



JUDGES MATTER

Judicial Service Commission interviews

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Mpumalanga Division of the High Court (Judge President)

Interview of Judge F M Legodi

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[length of audio] (94:04)

2017 JSC Interviews/Judge F M Legodi

CJ M. Mogoeng: How many years were you an attorney?

Mr Legodi: I was admitted in 1986 as an attorney so, and when I left the practice it was in 2004.

CJ M. Mogoeng: 2000 and?

Mr Legodi: And 4.

CJ M. Mogoeng: And 4. For how many years have years have you been a judge now?

Mr Legodi: It is now 13 years.

CJ M. Mogoeng: 13. When did you become the Chairperson of the Magistrate's Commission?

Mr Legodi: I became the Chairperson of the Magistrate's Commission in November, December 2010.

CJ M. Mogoeng: That commission exists to facilitate the employment of District Court and Regional Court Magistrates among other things?

Mr Legodi: Yes.

CJ M. Mogoeng: Disciplinary measures are taken at that level or with the facilitation of the commission?

Mr Legodi: Yes. I [01:15 audio disruption]

CJ M. Mogoeng: I won't ask you to comment on the matter that went to Parliament and Parliament decided otherwise. What exposure, if any, in terms of leadership does your role; judiciary leadership that is, does the role of the chairperson of the Magistrate Commission expose one too? Just in your own words, how do you get involved in leadership issues and so.

Mr Legodi: The position of the Chairperson of the Magistrate's Court is a very important one.

CJ M. Mogoeng: Magistrate's Commission?

Mr Legodi: Yes, let me just perhaps start there. It is a very important one in the sense that as the Commission and perhaps as the Chairperson you are also responsible to ensure that there is efficiency and effectiveness in the lower courts and that is in terms of the legislative framework but apart from that you must also

play a role of guiding those judicial officers in the lower judiciary. And that is a very important role to play in the sense that from time to time you are asked to intervene, advise and give directions as to what must be done for the enhancement of our cause efficiency and effectiveness.

CJ M. Mogoeng: I don't know about you, but when I became Chief Justice I realised that working with colleagues in the Magistracy was one of the most difficult assignments anybody could ever assume. What is your own experience? What has been your experience?

Mr Legodi: Perhaps I should start by saying I have been made out of the law judiciary, in the sense that having practised in the most rural area the only appearance that I had as a lawyer was an appearance in the lower judiciary. And that made me to a certain extent to have an understanding of the challenges in the lower judiciary and some of the things that needs to be done and I think to a certain extent that helped me as a Chairperson of the Magistrate's Commission to be able to sustain the responsibility of being a Chairperson of the Magistrate's Commission for a longer period, although, that was never my intention to stay there for a longer period. And that to a certain extent assisted, and you are right CJ it is not an easy thing and sometimes you need to stay back and reflect and see the extent to which you might assist as a Chairperson of the Magistrate's Commission and give direction. But, it is a very challenging exercise.

CJ M. Mogoeng: There was a stage when, and I am asking these questions testing or causing you to reflect on your leadership experience. There were times and there possibly still are times when the associations to which Magistrates belong, JOASA and ARMSA seem to put for having a role that could if unchecked undermine the role of the statutory leadership of the Magistracy. Has that been your experience?

Mr Legodi: I need to be ... [interjects]

CJ M. Mogoeng: Wanting to make representation in circumstances where the statutory leadership has already made representations? Some conflation of roles?

Mr Legodi: Yes. There has been, Chief Justice, but I just need to be very careful ...
[interjects]

CJ M. Mogoeng: Yes.

Mr Legodi: Not to start shifting the blame. Because still needs to sustain that good relationship with the judiciary, especially in the lower court. And one is a bit at pains in seeking to shift such blames because you could only make things worse. But there are those challenges and one has always tried as far as I could to ensure that some of the things are maintained to the extent that the judiciary should not find itself in a firing line, or something will bring the judiciary into disrepute.

CJ M. Mogoeng: If appointed Judge President, quite apart from your Magistrate's Commission responsibilities you will be a reason of the oversight role that Judges Presidents play over the Magistracy still have to contend with the issues between the Regional Court Magistrate, the District Court Magistrate and ARMSA and JOASA also wanting to get involved. How are you going to deal with them? Where are going to draw the line, if it is possible to draw a line, between where the statutory leadership ends and where the associations come in? How are you going to balance the competing roles, for want of a better expression?

Mr Legodi: It is always true, draw a line when you are in a leadership position and when it becomes necessary for one to be firm you have to do so. But, if you could bring say, for example, feuding parties together with the aim to ensure that what we have been employed to do is not adversely affected, would be something very important. And those challenges are there and sometimes they become very difficult to the extent that you have to be firm and say well, enough is enough. And when that happens it would not be because you did not take all efforts to ensure that you find an amicable resolution to whatever dispute might be there. And as you are saying CJ, legislative framework or the statutory framework is there to guide every one of us and if there are things that we need to do, and they are not been done, they will always be consequences to that. And that is my approach in dealing with people, especially in a conflict situation.

CJ M. Mogoeng: You would recall that at least two of the issues that I immediately got into your collision course with the Magistracy, the leadership of the Magistracy about shortly upon my appointment where one why should any Chief Magistrate or Regional Court President spent more time in the office than in court in circumstances where Judges Presidents and even the Chief Justice go to court to claims that appear to be rather to exorbitant by all standards? And I think I asked you to look into that. What have you been able to do?

Mr Legodi: Firstly, Chief Justice, let me say this, as a leader you need to lead by example. And as a start, it is expected of you as a leader, where possible, from time to time to be in court. Because it is the guidance that you would want to give to your foot soldiers in that respect. And I think the issue relating to absence from your headquarters and not going to court as a leader, and speaking for myself, is completely unacceptable. We have tried as the commission, for example, to emphasise this issue all those heads of courts in the lower judiciary. There are still challenges but it is not something that is now happening as it use to be there is some sort of an acceptance by those heads of court in the lower judiciary to ensure that they spent much time at their station except 1, 2 or 3 where you would find that there are so many absentees from the headquarters. There are so many travelling expenses that are being incurred and as we speak for example; and I need to say this because I think it is all out there, one of the heads of court in the lower judiciary especially the Regional Court has now been suspended, amongst others. The issue relating to exorbitant claims and perhaps there it is contend dis-, worrying that those claims look like, and this is saying an issue that is still pending, and I don't want to go much into details. But, it looks like its almost like having another sort of income, so to put it. And that is worrying. But, it is, and I want to believe that it is, and isolated instance by perhaps bad apples.

CJ M. Mogoeng: But there were quite a few of them, you'd recall, when I called for a list of those who were claiming S&T for travelling on a monthly basis and for at least one year if not more, regularly. Like an additional income. Others claim coming almost close to their monthly salary.

Mr Legodi: Yes.

CJ M. Mogoeng: There were quite a number of them and have that been attended too? Has that been on all of them or only some?

Mr Legodi: It has been attended to and in fact there is a request via the Auditor General to make a follow-up on some of these claims and that request has been made in the course of this year and the commission has issued a directive so to put it, to the heads of court to be cooperative with the Auditor General when they do their auditing. And I want to believe that will be one issue that will be looked into by the Auditor General.

CJ M. Mogoeng: Now I haven't refreshed my memory, but I thought you came from Limpopo? Am I right?

Mr Legodi: Well CJ, I have two provinces which I regard ... [interjects]

CJ M. Mogoeng: As home.

Mr Legodi: As my home.

CJ M. Mogoeng: And Mpumalanga is one of them?

Mr Legodi: Mpumalanga is one of them.

CJ M. Mogoeng: Oh, I see. I was just ... [interjects]

Mr Legodi: I am born in Limpopo and at a village called Mokokomaraja[?]

CJ M. Mogoeng: Motomogobe[?]?

Mr Legodi: I am not sure if [16: 03 vernacular]

COMM J. Malema: [vernacular]

CJ M. Mogoeng: Thank you Commissioner Malema.

Mr Legodi: I was just about to say Commissioner Malema will tell you where Motomogobe[?] is.

CJ M. Mogoeng: Okay. Now, have you at least done some work there? In your capacity, if a judge? Are you familiar with that environment as a judicial officer?

Mr Legodi: You mean Limpopo?

CJ M. Mogoeng: Mpumalanga, Mpumalanga.

Mr Legodi: Well I landed in Mpumalanga on the 2nd August 1984.

CJ M. Mogoeng: 19?

Mr Legodi: 84. 1984.

CJ M. Mogoeng: Doing judicial work there?

Mr Legodi: No, not doing judicial work but since I was appointed as a judge in 2004 from time to time I teach circuit in Mpumalanga.

CJ M. Mogoeng: All right. Outline your vision now about Mpumalanga. Now that you are familiar with Mpumalanga you have applied for the position of Judge President what is it that you think needs to be done by the Judge President who as matters stand will be the first judge of the new Mpumalanga Division of the High Court. What is your vision? What are you going to do? What needs to be done and how? Just take a bit of time, not too long, just a bit of time. I know that you are a man who takes his time when he speaks but just outlines the vision briefly.

Mr Legodi: Well my starting point CJ is the norms and standards because this document gives us guidance as to how we need to accomplish the mission and the mission being effective efficient and expeditious finalisation of cases. Now as a start

one would, and I think I had the opportunity having worked there as a judge and perhaps also as a lawyer, one has the opportunity to know what are the possible challenges if one was to be appointed as the JP for the province and my immediate desire will be to bring justice closer to the people. By way of increasing a number of increasing the circuit courts in the area instead of the community in those rural areas having to travel for example, and I am sure MEC will tell you there is a place called Ntongwa[?] it use to be called Komkluswa [?] for the people in those rural areas to have to travel to Mbombela, formerly Nelspruit, it is almost like 150 km. That needs to come to a stop and I think that will be my desire to ensure that we bring justice closer to the people. And I think as we do so it will also be easier for us as the judiciary to ensure that matters are finalised expeditiously in that respect. But the other important thing CJ is to rally around with the people; the stakeholders in the judiciary that is very important because as a leader if you think that you will lead alone you are bound to fail. You need to get introversion and let people who are going to assist you to be on your side. And it is my desire to ensure that a good relationship is created between the judiciary and other stakeholders. For example, if the accused persons are brought to court at 11 o'clock instead of at half-past eight to start court, perhaps at 9 o'clock you need to find a way in which you could deal and perhaps have a discussion with many of the stakeholders.

CJ M. Mogoeng: Finally, I think I must now leave the JP and the MEC to put questions to you, but finally, you have never been reported to the JCC for judgments that were reserved for an inordinately long period of time. But there are a number of your colleagues from the same busy court, Pretoria who have been. What is the problem? Why is it possible for others subjected to the same workload to write their judgments on time and others take rather too long to do that? What is the problem and what could be done that you would take with you to Mpumalanga to make sure that justice is not delayed?

Mr Legodi: Perhaps I should start by saying Pretoria and Johannesburg is not like other divisions. It's the most busiest division and I am aware that most of the colleagues who tend to be behind on handing or delivering of judgments they come from this two courts. That is one thing. It is the volume of the work sometimes which makes that to happen. I need to be a bit careful as to how I deal with this one. But, I

must immediately say that most of my colleagues work so hard to ensure that they do not unnecessarily delay the handing down of judgments. And as their leader, it will always be very important to know your foot soldiers, because that to a certain extent guides you even in terms of allocation of your work. If you best know your leaders, you are able to spread the work in a manner that will ensure that matters are not unnecessarily delayed. I would not necessarily know exactly what makes other colleagues not to be able to deliver their judgments expeditiously. But we are not the same. Some colleagues are more thorough, some colleagues are naturally a little bit slower and when that happens, and I am not trying to be defensive around it, it would to a certain extent give you a guidance as a leader of a particular court to know how to spread the work within your division. But it could well be that it might as well be necessary from time to time, even in-house to have some sort of continuous sharing of ideas. And perhaps even continuous training, because that is very, very important. Especially bearing in mind that we are having new intakes, and I think it is the responsibility of every leader when you are having new judges to be able to keep an eye, not because you want to interfere in their independent execution of their judicial functions but simply because you want to know as to whether there are challenges. And when you have matters outstanding for a longer period, as the leader, it is going to be very important for you to have an understanding why for example judgments are not been handed down or delivered expeditiously and to what extent can you help, as a leader of a particular court.

CJ M. Mogoeng: JP?

JP D Mlambo: Thank you CJ. Good afternoon [26:50 vernacular].

Mr Legodi: [vernacular]

JP D Mlambo: The Chief Justice asked you whether you've, you are familiar with Mpumalanga. Could you just briefly, in a minute or two, just tell the commission what work you have done in Mpumalanga as a judge?

Mr Legodi: Before 2015 from time to time I'll be assigned, as I said, to do circuit in Mpumalanga. In 2015 I think it was after the Limpopo Province had its court the

Judge President announced in one of our meetings that he would want to release Mpumalanga or matters coming from Mpumalanga; from the Gauteng Court. And colleagues were given the opportunity to indicate as to whether they will be willing to assist in that regard. Having spent many years in Mpumalanga I was one of them. And since then I have assisted in the establishment of the civil court in Mpumalanga. We have alternated with colleagues to attend to civil matters in Mpumalanga. And that gave one an idea as to what is required in that province to ensure that we have an effective and expeditious delivery of justice in the area.

JP D Mlambo: Thank you. When you started doing work there in 2015 and now, I want you to tell the commission how many rolls were there and what work did they do, in 2015? And how many rolls are there now? And what is your view about the number of rolls you see, say by the end of this year in Mpumalanga?

Mr Legodi: We have always been having about 3 rolls, criminal rolls in Mpumalanga. The one at the main seat and the other one which was referred to as special circuit court doing the areas Middleburg, Delmas, Ermelo and the surrounding areas. Now since then we have also, because of this idea to bring justice closer to the people, established another criminal circuit court at a place called Mkobola in the former Kwandebele and that is also functioning we operated with one single court doing two weeks per month in Middleburg and two weeks thereafter another two weeks in Mpumalanga Civil Court, but since the beginning of this year there is a full time sitting of civil court or civil roll at both Middleburg and Mbombela. Now effectively therefore we would need, we have been operating on the basis of about 4 to 5 judges but having considered a number of matters which are coming in on the civil roll it is going to be very important to try and increase a number of judges to sit, not only in the civil roll but also in the criminal roll. So, 2 or 3 more additional judges are going to be required to do those rolls.

JP D Mlambo: Thank you. So, if I understand you there were 2 rolls and they went to 3 but now there is 5?

Mr Legodi: Yes.

JP D Mlambo: And you think there should be another 3 because the work is rising there?

Mr Legodi: Yes.

JP D Mlambo: Now, what has been your role in the establishment of these rolls in Mpumalanga?

Mr Legodi: As I am saying when the civil circuit was introduced in Mpumalanga I was the first judge to share those good news with the people, practitioners in Mpumalanga. We have also engaged other stakeholders in Mpumalanga including the RAF because most of the matters are on the civil roll are the RAF matters. And with the cooperation of the RAF, I ask for the establishment of a committee that will take care of the RAF matters to ensure that those matters are finalised as quickly as possible. In addition to that one has interacted with the attorneys and the advocates in Mpumalanga. We have also ran a number of trainings in the area to ensure that we have a smooth way of dealing with matters in Mpumalanga. I have also had the opportunity of being involved in the meetings of some of the PEEC in Mpumalanga and thanks the JP for inviting me in some of those meetings. There is also a structure that before the start of every time we would sit down with the stakeholders to prepare and that is the court readiness meetings that we do with other stakeholders to ensure that in the next term we are all on the same page in terms of ensuring that we do not have hiccups.

JP D Mlambo: Thank you. In terms of the role of the JP, you mentioned that the rolls will grow. So, you are talking by the end of some period, probably by the end of the year about 10 judges. What's been your role, if any, in the establishment of a pool of acting judges from whom appointments can be made and can we talk about the prioritisation of women, acting women judges?

Mr Legodi: What is very important JP, and I think one is fortunate in that there are a number of women coming from Mpumalanga who have been given the opportunity to act in the High Court. And that is very important because as part of ensuring that we are sensitive about the gender transformation in the judiciary these people could

then form part of a pool provided if I was to be appointed you will not want to keep them in our division because we would have started with them. But these are the people who are coming from the area, are the people who are acquainted with the area and they are participating in the process of creating a pool is very important.

JP D Mlambo: The Superior Courts Act I think identifies Mbombela as the main seat of the Mpumalanga Division, but it also identifies Middleburg as the local city.

Mr Legodi: Yes.

JP D Mlambo: If you are appointed as JP how do you attend addressing the challenge of finding accommodation for the locals in Middleburg? And can you also tell the Commissioner about other efforts you have assisted in, in identifying other accommodation sites for the record, in Mpumalanga?

Mr Legodi: It is going to be very important that the sooner we get a suitable accommodation in Middleburg the better. Otherwise, we are going to be embarrassed because Middleburg is as busy as Mbombela and from time to time it is going to be very important that we get a permanent accommodation for the local seat in Middleburg. I have been fortunate to be involved in some of the meetings to check as to whether we can not have identified land where the local seat can be housed. And the sooner that is done the better. Because as I say, we are likely going to need the same number of judges in Middleburg as the main seat. So, it is going to be very important to ensure that we get suitable accommodation as soon as possible.

JP D Mlambo: Two more questions, then I am done. The Chief Justice-led you about challenges regarding the Magistracy. Are you able to share one particular challenge that you come across and how you resolved it that involves the Magistrate in Mpumalanga?

Mr Legodi: One challenge that I can immediately recall is court accommodation and sharing of costs. Firstly, there was a challenge that matters that arise for example from Skukuza are been tried in Mashishing Lydenburg which is almost like 180 km

apart. That was done despite the fact the Skukuza Court is been used by the district court. A court which is not used on a daily basis and that those matters which arise from the pack and are to be heard in the Regional Court, instead of going to Mashishing they could as well be heard in Skukuza. We have initiated that to ensure that courts are brought closer to the people. And that is what we have achieved. But, secondly the Graskop Court, the Regional Court and the High Court for many years shared the Graskop Court and that was intended to ensure that people coming from Westpark Ridge areas even Lydenburg or Mashishing do not have to travel for about 100 km from Nelspruit, it should be closer. As you recall JP the High Court was meant to be unseated by the Regional Court President from Graskop and due to ones' intervention and your intervention as well we managed to maintain the status quo that is the Regional Court as we speak continues to share the Court in Graskop with the High Court.

JP D Mlambo: One last question, Chief Justice. The Chief Justice mentioned problems in the Magistracy. You have sat in PEEC meetings one standing item is the age of awaiting trial detainee matters. The bulk of them are in the Regional Court and they spend years, not just months. If you are appointed as JP how do you intend to tackle the problem?

Mr Legodi: That will be my starting point. To ensure that those matters are finalised and attended to as speedily as possible and if there is a shortage of judicial officers I will be willing to approach either the Deputy Minister or the Minister to ensure that other people are appointed on temporary basis to deal particularly with those matters. The sooner they are finalised the better because we cannot continue to have unnecessary backlog.

JP D Mlambo: Thank you, Chief Justice.

CJ M. Mogoeng: In relation to which area did the JP try to make justice accessible by saying matters must not be heard in a far-flung area when there is a court available and it was then accused of trying to intimidate the Regional Court President. Which area was it? I saw that correspondence recently.

Mr Legodi: Where I was also accused of that, in fact, I was the first person to be accused of that, because I sought to intervene in my capacity as the Chairperson of the Magistrate's Commission. Not as the JP or representative of the JP because and if when I raised it was in what capacity are you seeking to intervene in ensuring that and as an attempt it, I tried as far as ...[interjects]

CJ M. Mogoeng: No, no I just want to know which area? In respect of which area was that.

Mr Legodi: It's Graskop.

CJ M. Mogoeng: Graskop?

Mr Legodi: Yes.

CJ M. Mogoeng: Yes, thank you. MEC?

MEC: Thank you very much CJ. Good evening Judge Legodi.

Mr Legodi: Good evening Mam.

MEC: As you are aware that Mpumalanga remains to some extent a largely segregated province. If you were to be appointed as Judge President how will you ensure that your judgment does give effect to the principles of non-racialism as enshrined in our constitution?

Mr Legodi: If you talk in terms of judgment it is dependant on what kind of issues are placed before you. And if becomes necessary to ensure that it is an issue that is in line with what you are saying I am sure that the court will be able to deal with that. And just to give you a classic example, I just heard automatic review matter which landed on my table. Here the proceedings were conducted in SiSwati and deliberately so one would believe that the judicial officers and those who were involved because it became an automatic review matter it landed on my table. Guess what? The proceedings were not in SiSwati they were in English and JP I did

not tell you about this, but I want to bring it to you so that perhaps you can establish a full court to deal with that issue. Because it says to you we have people who do understand SiSwati for them to translate those proceedings in SiSwati to English it means that they as well have translated the proceedings in SiSwati. And the Magistrate took an objection to say these proceedings I am referring them to you, so you can settle on our side because it is not what we dealt with. So, this language is a foreign language altogether to the actual proceedings. So those are some of the things that from time to time you will be guided by what is placed before you.

MEC: Thank you very much. My last question; the transformation of judiciary remains a point of contention in numerous circles. Do you believe that the Bench has any role to play in fast-tracking the transformation of the judiciary?

Mr Legodi: Well perhaps it is only the judiciary which must play that role and it is a constitutional imperative to ensure that we enhance that and show what the judiciary is properly transformed. Particularly with regard to gender transformation.

MEC: Thanks, CJ.

CJ M. Mogoeng: Thank you, MEC. Commissioner Nayambi?

COMM A.J. Nayambi: Thanks, CJ. Evening Judge Legodi.

Mr Legodi: Good evening, Sir.

COMM A.J. Nayambi: Last year when you were given a task to be a keynote speaker addressing members of BLA you were given a topic of transformation of judiciary and other related matters. What might you consider to be the challenges facing us, because we are still judicial is not transformed in South Africa?

Mr Legodi: Firstly, I think as a leader of any court you need to be proactive and identify people with potential to become judicial officers. And I want to believe that you can do this in many ways. The legal fraternity can as well help because one would expect that they can recommend certain people. They know them better.

Certain people who might be considered for acting position or appointment as judicial officers. And I think it is a challenge that we need to deal with as leaders of the courts. So, it is the identification of people with the potential give them the opportunity to act and as you do so find a way of guiding them and one of the things that you can do is perhaps to allocate a particular mentor to that person. And also have some sort of training that could assist in that regard.

COMM A.J. Nayambi: Thank you. Can you share with us your understanding of the doctrine of separation of powers?

Mr Legodi: Well, the executive initiates laws and these initiations of laws is presented to Parliament, Parliament makes the laws and we as the judiciary we are there to interpret the law and give effect the intention of the lawmakers.

COMM A.J. Nayambi: Thank you. My last question, it's your understanding of judicial accountability?

Mr Legodi: We as the judiciary account to the public and the litigants through our judgements. That is the way in which we account as the judiciary.

COMM A.J. Nayambi: Thank you, CJ. Thank you very much, Commissioner Nyambi. Commissioner Nochesi?

COMM Nochesi: Thank you CJ. Good evening, Judge Legodi.

Mr Legodi: Good evening, Sir.

COMM Nochesi: Judge Legodi, as you were deliberating with the Judge President I have thought you would touch on the matter that has just developed recently where you have been approached by the Law Society of South Africa and NADEL to do judicial training and training of the lawyers which would be addition to your already compact programme, and you agreed. Can you tell, what motivated you to agree to do that exercise?

Mr Legodi: Training is my second passion. And I have been involved in a number of training. And I got involved in the project that you are talking about because I have in the past assisted lead in facilitating judicial case training. And I was approached about it now recently, you recall that we had a meeting with your good self and Mr Swart, we agreed that there is a need to ensure that we continue with that judicial case training because it is very important and that will assist us in term of having the pool from which we can draw for the purpose of acting appointments even for permanent appointments. And I might say I was involved with a number of this trainings and many of the lawyers who are now on permanent basis as judges had been part of those training which I have facilitated in the past.

COMM Nochesi: As I understand you have been practising in Mpumalanga for quite some time, not to sure whether I am correct since 1984 or somewhere there. How does that help you in terms of understanding the cultures of Mpumalanga? Which is the area of which you are applying to be Judge President how that will assist you in terms of understanding the culture, the norms of that area?

Mr Legodi: It does help a lot. Because it is not only the culture but also the language which is being used by the people in Mpumalanga. And that is very important in the sense that when you are in an area where you are known, and you are able to communicate with ordinary members of the public in your court that serves to give some sort of confidence in the judiciary. And also, as you are saying the culture, we also have a way of addressing elderly people. And because you know the culture as they get into a court, they take the witness box you are able to address them in a manner that you know they will appreciate.

COMM Nochesi: Lastly Judge, this ... [interjects]

COMM Malema: No, no before you move. Before he moves on that question. Okay. Judge [57:08 vernacular]

Mr Legodi: [vernacular]

COMM Malema: You are not conversing your arrival in Mpumalanga properly. When arrival in 1984 bring us here from 1984. Just take us through that journey. Because why [57:16 vernacular]. So, the story is going to be that you don't know Mpumalanga. So, you ought to demonstrate to us how best you know Mpumalanga. You arrived there 1984 and then what happened till now?

Mr Legodi: Yes, Sir. I arrived in 1994, 2nd August?

[Crosstalk]

Mr Legodi: 84. And joined Phosa Majapelo and Partners, at that time I had already completed my article ship with Judge Webber who was in Polokwane at Mimosa House, I am sure you know where Mimosa House is. And I failed the board exam several times. But I was with Phosa Majapelo and Partners until 1987, remember I was appointed, no I was admitted as a lawyer in 1986. And whilst with Phosa Majapelo and Partners I was assigned to do matters relating to the political activist and when I left the firm Phosa and Majapelo to start a practice in Bushbuckridge I continued to carry that load. There is no area in Mpumalanga which I did not travel, during those days and that made me to have a complete understanding of the people in that area. And when I was appointed as a judge in 2004 it was always fulfilling for me to go back there and do circuit in that area. And the kind of confidence that you can see in the people of a judge who is well known within the area was just overwhelming to me and that continues to be the case. And perhaps it is also the manner in which you relate with people outside a court situation.

COMM Nochesi: Okay. This will be my last question Judge.

[Crosstalk]

COMM Nochesi: Now Judge I know for a fact that you have as a judge, good relations with the Law Society which commands more than 24 300 lawyers in this country and many other organisations NADEL and PLS that can be seen in the comments that have been made. How do you think that stakeholder relationship will help you as a JP in Mpumalanga? Thank you that will be my last question.

Mr Legodi: Everything if you want to succeed depends on how you relate with people around you. That is very important. And I want to believe that that kind of relationship will continue, and I think it is even continuing more enhanced in the sense that one will be in a leadership position for initiate things.

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

COMM Helens: Thank you, Chief Justice. Just more on a point of information. Judge you are applying for a leadership position as a JP, you are in a leadership position in the Magistrate's Commission. I was many years ago on that Magistrate's Commission its composition is that of a number of regional, senior regional Magistrates, Chief Magistrates, advocates representatives, attorney's representatives. Could you explain the composition because my experience under Judge van Dijkhorst is that they're quite a tough bunch to govern because they are all bosses in their own right, or they think so, anyway?

CJ M. Mogoeng: And members of Parliament are there.

Mr Legodi: Yes.

COMM Helens: Not in my day.

Mr Legodi: I am not sure if I understand the essence of your question?

COMM Helens: I am really asking you what kind of other persons do have who themselves have leadership positions on the Magistrate's Commission of whom you were required and are required to be the leader?

Mr Legodi: Other than on the side of the Magistracy and advocates and attorneys and as the CJ indicated members of parliament there is none. In a leadership position.

CJ M. Mogoeng: The Deputy Minister is part of it, is he not.

Mr Legodi: Oh yes, yes. Yes. The Deputy Minister yes, is part of that.

CJ M. Mogoeng: Are you able to hold things together or do you get overwhelmed by the senior people that you have to, who are involved in a meeting you have to Chair? With issues, you have to deal with?

Mr Legodi: No. I take charge when I am in that meeting and I am not suggesting for a moment that I become the boss. I become a leader and allow everyone to vent issues and sometimes they can be very robust but as a Chairperson in charge of that meeting, you should always accord respect to those members even when you do not agree with them. And I think that has assisted me immensely as a Chairperson of the Magistrate's Commission to have that kind of an understanding in a relationship.

CJ M. Mogoeng: It's your second term is it?

Mr Legodi: It is my third term.

CJ M. Mogoeng: Third term?

Mr Legodi: Yes.

CJ M. Mogoeng: Commissioner Msomi?

COMM S. Msomi: Thanks, CJ. Good evening Justice Legodi.

Mr Legodi: Good evening, Sir.

COMM S. Msomi: I am looking, perhaps let me start off by saying, I am impressed with the way you answer the questions. It comes through that you are ready and allegeable man. I am looking at two letters. One letter is from an organisation called, "The International Association of Women Judges". And this letter makes it abundantly clear and it is a credit to you they say, you are the best candidate for the position. You have their unanimous support and they also go to the extent of saying

under your leadership they are now twelve chief female Magistrates out of twenty-one countrywide which is a huge achievement because you've basically exceeded 50 percent when it comes to that. And I think we, you need to be congratulated.

Mr Legodi: Thanks. Thanks for that.

COMM S. Msomi: But then on the other side, you have a letter by an organisation called; "Education for Social Justice Foundation", it's dated the 22nd of March 2017 addressed to the JSC and it quite scaling it says this about you, and I think it might be a case of sour grapes; but I'll invite you to comment on it, and it's, was it dismissed?

CJ M. Mogoeng: Yes, the letter.

COMM S. Msomi: Okay, I am not aware. I withdraw my question Sir.

Mr Legodi: Thank you so much.

CJ M. Mogoeng: Thank you. Judge President Kgomo?

JP F. Kgomo: Good evening, Judge Legodi. I am going to ask you a question that I asked you the other time when you availed yourself for the Judge Presidency of Limpopo and a similar question that I asked the Deputy Judge President Ledwaba when he made himself available for that position. You'll recall he served in the NCCS which is the, I think, National Council of Correctional Services. About the workload. Now I tell you what concerns me, well Judge Ledwaba immediately said, no, no I am going to resign. You said well, I'll cope with the work if I recall your response that time. But the, there was a complaint that because of the number of applicants, the retired Mr Schoeman and others would do summaries of profiles which is a bit of a shortcut because a Chairperson can't read all the profiles which to me is unsatisfactory. Now you establishing the High Court. You are going to be establishing a local division and establishing some circuit courts. Don't you think that one or the other of this responsibilities will suffer?

Mr Legodi: You mean as the Chairperson of the Magistrate's Commission?

JP F. Kgomo: Sorry?

Mr Legodi: You mean that if I was to be appointed and I remained to be a Chairperson of the Magistrate's Commission, is that what you are talking about?

JP F. Kgomo: Yes.

Mr Legodi: My term, unless if I am wrong, if I recall correctly comes to an end, I think it is January next year. If I was to be appointed I would not renew that term. If I was to be recommended I think it will also be irresponsible of me immediately to try and ask for replacement. Because there might be a need to do a proper handing over. I know that I have been asked by other judicial officers in the lower courts to still accept a extension and I will not do it. Because I would want to focus more properly especially when you are dealing with a new division. I think that responsibility is just going to be huge and you would not want to leave one responsibility lacking because you want to have it all.

JP F. Kgomo: Thank you, Chief Justice. That gives me some comfort.

CJ M. Mogoeng: Thank you. JP. Commissioner Norman?

COMM T. Norman: Thank you, Chief Justice. Good evening Judge Legodi.

Mr Legodi: Good evening, Mam.

COMM T. Norman: Thank you. Just to correct no, Commissioner Malema corrected your hometown it read to be pronounced properly. Can I just correct that IsiXhosa is IsiXhosa, not IsiXhosa as referred to in the documents?

Mr Legodi: Thank you, Mam but I can assure you you'll not gossip about me in IsiXhosa and I don't understand you. I will understand you. So, you can't gossip.

COMM T. Norman: Yes, thank you. And then the question that I have is, you indicated that you are already, you've appointed women to act in your division. And you said that you have chosen them because they know the area quite well. And then you believe that it will be good for that division. But my concern is if then the invitations are extended to the people who know Mpumalanga well aren't you running the risk of promoting tribalism within your court?

Mr Legodi: Firstly, let me just correct this. I don't have the authority to appoint acting judges. It is his responsibility, I am talking about Judge President Mlambo he is the one who made those appointments. And what I was trying to convey is that those people who have been given the opportunity to act and coming from that area is a starting point as a pool. But certainly, it is not restricted to the people in Mpumalanga, and in fact, if I was to be appointed Mam, and there is a space for acting, already I have a number in mind of women who will be given the first opportunity to act in that province. And those people are not coming from within the province itself.

COMM T. Norman: Yes, thank you. Thank you, Chief Justice.

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

MIN F. Muthambi: Thank you, Chief Justice. [1:13:23 vernacular]

Mr Legodi: [vernacular]. Now that you are saying Makoni[?], I need to greet properly as well.

MIN F. Muthambi: Okay. Thank you [vernacular]

[Laughter]

Mr Legodi: And thank you so much for calling me Makoni I really appreciate that it makes me feel so good when people they refer to me as Makoni.

MIN F. Muthambi: [vernacular]. Okay, thank you, Chief Justice. It is a follow up on the question raised by JP, Judge President Kgomo. Shall you get, we know you are the Chairperson of the Magistrate's Commission. And then let me commend you I have been signing a lot of senior Magistrate's posts through your steward leadership that you had to meet and process a lot of them for that effect. I want to thank you for that. But I think you are able to do that because you were not preoccupied with other things. And then you know there is still backlogs that the Magistrate's Commission had to deal with. Then and the requirement by the law, of course, that commission must be chaired by a judge, so now if you are going to be automatically, if you're to be appointed to the head of court, where the challenges of the Magistrate's Court are going to be discussed as an Appeal authority, don't you see a potential conflict of interest. Because in response to your answer I was going to say that you are going to say immediately once you are appointed then you are going to relinquish that responsibility, what do you see a potential conflict of interest because should there be issues now, in the area of the work that you will be doing, and you will then be part of the heads of court, how are you going to deal with that?

Mr Legodi: Firstly, Minister that the compliment that you have perhaps should be given to the foot soldiers in within the commission because they spend sleepless nights in ensuring we have what was placed before you. And secondly, I am not sure if I understand the essence of the question that you are posing to me. Whether it is a conflict by virtue of me being the Judge President or is it a conflict because I am chairing the Magistrate's Commission. I might need clarity around that. But as things have been I have been a judge, a chairperson of the Magistrate's Commission as well. There has never been a conflict but if it was to be a matter that concern the Magistrate's Commission certainly I would not sit in that matter because quite very often I am also cited as a respondent in those matters in my capacity as the chairperson. So, I would not be involved as a chairperson on appeal in a matter that involved the Magistrate's Commission.

MIN F. Muthambi: Okay. Then now that you'll be the President of the the Judge President of the court and then you'll be much focused, I supposed, on the leadership of the court and the administrative part of it. Can we get assurance that

also while you are there maybe afforded an opportunity you'll be able to be still a leading member of the Bench so that we see you actively participating in the Bench?

Mr Legodi: I thought you'll say can I do some sort of community service in Limpopo whilst I am still in Mpumalanga. I can assure you, Minister, that I'll continue to do what I have been doing all along.

MIN F. Muthambi: Okay. I am interested on your leadership style. Are you a team player?

Mr Legodi: I want to believe so. I really want to believe so. And I don't want to start talking about myself because I feel a little bit uneasy when I am forced to talk about myself. But I think I am a team leader and you can ask any member of the commission who will tell you the extent to which I try, as far as I can to be a team leader. You can ask any head of the lower courts. I am sure they can vouch to that. You can ask any of my colleagues in the High Court. I am sure they will vouch for that.

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

COMM T. Masuku: Thank you, Chief Justice. Good evening Judge Legodi.

Mr Legodi: Thank you, and to you Sir.

COMM T. Masuku: The two questions that I would like to ask. One relates to a judgement which was overturned in the Constitutional Court and it was a judgment involving Pitje versus Shibambo and Others if you recall that case?

Mr Legodi: I do.

COMM T. Masuku: And in that case what appeared to be the problem with it is that the person that you ordered, you order that he be evicted was a 76-year-old man, who was ill and when you ordered the eviction you did not consider all the relevant circumstance of Mr Pitje. And you appeared to have been criticised too for failing to

apply PIE, which is really the law that governs how we evict people from their homes. What assurance would a community that faces evictions all the time have, vulnerable communities all the time that in providing judicial leadership these kind of places, do not, do not happen?

Mr Legodi: Commissioner Masuku, let me perhaps start by saying that the process of appeal is very important. You recall in that case that the petition to the SCA was dismissed. And it is how it eventually landed in the Constitutional Court. And the criticism was for having found that there was a bona fide purchaser of the property. The moment I reached that conclusion I should have considered whether to then immediately evict that senior citizen, would not amount to unfair putting those people in the street. And we learn on daily basis, we make mistakes, we reach wrong conclusions, and as I am saying, in this case, the SES one did not see that coming but I can tell you now anything which comes before me especially in the unopposed motion roll and you are dealing with a primary residence that is just about to be declared specially executable I become more proactive. And quite very often to the dislike of those practitioners who appeared before us to say this if it is unopposed what does it look like. You are on the other side. The assurance that I can give to you, therefore, is that that is a learning curve and I think I continue to do so. Sometimes instead of disposing of the unopposed motion roll at half-past eleven, I go up to one o'clock and specifically because I pay much attention to those issues which have been raised by the Constitutional Court.

COMM T. Masuku: Thank you for that answer. The second question really relates to this principle. The principle bothers me a lot. And it is a principle, the call it the principle of subsidiarity; where the courts say if there is legislation that can give you a full answer to a complaint; for example, you cannot rely directly on the Constitution. So, if I want to claim my right to dignity and I want to use the Constitution as the source of my complaint the principle of subsidiarity says that I am not entitled to use that Constitution directly, I must go to the promotion, to the promotion of equality and prevention of unfair discrimination to find my cause, or use the common law. What do you, how do feel about that principle?

Mr Legodi: Well I am not sure what is it which you are talking about, but we know that the Constitution is the supreme law of the land and I will particularly worried speaking from where I am that there is a suggestion in a particular law that you can ignore the supreme law of the land. So how we interpret the legislation in giving effect to it, we are always guided by what the constitution says. If its something that is permissible in terms of the Constitution, then perhaps you might be on the right path. But if it is something that is inconsistent with the Constitution well the Constitution is going to take precedent.

COMM T. Masuku: Thank you, judge.

FEMALE: Commissioner Fourie?

COMM Fourie: I also wanted to touch on the Pitje matter but Judge Legodi has dealt with that sufficiently in my mind, so I don't have any further questions. Thank you.

FEMALE: Commissioner Thomas?

COMM N. Thomas: Thank you, President. Good evening Justice.

Mr Legodi: Good evening Commissioner Thomas.

COMM N. Thomas: May I inquire from you if you have this book, Book 1 of 1, feedback from law bodies? Is it perhaps before you or not?

Mr Legodi: I, there are documents in front of me, I am not sure ... Ja, is it book 1?

COMM N. Thomas: Its book 1 of 1.

Mr Legodi: Yes, I am having that.

COMM N. Thomas: Oh, thank you. May I ask you then to turn to page 161 at the top of the page. You'll see that ...[interjects]

COMM N. Thomas: 1?

Mr Legodi: 16 – 161, please.

COMM N. Thomas: Perhaps it must be here. 161 you say?

Mr Legodi: That's right

COMM N. Thomas: Yes. 161...Yes, I am there, 161 is that my judgement?

Mr Legodi: I beg your pardon?

COMM N. Thomas: Are you talking about one of my judgments.

Mr Legodi: I am, well let's just take it to there at a time. Are you at page 161?

COMM N. Thomas: Yes. 161.

Mr Legodi: Yes, of book 1 of 1. Right the very first paragraph where the author of this report, this is a report offered by the Johannesburg Society of Advocates, giving you know view about your suitability or otherwise.

COMM N. Thomas: No, no I don't have that. What appears on what I am having here on 161 it is book 1 of 1 is one of my judgments.

Mr Legodi: Feedback, the booklet is called: the feedback from law bodies. This one.

[Crosstalk]

COMM N. Thomas: It does indeed have the 161, trust me. Yes, there is 161. Okay for the sake of progress please commissioner it is getting late. Do you have it now?

Mr Legodi: No, no, no I don't have it.

COMM N. Thomas: Not.

Male: [1:27:30 inaudible]

COMM N. Thomas: Oh yeah, okay fine. Then let's just carry on without it then. I would have preferred for you Judge, at least for you to have it before you. Let's ask one of the officials to hand it to you. Thank you, justice.

[Crosstalk]

COMM N. Thomas: This is the relevant paragraph, but I think he's got it now. Do you have it judge?

Mr Legodi: Ja.

COMM N. Thomas: Thank you.

Mr Legodi: That is the Makados matter, 161 which I am having here is comments by the JCB if I am not ...

[interject]

COMM N. Thomas: Right, that is the one. Thank you. Now the very first paragraph that occurs on that page. It says that, and I need to put it before you for context, but that is the report. And what it says there is that it is noted that you did not mention in the questionnaire when you were asked you didn't mention the Pitje case as a matter that, in which you have been overturned as at where. Is there any reason why that was not done?

Mr Legodi: Not at all Commissioner.

COMM N. Thomas: Why was that not disclosed?

Mr Legodi: No, there is a minimum number of cases that you can disclose, and it was not because I was hiding anything from this.

COMM N. Thomas: Yes. Well, I ask you the question because of the importance of the matter. But I am not going to belabour the point and still sticking to that little bundle before you. At page 167.

Mr Legodi: 167.

COMM N. Thomas: If I may ask you to turn to that page.

Mr Legodi: Yes.

COMM N. Thomas: There the Johannesburg Society of Advocates the comment they give us comment on your linguistic and communication skills and when asks this questions really justice because you are really applying for a senior position and there are certain expectations that one has of a justice of your seniority having been appointed in 2004 and now applying for a leadership position in the form of a JP position.

Mr Legodi: Yes.

COMM N. Thomas: Now what has been stated there about your linguistic and communication skills occurs on page 167 towards the foot of the page. They say the candidates written judgments are in English, some of the paragraphs of his judgements contain careless errors. And then they continue to give us an example from one of the judgements that you have penned. Yes, and they refer us to the National Credit Regulator versus National Consumer Tribunal of South Africa and let me just carry on, I don't want to read the whole thing. Now just picking up from the third line of that paragraph, the quotation it reads as follows:

“the legislator is alleged to be speaking without pausing, to properly formulate what it really wants to say and without pausing to ensure that words express that it's unfortunate statement that only serves to indicate how the tribunal materially committed an error of flaw”

but what does this passage say? I battle to comprehend what the learned judge was seeking to convey there? Can you please enlighten us, in terms of what is it that justice was trying to convey?

Mr Legodi: Well, I am not sure whether ... [interjects]

COMM N. Thomas: The passage is before you judge.

Mr Legodi: Ja, the passage is before me. But it could well be that we are talking about something which was not edited. We could be talking about which was not edited and I did not have the opportunity to check the correctness of the quotation in terms of the signed judgement. And it not quite very clear because it could well be that this is a judgment that I delivered, and it was sent for transcription and it could well be that before I edit that judgment they relied on this, because and it happens quite very often.

COMM N. Thomas: Is that right?

Mr Legodi: So, I do not think, and just looking at it now, I do not think, and I am not supposing, I am not suggesting that I am the most careful judge in terms of that. I don't think I could have allowed something like this.

COMM N. Thomas: That does make sense in prospect.

Mr Legodi: It doesn't make sense at all. So, I am just thinking out loud ... [interjects]

COMM N. Thomas: That's why I am shocked.

Mr Legodi: What could have happened.

COMM N. Thomas: Yes. Very well. And of course, just the last paragraph I want to refer you to which complimentary somewhat, just to be fair to you Justice. On page 169 the author of this report having referred to pith the judgement and that which you have said now that you have learned from the error of your ways as we all do, then

he then says there are certain judgments that counterbalance the Pitje report. So, I think just for fairness we should refer to that piece as well.

Mr Legodi: Thank you so much.

COMM N. Thomas: Thank you. Thanks, judge.

CJ M. Mogoeng: Just in passing, the Military Court what is your rank?

Mr Legodi: Well we should start by saying we have a colonel of the military appeal court of the military here.

CJ M. Mogoeng: I know the JP I saw his picture now with the military uniform, he told me he is a colonel, and what about you?

Mr Legodi: Very intimidating. No, I have not been honoured by ... [interjects]

CJ M. Mogoeng: You have not yet been honoured?

Mr Legodi: Yes.

CJ M. Mogoeng: Yes. On a lighter note, I must say the JP warned me that when he meets me he is supposed to salute me. I said don't embarrass me, please. Thank you very much, Judge Legodi you are excused.

Mr Legodi: Thank you.

CJ M. Mogoeng: And members of the media, members of the public if you could excuse us so that we can deliberate.