harp back on something there CJ raised earlier that judges are a difficult bunch who know their rights. I just wanted to find out from you, seen that you are quite young, whether there, is your view, any chance that might pose a problem that has your elevation to leadership position might pose a problem for some of your colleagues who are considerably older than you and have been on the Bench for longer than you have?

Ms Phatshoane: I do not think so Justice Maya. As a matter of fact, one of my most, one of the senior colleagues in my division just about yesterday sent me a message to wish me luck in my interviews. That says a lot. I have worked well with them, I cannot foresee that there would be any difficulty with them concerning how I would command my authority. I doubt very much. There is a measure of collegiality I must add in our division. For instance, I have on the case flow, as I had a said already, on the case flow management the judge in the division that manages that if there was some or other resistance surely it would have been apparent from that because running that office, I have to obviously in consultation with the Judge President, allocate some files to the judges equitably so. We work well as a team in our division. I cannot foresee that there would be any resistance from colleagues.

APRES M. Maya: Thank you Judge Phatshoane.

Ms Phatshoane: Thank Justice Maya.

CJ M. Mogoeng: Judge President Lex?

JP Makgadzi: Yes, thank you. I just want to find out I see that you stated you are the Vice-President responsible for programmes at the IAWJ and I have known at the Judicial Case Flow Management Committee to be very productive and really contribute a lot in that committee. What I want to know is the membership of the IAWJ has a majority of Magistrates and do you in your programmes, and we are aware of the programme that exists in the Magistrates Court that cases are not being finalised, they are being delayed. Do you, in your programmes, at the IAWJ have a subject or programme that deals with judicial case flow management?

Ms Phatshoane: Not at all Chairperson. We don't have the programme on judicial case flow management. Perhaps maybe in the future, it is something that has to be included in our programmes, that would certainly be helpful because we also need to improve our efficiency as well as judges and magistrates. I think that is a brilliant proposal.

CJ M. Mogoeng: It looks like colleagues don't have questions. Oh, Minister?

MIN F. Muthambi: Good afternoon Justice.

CJ M. Mogoeng: Where have you been?

Ms Phatshoane: Good afternoon Minister.

CJ M. Mogoeng: Minister you may proceed.

MIN F. Muthambi: There is a booklet here that's written: "feedback from law bodies". Do you have a copy of it?

Ms Phatshoane: Feedback from law bodies? Yes, yes, I do have that Madam Commissioner.

MIN F. Muthambi: Can I ask that the secretary provide you with a copy of it.

Ms Phatshoane: I didn't hear the question Mr Commissioner, Ms Commissioner.

MIN F. Muthambi: I am asking the secretary to provide you with a copy.

Ms Phatshoane: I do have a copy.

MIN F. Muthambi: Yes. Can we look folder written JCB?

Ms Phatshoane: I am in the folder.

MIN F. Muthambi: Then I want us to go to page 236.

Ms Phatshoane: 236? Pages are up until 233.

CJ M. Mogoeng: Does that relate to Judge Williams?

MIN F. Muthambi: It is here. It is here.

CJ M. Mogoeng: Minister proceed with your question.

MIN F. Muthambi: With Judge Williams? My apologies. Then let me go to the ... Oh, I messed-up CJ can the others take. I'll come later.

CJ M. Mogoeng: While you are sorting yourself out.

MIN F. Muthambi: I am sorting myself, my apologies sir.

CJ M. Mogoeng: All right. Commissioner Norman?

COMM T. Norman: Thank you, Chief Justice. Good day, Judge Phatshoane.

Ms Phatshoane: Good day Commissioner.

COMM T. Norman: I just want to understand, I've thoroughly enjoyed reading your judgment in the Transnet matter. And what I wanted to know is why don't you mark your judgement reportable?

Ms Phatshoane: I don't ... (interjects)

COMM T. Norman: Because that one, three years later the constitutional court deals with a similar matter and had you reported that one I think then we would have set the trend in we would have developed a law. Is there any particular reason why you didn't mark it reportable?

Ms Phatshoane: I need to get to the judgement.

COMM T. Norman: Yes.

Ms Phatshoane: It's not marked reportable? Is it not marked reportable?

COMM T. Norman: I didn't see a mark reportable?

Ms Phatshoane: Because some of the judgments, one would mark them reportable, but they are not reported, in any event. Even when you mark a judgement reportable some of the judge, most of the judgments will not be reported.

COMM T. Norman: What is the system? Because I think we need to deal with that. Because if you are writing good judgments, you must have mechanisms where your judgments get reported. What is the system that gets followed in your division in order to have judgments that you would mark reportable? Even if you don't mark it reportable because in some divisions there is a certain committee that goes through judgments and then would decide what gets reported. But what is the system that you have in your division?

Ms Phatshoane: What I have found in the Northern Cape is we do have a liaison employee from our court who would forward the judgments that are reportable to the,

I think it is the legal profession, the Bar, there is someone that is appointed at the Bar and I think also at the side-Bar, I stand to be corrected; that go through this judgment and would have to forward them to the publishers. I think that is how the judgments get to be reported nowadays.

COMM T Norman: Okay, thank you

Ms Phatshoane: The judgements would be reported in SAFLII, for some reason SAFLII is reporting the judgments, but the publishers do not report our judgments.

COMM T. Norman: Thank you.

CJ M. Mogoeng: Thank you, Commissioner Norman. Minister?

MIN F. Muthambi: Thank you. Now I am sorted. My apologies earlier. I read the wrong profile. Yours now it is onto page, the same document that I referred to.

Ms Phatshoane: On?

MIN F. Muthambi: Page 230.

Ms Phatshoane: 230.

MIN F. Muthambi: We are dealing with paragraph 2, of the documents fit and proper.

Ms Phatshoane: Right.

MIN F. Muthambi: Yes, it says there is nothing in the application except the unsubstantiated JSC allegations or the judgement attached that will suggest that the candidate is not a fit and a proper person. I believe you also have a short list, book 1 of 1.

Ms Phatshoane: The short list?

MIN F. Muthambi: Ja.

Ms Phatshoane: Book 1, the short list? Yes, I do have Madam Commissioner.

MIN F. Muthambi: You have it?

Ms Phatshoane: Right.

MIN F. Muthambi: And then I want to take you to, it is a pity that the document are not numbered, but before Judge Williams folder, there is a BMK Attorneys letter.

Ms Phatshoane: BMK? That is the copy of my ruling?

MIN F. Muthambi: Hello?

Ms Phatshoane: Just before Judge Williams ... (interjects)

MIN F. Muthambi: Yeah, before the folder of Judge Williams ... (interjects)

Ms Phatshoane: A copy of my ruling.

MIN F. Muthambi: If you go there. There is an affidavit and a letter from BMK Attorneys.

Ms Phatshoane: BMK Attorneys, right.

MIN F. Muthambi: You got it?

Ms Phatshoane: Right.

MIN F. Muthambi: Then I want you to go to your own, I think it is an affidavit or whatever, but it is a reportable number circulated to judges in the High Court of South Africa, is the State and there are a lot of accused person there at the end of

the day the order is like it's done, it's a court order like. Because it has got your name underneath.

Ms Phatshoane: Right.

MIN F. Muthambi: You saw that?

Ms Phatshoane: Right.

MIN F. Muthambi: I want to take you to paragraph 5. It is an order, should be a court order. You got it?

Ms Phatshoane: Right I do have that.

MIN F. Muthambi: Okay. It says, "the affidavit by Mr Block contains general sweeping uses that meant in as far as those allegations are concerned it is the duty of the JSC to determine their probability." Then I want to take you to the affidavit prior to your judgment. It is paragraph 8.1. Affidavit in support of the complaints. You got it? It is on page 4 of the affidavit that has been, the one that's attached on the BMK Attorney document. On top.

Ms Phatshoane: Thank you. I am with you Madam Commissioner.

MIN F. Muthambi: Okay. Before I ask my question, I want us to read together 8.1. It says,

"a black judge in the presence of Judge President of the Northern Cape, Judge Kgomo, Judge President Kgomo overheard telephonic conversation between the President Judge in this matter. Judge Phatshoane and Judge President Kgomo. Judge Phatshoane conveyed to the Judge President Kgomo that she doesn't have ground to convict me, John Block, on the charges arraigned on before her. The response by Judge President Kgomo conveyed telephonically to Judge Phatshoane was to the effect convict the bastards".

Yes, I am reading.

“Convict the bastards. The only reasonable conclusion that this telephonic conversation had taken place at some stage after argument by legal counsel on 20 May 2015 and the delivering of the judgment on 13 October 2015.”

I want to end it there and we will go back to your order on paragraph 5. So it is in here your own assertion on paragraph 5 to say insofar as those allegations are concerned it is the duty of the JSC to determine their propriety(00:53:41 unclear). Was this order as per your own judgment compliant with?

Ms Phatshoane: Chairperson my order is at paragraph 6, it says the application for a special entry in terms of Section 317 was refused, that was the order. What appears in paragraph 5, questioned by the Commissioner was that dealt with by the Judicial Conduct Committee indeed sir I was advised that the JSC dealt with the complaint and dismissed the complaint. It was dealt with Madam Commissioner.

MIN F. Muthambi: Do you have any background as to on what basis was the complaint dismissed?

Ms Phatshoane: Regrettably Mr Chair I am not privy to the internal workings of the JSC.

MIN F. Muthambi: And then as a party implicated aren't you concerned?

Ms Phatshoane: I received a, what happened, perhaps maybe let me get clarity. Just say, you just asked a question am I not concerned about?

MIN F. Muthambi: About that, to say there was an enquiry and it was dismissed. As an implicated party aren't you concerned about that?

Ms Phatshoane: That it was dismissed? On the contrary Madam Commissioner as you can read from the paragraph I must say that what you read there in a way my name was being verified. I was happy to receive the letter from the JSC to say that those allegations, which I must add that I had said they were general sweeping and hearsay statement. But the JSC saw that they were not in compliance with the Act and dismissed those allegations.

MIN F. Muthambi: Okay. I want to also add up on the issue raised by the Chief Justice with regard to your leadership skills.

Ms Phatshoane: On the?

MIN F. Muthambi: Leadership skills.

Ms Phatshoane: Right, you were referring to document Madam Commissioner?

MIN F. Muthambi: No, I am not referring to any document. I am saying the issues that the Chief Justice raised as he was interacting with you on the leadership skills. Are you a team player?

Ms Phatshoane: Indeed, I am a team player.

MIN F. Muthambi: Can you share with us your own experiences that make you believe that you are a team player?

Ms Phatshoane: I am a team player Madam Commissioner in a sense that I am involved mentoring the young judges that come to act in our division. I will help them out. I get along well with my colleagues on the Bench. We work well, I cannot, but I am a team player.

MIN F. Muthambi: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Minister. Commissioner Msomi.

COMM S. Msomi: Thanks, Chief Justice. Justice Phatshoane you must tell me if I am asking an unfair question. And it is based on what I have been listening to.

Ms Phatshoane: Right.

COMM S. Msomi: In 2008 there was a what appears to have been a skirmish between various judges. Yes, the matter was resolved, and I am looking also at the fact that there is another judge who had been nominated and that judge has withdrawn to participate in this proceeding. Now based on that, and it is unfair on you because you were not there in 2008 but you are there now. Would it be save or fair to say your division appears to be factionalised is that a fair conclusion? Are you guys factionalised?

Ms Phatshoane: I do not believe that we are factionalised, Chairperson. I have not noticed that there were some factions in our division.

COMM S. Msomi: So in your view, you work well?

Ms Phatshoane: We relate quite well with one another.

COMM S. Msomi: Okay. The second question that I wanted to raise is regarding your leadership qualities. It is generally accepted in our profession that you earn the respect of the legal fraternity if you have good forensic skills, in other words, you know the law, you have a clear legal brain and that is why the Chief Justice, I think, was saying lawyers are a tough bunch to manage simply because all of them think they are clever and that is why they are there. Given that, what would you say has been your contribution to the jurisprudence of our law, which makes you to stand above the rest? To earn the respect of your colleagues? Which case would you say I had an opportunity here to rewrite the law and I did so and that puts me up there?

Ms Phatshoane: Chairperson, perhaps maybe I may say to the very same case of Mr Block and others. There was an issue concerning the interpretation of the Corruption Act. It appears that the previous Corruption Act regulated the receipt of the gratification that was received prior to the Corrupt Act and the gratification that is received after the Corrupt Act. But now you look at the legislation, the 2004 Corruption Act, somehow it had that "lacuna" sort of to say that if the Corrupt Act is perpetrated at this stage and the benefit is given at some point in the future that type of, in other ex-*pose facto* it does not apply. I had to interpret that piece of legislation. I have look into the Constitution itself to say is there any ambiguity here or an error in

my view, in the end, having regard to what the constitution is saying and having regard to the history of this legislation I was of the view that it must regulate both types of conduct. I think so. I think I think that will be that. There are also other cases, unfortunately, they are not reported. One of them is attached there with the interpretation of the Consumer Act, it is also attached there. Where the consumer was made if I have to use the colloquial term “run from pillar to post without any assistance” and it involved more. My interpretation of that Consumer Act and ja, I think, ja.

COMM S. Msomi: Basically, in short what you are saying to us is that you are going to command respect of your colleagues because your legal brain is a clear one? Is that what I am hearing?

Ms Phatshoane: I think if one reads what the Bar in their comments about me says that speaks for itself. They’re saying that my judgment takes no issue, they are well researched it goes on to show that the judge really puts a lot into her work. That is what they are saying.

COMM S. Msomi: Moving on, and just one question and it relates to two principles. One principle is the principle around judicial activism as a concept. When you exercise your judicial duty. How would you define it? What are its pros and cons of judicial activism and where do you fit in within the realm of judicial activism. Second question is related to that, is the role of the judiciary in a developmental stage? Thank you.

Ms Phatshoane: Chairperson judicial activism at times others would say that it is judicial restraint others would say this is a judgment where as opposed to applying the law the judge decides matters in terms of his or her own personal consideration or political consideration when it comes to what they call that type of a decision by the judge. A decision of judicial activist, all I want to add is as judges we are human beings we live in a society where things are happening, we cannot close our minds to that. When litigants come before us already, you know, consideration of socio-economic backgrounds and all those come into the picture, but the judge should always be cautious to apply the law. Considerations outside that. That is my view.

COMM S. Msomi: And the last one, the role of the judiciary in a developmental state? And perhaps linked to that as I conclude would be inclosing, having been there now for the last 7 years, surely there must be something that needs to be fixed. What is it that you will fix there, which you have noticed over a period of time that it needs to be fixed and you being the Deputy Judge President if appointed, will occupy your priority list? Thank you.

Ms Phatshoane: I think, Chairperson the last question what needs to be fixed? I think in a way that was the question that the Chief Justice previously asked, and I had said if I recall my response were that the backlog and linking that to case flow management that perhaps a much more effective case flow management system could help out. In tackling the backlog situation in our courts. The role of the judiciary in the developmental state I think the judiciary would have to be proactive in its programmes. The running of its programmes. Ensure that for instant accessibility to justice, to members of the community it would have to ensure that its systems and processes are effective and efficient. It had to ensure that it is responsive to the needs of the community and it has to ensure that it brings justice to the people. That in a nutshell, I think will be my response to that question. Thank you.

CJ M. Mogoeng: Commissioner Nkosi Thomas?

COMM N. Thomas: Thank you, Chief Justice. You know I, good afternoon Mam. Good afternoon Justice Phatshoane.

Ms Phatshoane: Good afternoon Mam.

COMM N. Thomas: My question goes to your vision and I am delighted that Commissioner Msomi has put the question to you, but I just want to pursue it a little bit because I would have put the question exactly the way in the same manner as he has put it i.e. what are the challenges in the division and secondly you now applying to be part of the leadership team what solutions would you bring. Now that is a vision question. But in answer to my colleague, you referred to the problem around backlog and you then said your vision is to deal with it via case flow. Now the question is, is

that the only challenge or are there others that you can think of? And of course, the question would be what is your vision in respect to that?

Ms Phatshoane: The other challenges that I have to come to think of apart from that Chairperson, I don't see, I can't think of any other challenges that we really have. Except that we need to be responsive and work with our community. Bring justice to the people of the Northern Cape through expeditious resolution of their dispute. That is how I see our self contributing towards the improved judicial system particularly in our area of jurisdiction.

COMM N. Thomas: Have you encountered in your division challenges pertaining to issues of diversity?

Ms Phatshoane: Chairperson I think is it Commissioner Msomi was asking about there was something that happened before in 2008 and since I came onto, at the division from 2009 I have not encountered anything pertaining to diversity issues. But I need to also say this, perhaps it is one of the things that I forgot to say in my management skills. I am assisting the Judge President as a liaison person with Sanjay and between my office and Sanjay we have a programme or the workshop that has been arranged that would take place, I think in the beginning of June, on diversity.

COMM N. Thomas: Maybe I should ask, put a direct question to you and the Chief Justice I have no doubt that he will bring me into line if the question is unfair.

Ms Phatshoane: Right

COMM N. Thomas: Do you get along with Justice Williams?

Ms Phatshoane: Oh, yes, I've never had issues with Judge Williams. Never had issues with Judge Williams.

COMM N. Thomas: So you and Judge Williams work together, as a team and there are no diversity issues flowing from that relationship?

Ms Phatshoane: No, not that I know of. No, I've never had issues with Judge Williams.

COMM N. Thomas: Okay. Then I'm going to have to step off the point there.

Ms Phatshoane: I remember, I remember that at some point there were some issues between Judge Williams and other colleagues, but I don't have issues with Judge Williams.

COMM N. Thomas: Right now, that you are aware. Okay, what is the nature of the issues that you are alluding to that exists as between her and other colleagues?

Ms Phatshoane: I think it was about a judgment that she had written. Which was in Afrikaans and the colleague was unfortunately not conversant in Afrikaans and she had advised her to go and deal with it by looking at the dictionary, the dictionary, something to that effect. I never had any issues, really.

COMM N. Thomas: Now we are putting this question to you justice because as I suggested you are joining a team of going to, if successful, you are going to become a co-leader of that division and I started off by asking about challenges and your vision as regards their resolution. Would this be perhaps one of the issues that you would need to apply your mind to, the way of perhaps of addressing going forward?

Ms Phatshoane: Perhaps the diversity workshop would be of assistance or would be of assistance rather. But as I said as colleagues, since I came into that division in 2009, quite part apart from perhaps maybe that incident we get along very well. And hopefully where we are lacking that diversity workshop should be of assistance to us.

COMM N. Thomas: Well just, one last question before the Chief Justice asks me to step off. Are there issues of access to justice in the division that are on your radar screen or not?

Ms Phatshoane: Access to justice?

COMM N. Thomas: Well, and I think that is linked to the linguistic factor that you alluded to now. Is that not the sort of thing that should occupy your mind as well, in the way of making justice accessible in the way linguistically and so on and so on?

Ms Phatshoane: Yes, it has to be. It has to be accessible. Linguistically and other one.

COMM N. Thomas: Is there a plan around that? Do you have a vision? Do you have a plan on how to remediate those areas of challenge?

Ms Phatshoane: I am sure we can following that. Well the question of, is it a question of language as a barrier in our court system? Ja See Commissioner, Madam Commissioner the issue of language in our courtrooms I think it is coming a long way really. At some point, I believe that it was proposed that English be the only media of instructions through our courts. To alleviate that problem a linguistic problem, I think we do have the interpreters. I believe also the office of the Chief Justice has also the translator programmes for the judges. Yes, I believe it should be part of our vision. You have to make access to justice really accessible to all the judges and ja. That in a way assist the interpretation, translation problems if a judge is not well au fait. I will believe that there are in other courts, they will have the record itself and the judgments translated for the judges. Yes, that we would have to look into that. Because in the Northern Cape 53 percent of the people in the province are Afrikaans speaking, 33 Tswana and other, ja. Thank you, Mr Commissioner.

COMM N. Thomas: Thank you justice. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner. Commissioner Helens?

COMM Helens: Judge I want you to imagine a scenario your JP is away on long leave. You are the acting JP. You've set up the roll for the next term and the senior judge comes to you and says, No look you've got me going on circuit, I don't do circuit anymore. I stay at the base of the court, the seat of the court. I like to do

automatic reviews, civil trials, a little bit lighter load. I am older now, and so please change your roll, take me off circuit. What would you do?

Ms Phatshoane: Thank you Mr Commissioner. As the Judge President, you have distributed your work to your judges equitably. Not only one judge should go on circuit, they should all rotate. As a judge president, I have to ensure that they rotate unless where there would be a case of reasonable accommodation where you would find that a particular judge would be having small children to raise that they cannot be left behind. Otherwise, you have to distribute your work equitably. And if a judge comes to you having distributed the work equitably and makes an excuse you sit with him down and explain to him this is going to be. You will have to go on circuit. If he cannot then the next step is to contact the Chief Justice, I've got this problem. The judge does not want to go on circuit and a Judicial Service Conduct Committee.

COMM Helens: Is there any likelihood of any of the judges in your division taking that attitude towards you, giving your relative juniority?

Ms Phatshoane: I do not think so. I doubt that.

CJ M. Mogoeng: Is it a follow-up question, otherwise I still have, or should I just include it in the list that I already have? Is it a follow-up question?

MALE: I am coming later, I didn't come.

CJ M. Mogoeng: Yes. Commissioner Dadiza?

COMM T. Didiza: Thank you very much CJ. Good afternoon judge.

Ms Phatshoane: Good afternoon Commissioner.

COMM T. Didiza: How are you?

Ms Phatshoane: I am fine. Thanks.

COMM T. Didiza: Fine. Let's go to your questionnaire on page 9. On page 9 point 18, the question is, "under any circumstances known to you which may cause you embarrassment in seeking the appointment for which you have been nominated?" And your answer was, yes.

Ms Phatshoane: Right.

COMM T. Didiza: In respect of 18.1 I think that point has been covered or conversed. But what I want to know is on the other three cases what is it that you think will be embarrassing?

Ms Phatshoane: What other three cases?

COMM T. Didiza: You said. 18.1 relates to the case of Mr John Fikile Block?

Ms Phatshoane: It's the same, it's the same.

COMM T. Didiza: Is it the same matter?

Ms Phatshoane: It is the same matter. It is just that, I've numbered the paragraphs to say that was the complaint, and I attach my ruling in the next paragraph, and then I just summarised what my ruling entailed, and the last part was that the application was for leave to appeal against the very and the sentence would have been before me on the 6th of February, it was before on the 6th of February 2017.

COMM T. Didiza: But given that the matter saw revolved why did you feel it would be embarrassing?

Ms Phatshoane: That was before I received the, the ... (interjects)

COMM T. Didiza: The response.

Ms Phatshoane: The response from the JSC. I had to mention that.

COMM T. Didiza: Okay. No thank you very much. The second question relates to access to justice. One element of that had been asked and I won't ask it, it was part of what I wanted to ask with respect to language. But also given the geographical situation of the province that is vast and big, and you'll be part of the leadership of that division do you think at the moment it is adequate all the citizens of the province will say given the infrastructure of the courts, the magistracy they feel they can access it. Even people from Witbank?

Ms Phatshoane: That you very much Commissioner for asking.

COMM T. Didiza: No that's Witbank of Northern Cape not of Mpumalanga.

Ms Phatshoane: Thank you, Commissioner, for asking that question. Through judicial case flow management system, we've got the use of the AVR system. The AVR system is audio visual reminder system it operates in the Magistrate Courts bringing justice closer to the accused people, your magistracy and the use of the AVR is an answer in a situation of a division in a fast province as the Northern Cape where for instance a trial could be, well you might have a link of a communication between the High Court in Kimberley and another High Court in Upington, not the High Court the other court in Upington and the attorneys from Upington and the attorneys from the Northern Cape and the judges could deal with some of the, like the pre-trial conferences could dispose of other matters in that way. Through the use of the AVR system but unfortunately, the use of the AVR system is not applicable in the High Court set up. Those are the things that we would have to look into, in the future in order to bring justice to the people of the Northern Cape. Hopefully, the legislature would also help in promulgating in that area to ensure that the High Courts can use that system as well.

COMM T. Didiza: With respect to one of the minority communities of that province the Khoe and the Khoi?

Ms Phatshoane: The?

COMM T. Didiza: The Khoe and the Khoi? Have you looked at how you would, has it been a challenge, maybe let me put that way, and if so what in the deliberations or in your view you would be able to address those communities. Maybe I can see some members are looking, you do have the Khoe and the Khoi's those who were removed from Namibia sent to, were part of the Koevoet and landed up in North West and because of the asbestoses issue they ended up move to Northern Cape and some of them of Battalion 32 where in the Northern Cape. And then they were settled and given citizenship post-1994. There are a community of Northern Cape.

Ms Phatshoane: The question being?

COMM T. Didiza: It relates to the issue of access to justice.

Ms Phatshoane: Access to justice?

COMM T. Didiza: Yes, and I was just asking whether given that minority challenges of language where they are located. Is it a challenge? If it is, have you thought maybe applying for this position where you will be leadership on what ways would you be able to deal with that reality of that province?

Ms Phatshoane: The problem of language is solved through an interpretation service. I appreciate your question. I don't know if it is the same tribe or not, maybe Commissioner Shushu can say; there is a tribe that is located just closer to Kimberley, Platfontein. Yes, I have been in contact with the office of the family advocate. They've been liaising with me together with Judge Mamosebo from our division that at some point, including we have to include the social development. We also have to include other role players as well. We need to assist those people. They need to be assisted. There is a problem in that area, they need to be assisted. They are already, as I understand, the office of the family advocate now and then would visit that area and possibly see to some of their needs in that community together with the social worker. But we have to play an active role and help out in that community.

COMM T. Didiza: The last question from my side, Judge, relates to administrative capability. I assume that if you were to get this position as the Deputy JP together JP one of the things, one the responsibilities that you'd have to deal with relates to administration and some of the issues that were mentioned. What would you say are your strengths in that regard?

Ms Phatshoane: In the administration? Chairperson, if I have to brag about it I think I've got the qualities of a leader. And when I speak I am able to command that respect and I believe that I will be able to administer what I have to administer as the Deputy Judge President. I do have those leadership qualities. That in itself, I think, is clear from my involvement in several of these organisations as I have highlighted in my CV.

CJ M. Mogoeng: Thank you, Commissioner Dadiza. Commissioner Schmidt?

COMM H. Schmidt: Thank You, Chief Justice. Judge could I clarify with you my understanding of the Section 317 application, which you gave judgement? Inter alia that application contains no date which the alleged telephonic discussion took place. That is number one. Number two, there is no name of any judicial officer to whom, or in whose company the apparent conversation took place. Thirdly no place with the discussion took place? Fourthly no confirmatory affidavit attached to any of that particular application. Having said that, it is all based on hearsay evidence. Thirdly if true, it would entail the unethical conduct, or at least the improper conduct of three judges of the High Court. Based on, based on hearsay evidence would you agree that had it been in a civil trial there would probably have been met with a punitive cost order had you brought the application similar ... (interjects)

Ms Phatshoane: The application, indeed Chairperson. As I had said, in my judgment, it amounted to no more than an abuse of the court process.

COMM H. Schmidt: Did you have an opportunity to respond to the complaint that was lodged with the JSC or the JCC?

Ms Phatshoane: What do I respond to Mr Commissioner. There is nothing that I have to respond to.

COMM H. Schmidt: No, I'm just stating. I didn't see your response that is why I am asking, and then thirdly or lastly, do you admit or deny those allocations? For the record.

Ms Phatshoane: I deny those allegations. As I said I took an oath of office to administer the law without fear, favour or prejudice.

COMM H. Schmidt: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Schmidt. Commissioner Modise?

COMM T. Modise: Thank you CJ. Mam, do you ever wake up in the middle of the night and worry about a decision you might want to change?

Ms Phatshoane: Thank you, Chairperson. Wake up in the middle of the night or work in the middle night? Did I hear? Wake up in the ... (interjects)

COMM T. Modise: Do you ever stay awake at night, maybe simplify my language, and wonder whether a decision or any decisions you have taken you may have taken otherwise given the advantage of time?

Ms Phatshoane: Already taken? No.

COMM T. Modise: Have you ever lain awake and gone through your decisions in court and wondered whether you had taken all the decision you have taken correctly?

Ms Phatshoane: I have never woken up and worry about whether the decision that I have taken were correct or not. I apply my mind to the issues before I hand down a judgment. You have to grapple with the issues beforehand but once you have

reached the decision that's it. You must be happy when you hand down your judgment and say to yourself, I think I ... (interjects)

COMM T. Modise: So you never?

Ms Phatshoane: I am happy with the outcome of the decision that I.

COMM T. Modise: Okay, judge you are very fortunate. So you've never made a mistake, or you have a system which enables you to get second opinions and third opinions before you pass judgment?

Ms Phatshoane: A system where I've got second opinions before I pass judgements?

COMM T. Modise: Shall I say, CJ, that we have heard that in certain instances judges need to be helped. And this is why I am putting this question. But Judge Phatshoane says she is very fortunate, she grapples with the matters herself, passes judgment has never had to review any of her decisions.

Ms Phatshoane: Basically, before you pass a judgment you must satisfy yourself. There might be one or other areas, that is now before you pass a judgment that you might want to bounce one aspect with a colleague or so. You do that. I think we do that often. That you would want to bounce one aspect with a colleague and you do your own research. But once you have done that, done your research and you put it to pen and paper you should be happy with the outcome of our decision. And there are systems in place, through the appeal processes or what in the event that, you know, that one of the parties is not satisfied with the outcome of your judgment.

COMM T. Modise: I see you come from around Rustenburg, originally and the dominant languages in the Northern Cape are Afrikaans, Setswana and SeXhosa, are you fluent in the other two languages? SeXhosa and Afrikaans?

Ms Phatshoane: Not fluent in SeXhosa, my Afrikaans is quite good. I can read Afrikaans, I can understand Afrikaans. I could, I can even hear evidence in Afrikaans.

COMM T. Modise: So have you ever, whilst you were presiding, seen any injustice taking place during the proceedings; and if you have what have you done about it?

Ms Phatshoane: An injustice taking place during the proceedings. That would-be a, I wouldn't ... (interjects)

COMM T. Modise: Let me be a layperson, an injustice not as an injustice as in the judgment. Something a miscarriage maybe an ill-afforded opportunity maybe to a defendant or to somebody who is accused who does not understand the proceedings. Any unfairness happening in the courtroom, have you ever seen it?

Ms Phatshoane: It does happen particularly when a judge understands most of the languages. Setswana, some of the witnesses would come testifying in Setswana and the old counsel would be perhaps not fluent in any of those languages. And sometimes you pick up a problem Commissioner, through the interpretation itself and you are able to say, stop, stop the interpreter and say interpreter you are not interpreting correctly. And that would then be, the situation would be corrected in that way.

COMM T. Modise: Lastly CJ, what is your opinion about the system of disciplining lawyers and judges? You think it is effective?

Ms Phatshoane: I think it is effective.

COMM T. Modise: You are satisfied with it?

Ms Phatshoane: I am satisfied with it.

COMM T. Modise: Thank you

CJ M. Mogoeng: Thank you, Chairperson. Commissioner Stock?

COMM Stock: Thank you very much CJ. Good afternoon Judge Phatshoane.

Ms Phatshoane: Good afternoon sir.

COMM Stock: No, I think I need to indicate from the onset CJ I have three issues that I want to raise, but two of them have already been adequately conversed by other colleagues. So there is only one issue that I want to pose to Judge Phatshoane.

Ms Phatshoane: Right.

COMM Stock: But I want to pose it in a form of a scenario. Which I want to narrate. Say for an example I am head of department of a particular government department. And then there are vacancies in the department that gets advertised. Once the vacancies have been advertised my wife happens to be one of the people that have got interest to apply for this vacancy. And then my wife gets an opportunity to apply, and then ultimately, she gets shortlisted for the interviews and then I am the head of department. And I am supposed to constitute a team that which will deal with the interviews and all of that. But once the team has interviewed, make recommendations, I am the one that is supposed to appoint. Now I want to pose a question to you in this format. Do you think that the fact that my wife, because the constitution allows her as an ordinary citizen all the rights, also as an ordinary citizen, to apply for any position where she qualifies and all of that? Do you think it would be a right thing for me to do where my wife now gets shortlisted for a position to be interviewed at the department where I am the head of the department? Do you think that will be a right thing to do?

Ms Phatshoane: The question is a bit problematic. People should avoid confliction relationship. I would say that in a situation such as that what is important is disclosure. Because what happens quite often is that people don't disclose this form of relationship. Let it be all out in the open. But insofar as you are now signing the appointment letter it's problematic as the HOD of that division. What message is it

sending to the public out there? I understand she is a citizen, just like any other South African and she is entitled to all this.

COMM Stock: Now my follow up question, Judge Phatshoane, let me try to simplify it in this context. Because I am the HOD of that department my wife is shortlisted. Then there is suddenly an uproar in the society about nepotism. About those candidates that are also contesting with my wife for the same position. A serious allegation in the public domain, there are press conferences, there are media releases that I am going to give my wife an advantage over those that are contesting for the similar position of her. Now, don't you think if that happens, during that process maybe myself as head of department I must recuse myself from the process?

Ms Phatshoane: Oh yes.

COMM Stock: And the allow the process to unfold?

Ms Phatshoane: Take it's on course.

COMM Stock: Then would you agree with me if I put it this way to you. That perception the public perception, whether true or false it has an implication on the outcome of processes? Do you agree with me on that one?

Ms Phatshoane: Yes, I do.

COMM Stock: In a sense that if I allow my wife to come for interviews, even when people are complaining, if I allow my wife to come for interviews based on the outcome of the interviews; if she gets appointed there will always be a cloud hanging that I have appointed my wife because of the relationship that we have? Do you agree with me on that principle?

Ms Phatshoane: There must always be a disclosure.

COMM Stock: Now the point that I am actually coming to you is the because in the packages there is an issue about the application for the recusal in the case that you were presiding over. And then I actually looked at the rooster documents ...

(interjects)

Ms Phatshoane: What papers?

COMM Stock: I am saying the package, this package. There is an application which was in the newspapers. Which was refused? During the proceeding of the case that you were presiding on, the John Block case. You are presiding over a case, now during the trial process there is an application which is lodged by the defendant, or the accused lodges an application during the trial that based on this perception or this allegation, whether tested or untested, you are submitting an application that yourself as a judge, somebody that presides over the case must recuse himself or herself. Now during the case, there was an order that made of that application if I am correct, and in the application, was not granted. And then the case continued, continued up until were there was a verdict and there was an order in the case. Am I right Judge Phatshoane?

Ms Phatshoane: Right, yes there was at some point an application for my recusal in that matter.

COMM Stock: Yes. Now going back to the scenario that I was actually ... (interjects)

COMM J Malema: Please Chief Justice.

CJ M. Mogoeng: Are you raising on a point of order?

COMM J. Malema: No, no it is not a point of order. I am worried that John Block's matter it looks like it is go for an appeal. It is going to go on an appeal.

CJ M. Mogoeng: Yes.

COMM J. Malema: And if you are not careful you are going to converse on some of the points which might be ... (interjects)

CJ M. Mogoeng: Will come to the Constitutional Court even.

COMM J. Malema: Not only Constitutional Court but subject of an appeal. And we've got Judge President of the Appeal; we've got Chief Justice here and I am scared we're entering into dangerous territory especially when the was asking for recusal and recusal was not granted. Those may be some of the grounds why we are going on appeal. I am not sure.

CJ M. Mogoeng: No well I think it would be central to it because that is precisely why he lodged a complaint. He says there is biased, and I would be surprised if it doesn't feature in the appeal process. Commissioner Stock what point are you, whatever question you put to her just be mindful of that possibility.

COMM Stock: Okay no thank you very much, Chief Justice. I am actually very mindful of the fact that this matter like Commissioner Malema is saying is still going on appeal. And I am also conversant of the fact that everything that we say on record might also be subject to the appeal process. So I will not go to the merits too much of the case itself. But the question that I wanted to ask Judge Phatshoane in light of what I actually narrated about my own issue as a head of department. And then you agree with me that, no based on the conflict of interest and also because of the perception, whether the perception is right, or the perception is wrong I was supposed to either declare it or either I was supposed to withdraw and recuse myself. Now I am coming to a case itself which you presided on. But it is up to you, Judge Phatshoane if you feel that I am posing an unfair question to you, it is up to you, I am not imposing my question to you to be answered. But I am going, in any case, to raise it in this fashion. During the proceeding of the trial of the case, when you presided do you think that it was not a good thing for you to have recused yourself in light of the fact that the division that you were judged in there were already 7, in total of your colleagues?

Ms Phatshoane: There are?

COMM J. Malema: No, no, no, no, no, no, no.

[laughter]

CJ M. Mogoeng: Order.

COMM J. Malema: Justice, maybe I must make it firm proposal that the recusal and non-recusal of the judge in the John Block's matter cannot constitute part of the questions to her.

CJ M. Mogoeng: You are right.

COMM J. Malema: Because it can be subject of appeal before the Appeals Court and he is putting all because that which he says here is going to be used against her in the court there. I don't know. But really Commissioner Stock says, I will not go too much into the details, but he agrees he is going to go into the merits, but not too much. It is not allowed, not even one step into the merits. So please I know it is tempting but I need you to really declare that we can't go there. We can't canvas those grounds.

CJ M. Mogoeng: Commissioner Stock, Commissioner Malema is right. He is right you can't go there.

COMM Stock: No, no thank you CJ for that ruling. I respect it fully and I will step off from that point there CJ.

CJ M. Mogoeng: Thank you.

COMM Stock: With all due respect Judge Phatshoane to you.

CJ M. Mogoeng: Yes.

COMM Stock: The next question I was going to ask ... (interjects)

CJ M. Mogoeng: I thought it was one?

COMM Stock: It is a follow-up.

CJ M. Mogoeng: Okay.

[Laughter]

COMM Stock: No, let me withdraw CJ. I withdraw. Let me withdraw the floor. I am intimidated of the Commissioner Malema is putting under severe pressure.

CJ M. Mogoeng: Thank you, Commissioner Stock. Commissioner Masuku.

COMM T. Masuku: Chief happily I have been, my questions have been asked and answered.

CJ M. Mogoeng: Thank you very much, Commissioner. JP?

JP F. Kgomo: Thank you, Chief Justice. Judge Phatshoane the commissioners are justifiably concerned about access to justice but you, perhaps you seem to be missing the point. What is the position as regard access to justice when one goes on circuit? Do we not conduct motion courts in all the circuits in the Northern Cape?

Ms Phatshoane: Yes, we do. We do conduct ... Thank you, JP. We conduct a motion courts in all the circuits. We also do criminal trials in all the circuits.

JP F Kgomo: Yes, and the, in declaring the circuits the JP has also if you remember made provision that civil cases are also being tried in Calvinia which is seven-hundred and something kilometres and in Springbok which is eight-hundred and something kilometres would that also not be a question of access to justice. It is different from other provinces.

Ms Phatshoane: That would be true.

JP F Kgomo: Yes, and one aspect also you were asked about your administration. Do you play any part, or have you played any part in the appointment of senior officers at the High Court?

Ms Phatshoane: Indeed Chairperson. I have played a part in the appointment of the Director Court Operations. I was part of the panel that had to interview the candidate or candidates. And the appointment of the Registrar or Registrars in our divisions and the appointment of law researchers in our division.

JP F Kgomo: What about the court manager?

Ms Phatshoane: The appointment of the court manager as well JP?

JP F Kgomo: Yes lastly, we know it is maybe a non-issue, but the 2008 matter did not affect you but two of the judges, just for the commissions, one is no longer in that court and one has returned, isn't it?

Ms Phatshoane: That's true.

JP F Kgomo: Lastly are you aware that I sent the same message as Judge President to all the judges, in fact, including the acting judges, when this vacancies became available and wished each and everyone good luck if they avail themselves. And I am saying this because the question arose, well would you command respect from more senior judges. Are you aware of that?

Ms Phatshoane: I am aware of that JP.

JP F Kgomo: Thank you.

CJ M. Mogoeng: Commissioner Fourie?

COMM Fourie: Thank you, Chief Justice. Good afternoon Judge Phatshoane.

Ms Phatshoane: Good afternoon Commissioner.

COMM Fourie: I didn't mean to ask questions, but I was a bit concerned about the answer you gave to the question put to you by Commissioner Modise. When she asked you and if I may use my own words do you ever worry afterwards whether you got a judgment right? She said do you wake up at night and so on. And you said no, you do your work beforehand and then when you have given your judgment you don't worry about it anymore. Am I correct that you said that?

Ms Phatshoane: Well, what I said is obviously beforehand you bounce the matter with your colleagues and you do your own research, write your judgment and once you're satisfied with the judgment you hand it down. What I am, at the end, at the end of it all somebody confronted with the same facts might see things differently than ... (interjects)

COMM Fourie: Sorry, if I may interrupt you. And that is why I am asking the question because you may unintentionally have created the impression that you think you are always right.

Ms Phatshoane: Okay, I understand where you are coming from.

COMM Fourie: And I want to remind you of the fact that two of your judgments have been overturned on appeal and I want to ask you what is your approach in general when applications for leave to appeal come before you?

Ms Phatshoane: The law is very clear when an application for leave to appeal comes before you, you ask yourself a question are there reasonable prospects of a successful appeal? On the basis of that, you either grant leave or you refuse leave.

COMM Fourie: But that means there is some doubt as to the issue, isn't it? Or there can be some doubt as to the issue.

Ms Phatshoane: That is why I said, Commissioner, when I was responding to Commissioner Modise that insofar as your judgment might be incorrect there are Appellant Courts to look into that.

COMM Fourie: Do you as a general sort of approach when you feel there is doubt, grant leave to appeal? Or would you generally think you don't want to burden another court to look at the same issues again?

Ms Phatshoane: You have to seriously look at the grounds of appeal. If there are reasonable prospects of success on appeal, we will have to grant leave. We have to grant leave.

COMM Fourie: Thank you, Chief Justice. Thank you, Justice.

CJ M. Mogoeng: Thank you, Commissioner Fourie. Commissioner Malema?

COMM J. Malema: No, I just want to follow up on this question. Because I also, I was uncomfortable with your response. Creating an impression that you are forever right, and you'll know that we all make mistakes and that is why there is an appeal. I think you spoke to that point. Is there a judgment where someone approached you and said we are seeking leave to appeal because we think we've erred and given the reasons which they put before you, you will even get persuaded that no I think here I might have made a mistake and granted?

Ms Phatshoane: Yes, I ones, that is why you when an application is argued before you and you are persuaded by the arguments before you that I may have erred then you grant leave. You grant leave.

COMM J. Malema: Then before you make judgment, for sure somewhere somehow you heard matters gave you sleepless nights? Like you are in a hard conversation with yourself and trying to go this way. And you think no, this one is not working for me and you'll even after working on it you have written it and all that. And when you got to bed you think, no I have not done justice to it you still continue with that. You don't go through such process?

Ms Phatshoane: Oh yes, that you do. That you do. You would go through that process.

COMM J. Malema: That is exactly what my National Chairperson of ESOP he was asking whether there are issues that keep you at night thinking like, you know, here I have to apply my mind what could be a possible satisfactory decision which will serve justice.

Ms Phatshoane: I thought I understood her question to be that after I had delivered a judgment do I spent sleepless night over the judgment that I had delivered. Before I deliver a judgment, indeed, I spent sleepless night thinking because I have to be sure that having researched the law, is this the right judgment that is going out?

COMM J. Malema: But even after you delivered the judgment you are a human being your still like, yes, I've taken a decision, but did I take a right decision. You don't have to change it. You are keeping the conversation going. You can't change it, you have delivered it but for the sake of your own conscious you don't have sometimes, I mean are you not going through such, you know, processes even after delivering a judgment? Particularly if such a judgment has invited a huge criticism and you get it from all types of people including some law aspect that you've got a huge respect for and they've gone on record saying you've erred, you know, something like that. You don't after that maybe have some, not necessarily nightmare ja, but that type of a situation?

Ms Phatshoane: Yes, when people say that you have erred as in the application for leave to appeal, that is a question which you have to ask yourself. Did I really err? And based on what they put before you, can you consider the application, their application. If it means granting leave you grant leave.

CJ M. Mogoeng: Thank you Commissioner Malema. Judge Phatshoane I just want to touch on one or two issues. This is a leadership position.

Ms Phatshoane: Right.

CJ M. Mogoeng: If the JP is not there you become the JP. I have asked you, I think Commissioner Didiza asked you, I think the Minister asked you; what leadership qualities do you possess. I don't think you've answered that question. You have spoken about being respected as you speak. You command respect when you speak. I want to know what is it about you that assures you and that ought to assure us that as Deputy Judge President and as Acting Judge President in the absence of the Judge President you will be able to lead. But maybe let me break it down. You've applied for a leadership position. You must have scanned the environment, what exactly are the problems in the division? Let's start with human relations or collegiality, what challenges have you picked-up as a member of that court that require attention? In terms of how judges relate to one another?

Ms Phatshoane: In terms of how judges relate, collegiality Chairperson I have not picked up a problem. We are, we relate well with one another. Apart from this incident that I had referred to of the judgment that had been written in Afrikaans and there had been some incident as well in 2008. But in so far as, as colleagues in that division I have not picked up a ... (interjects)

CJ M. Mogoeng: All right. One of the documents that we have is a letter from Judge Williams. She says it was rumoured, and I picked up from that that she is unhappy, it has been rumoured that the JP was grooming you over the years either for JP-ship or DJP-ship. You said everybody knew that or believed that to be the case. Is it likely or unlikely to spoil relationships in the division? Particularly because she has withdrawn you are seven years her junior in terms of service. What have you to say about that? Don't you foresee that problems could arise out of that and if you do how will that be dealt with?

Ms Phatshoane: Perhaps maybe there might be a problem that could arise out of that from Judge Williams perspective. The fact that she withdrew from the matter. How that could be dealt with, perhaps through the diversity workshop that is planned to take place soon. We might be able to deal with those issues. And perhaps the other, the other thing that we might have to do if Judge Tlaetsi is appointed and if I am also recommended and appointed eventually would have to sit with the judges in

our division and, if at all, there are any problems we will have iron out those problems moving forward.

CJ M. Mogoeng: One of the challenges that was part and parcel of the 2008 issue was this; people from outside of the Northern Cape being given leadership positions. People from the Northern Cape are not being considered for leadership positions. Judge Tlaetsi comes from Thabanchu, you come from Rustenburg, Judge Williams comes from the Northern Cape is it not a likely problem that you must anticipate and position yourself to deal with if appointed? So that you don't go back to 2008? You maintain the peace that appears to be there?

Ms Phatshoane: Chairperson, indeed one would have to maintain the peace that appears to be there at the moment. But I also need to say that Judge Williams is not from the Northern Cape, she is from Cape Town.

CJ M. Mogoeng: Oh, I beg your pardon. I thought she was from the Northern Cape.

Ms Phatshoane: She is not from the Northern Cape.

CJ M. Mogoeng: Okay. So she is just like you and Judge Tlaetsi. Okay, now what problems are there in relation to the backlog. Let's start with the High Court and how are you going to deal with them. Be specific. Let it not be if there are backlogs well maybe case flow management an effective implementation of case flow management will work. No, no, no. What problems are there and how are you going to address them. Let me give you an example. I am not in Rustenburg Magistrate's Court, but I know there are problems. There are problems with issuing orders on time, there are problems with the courtroom space and I know there are problems in Polokwane Magistrate's Court they don't have enough courtrooms, they are not able to finalise cases on time. The same apply to Mankweng, I know there are problems in Pretoria, I know there are problems in Umtata Magistrate Court and High Court are being attended to. That sort of sense. In the process of familiarising yourself with the environment in which you are going to be a leader if appointed, what problems have you identified that will call for your attention together with the attention of the Judge President?

Ms Phatshoane: Thank you, Chief Justice. When I started with the case flow management there were a whole lot of cases that were just left out to gather dust in the Registrar's office. But with the implementation of the case flow that backlog of matters, some of the matters they had not, they had, the parties had lost any interest in them, and letters to show cause was sent out. Those matters where either the attorneys come forward were settled or they were either withdrawn or what. The backlog has drastically been reduced every day since we started managing the implementation of case flow as the judges. I do have statistics of the number of matters that the judges set through, through the case flow management system from the Registrar's office. A number of matters that had been certified trial ready. When we started with the case flow management there was in our division a situation where you find in the Registrars office that there were papers laying around. But with the implementation of the case flow management there had been, there were officials that were appointed to see to it that files are, papers as they are filed they are properly placed in the files. There are personnel in that office that would now and then report to me if they are hiccups. Whether attorneys have problems. How do we address problems from the attorneys? There is a system where which had been put in place since I started with the implementation of the case flow. Where the Registrar's office would take a telephone call and call the attorneys. Something which did not happen in the past. To say this and that had not been done in the file. What are you intending to do about that and so forth, Chief Justice?

CJ M. Mogoeng: So there are no problems that you need to fix? Everything has been attended to?

Ms Phatshoane: Problems are being attended to.

CJ M. Mogoeng: Magistrate's Court? Any backlog that needs to be approached differently? Or are they up to date?

Ms Phatshoane: They do have a backlog. They report to us the PEEC, they will tell us of the measures that they have put in place, the District Magistrate that is to tackle their backlog. We have that report annually and they will inform us of the

meetings that they do have to deal with issues of backlog and they will even provide us with their statistics of whether their backlog is reducing or increasing. Whatever the case might be. We also have, Chief Justice as you know, the head of the court is responsible for coordinating both the regional court and the district courts. In this case, in our division, we do have Judge Mamosebo who is a liaising judge for the district courts. We also have Judge Pakati who is the liaising judge for the regional courts. And yes, we are tackling, we are helping out. There is this communication between the office of the JP and the magistracy.

CJ M. Mogoeng: What I needed to know was, as part of your preparation for this interview, as a person who knows that she will be part of the leadership that will play an oversight role in the performance of the Magistrates Court what specific problems have you identified and how do you think the magistracy, or the leadership of the magistracy could be helped to perform better than they are doing already? If you haven't thought it through it is fine. I will understand but what specific problems did you pick up and what do you think needs to be done.

Ms Phatshoane: I have not thought that's Chief Justice, from the magistracy's perspective.

CJ M. Mogoeng: The prosecuting authority?

Ms Phatshoane: The problems that they are encountering?

CJ M. Mogoeng: Specific that impact on the work being done by the magistracy? The police?

Ms Phatshoane: There are, there are, perhaps let me put it this way. Through the PEEC Chief Justice, we discuss several issues as and when issues arise. We deal with those issues. For instance, there was the lack of forensic services quite recently that in some area, I think it was the Namaqua, the Namaqualand area; that problem had been solved through the office of the DPP in conjunction with the Chief Prosecutor in that region and a report was forwarded to me which I then shared with the Judge President and he reported to the PEEC Committee.

CJ M. Mogoeng: Do you know, or don't you know whether there are enough Magistrates in the District Court and in the Regional Court? Do you know, or do you not know whether they have enough courtrooms in the District Courts in the province?

Ms Phatshoane: Chairperson I know that there is insufficiency of the courtrooms in the province itself. I know that at some point the department was trying to provide mobile court in some of the areas. I do know about those challenges Chairperson. Perhaps what would then have to happen in the future one would have to actively be involved in visiting these courts, or these areas and see what needs might be to improve the situation. I am aware that there is problems.

CJ M. Mogoeng: Thanks. I just want to thank you for having made yourself available for this interview. And thank you for bearing with us. You know, while we were putting so many questions to you. I just comfort from the fact that you said you are fine, you are not nervous. But thank you very much for coming here.

Ms Phatshoane: Thank you, chairperson and commissioners. Thank you.

CJ M. Mogoeng: And you are excused. Thank you, mam, thank you, Judge.