



# JUDGES MATTER

**Judicial Service Commission interviews**

**04 April 2017.**

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

**Interview of Deputy Judge President L P Tlaletsi**

**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: Go ahead JP.

JP D. Mlambo: I just wanted to say that MEC Shushu is also the, currently the Acting Premier.

CJ M. Mogoeng: Thank you, I wasn't aware. Welcome, Acting Premier. Good morning Deputy Judge President Tlaletsi.

Mr Tlaletsi: Good morning Chief Justice.

CJ M. Mogoeng: Are you well?

Mr Tlaletsi: Not so well. First, I was tripping I would say my voice is not what it is supposed to be. I have had some flu, but I'll try and speak up.

CJ M. Mogoeng: Yes. You did well. Nobody must assume that you don't have confidence because you are a confident man I know. You've been a judge for about 13 years, am I right?

Mr Tlaetsi: Yes. I think it's about 14 now.

CJ M. Mogoeng: About 14 years.

Mr Tlaetsi: Yes, Chief Justice.

CJ M. Mogoeng: Attached to the Northern Cape Division of the High Court?

Mr Tlaetsi: That is so.

CJ M. Mogoeng: You have served in the Labour Appeal Court.

Mr Tlaetsi: Yes. Labour Court and Labour Appeal Court.

CJ M. Mogoeng: Just tell us now, Labour Court was not part of your practice. How did you end up there? Just in your own words tell us how you moved from a general practitioner; a Judge of the Northern Cape a Division of the High Court; landed in the Labour Court; Labour Appeal Court, Deputy Judge President. Just in your own words, sir, take us through that journey.

Mr Tlaetsi: Yes. Shortly before my appointment to the Bench, I had undertaken a Master's Degree in Labour Law, so I did some coursework what was outstanding now was the mini-dissertation. Now upon being appointed I couldn't at that stage get time to deal with that dissertation and then on the second year on the Bench I was fortunate to be sent to the Labour Court and with the tutelage of Judge President Zondo manage to take me through the motions and I could then grasp quickly with the issues relating to Labour. And I went there continuously almost every year until I acted in the Labour Appeal Court and ultimately appointed to the Labour Appeal

Court and later as the Deputy Judge President of the Labour Court and Labour Appeal Court.

CJ M. Mogoeng: Yes. You have also acted as the Judge President of the Northern Cape Division of the High Court. Is this so?

Mr Tlaetsi: That is correct Chief Justice.

CJ M. Mogoeng: Tell us about your acting stint? What are the challenges in the division? What is your vision in relation to that division? Just take your time, I won't interrupt for a while. Tell us how your experience prepared you for that position and any other leadership role you have played what are the challenges? What solutions do you think or what changes need to be brought about in that division and so on and so on? Just take a bit of your time to outline your vision.

Mr Tlaetsi: Yes. Firstly, the Northern Cape I think is the biggest province in the Republic in terms of size, though the population isn't, doesn't account for that size. And is scarcely populated and people have to travel long distances to come to the court but the circuit court that we are having are assisting. In my acting stint as the Judge President, I was fortunate that before then I was tasked with the function of organising a stakeholder's conference. That stakeholder's conference was almost mirrored on what the CJ had in the North West as the Judge President then. We invited various stakeholders, identified the problems that we could be having, all those bottlenecks and out of that one could understand clearly the kind of society that within which one was operating. And the, there was some problems regarding the language, some areas where predominantly Afrikaans. I think things started to change. We have appointed Judges who in some Magistrates of Courts who speak English and they use of interpreters also assisted. So, my vision for the division is that I think it will best serve the people of the province if the courts, the court is self-function effectively, efficiently and the resources are used optimally. The kind of Bench that we have, we've got committed men and women who are willing to help at all times. They are hardworking, I think they will be there to provide support. All and all I think our duty being to serve these, the public that will be our priority and we can

do that. Particularly the poorest of the poor where possible we will have to go to those areas and ensure that we render our services to those people.

CJ M. Mogoeng: One of the issues that have embarrassed the judiciary are reserved judgements that take too long to be delivered. Is that a problem in that division or not? And if so what are you going to do too, to bring an end to it.

Mr Tlaetsi: It's not that much of a big problem for everybody. There could be some judges there and there who perhaps would slip-up, but with the engagement processes that one would have to put in place, some are already there. The systems that should be in place is from time to time to monitor progress and if you see that there is a problem of delays one would have to engage with that particular judge. Found out what could the problem be. And once you have identified the problem then maybe it can be easy to resolve it. But one must be careful not to reward laziness by taking such a judge aside and say only work on your reserves and other judges take more work because that will be one way of saying that's a good way of conducting yourself.

CJ M. Mogoeng: Yes.

Mr Tlaetsi: But I think a buy-in of judges and everybody that will assist.

CJ M. Mogoeng: Yes. Tell us a bit about your leadership experience as Deputy Judge President of the Labour Court and the Labour Courts. How has that, if at all, prepared you for the position you are applying for.

Mr Tlaetsi: We, in the Labour Courts you have 4 courts across the country. The Johannesburg, Durban, Port Elizabeth and Cape Town. One has been exposed to dealing mostly with the administrative aspect of it as the Deputy Judge President overseeing the spending on the budget and also overseeing the allocation of work to the various, to the judges. Of course, we do have backlogs, especially in the Labour Court. So, I have embarked on a project which I had inherited from Justice Mlambo when he was JP thereof having *pro bono* acting appointments for judges during the recess periods to deal with the backlog. That is still ongoing every recess, short and

long recess, we do have acting judges to assist. Furthermore, my door is always been open as one would understand that from day to day we get a lot of correspondence from the public. Some people would not understand how the operations of the court work. We manage to get those people in, explain to them, respond to the correspondence. We also have a *pro bono* office which is run by the court in conjunction with the SAS Law. They have attorneys coming there daily to assist the indigent to put their cases across the draft pleadings and they do it on a voluntary basis. At the moment we are in the process of appointing a full-time attorney to do that work in Johannesburg because that is where most of the backlog is and Legal Aid has gladly agreed to fund that project.

CJ M. Mogoeng: Yes. Have you said all you need to say on your own before I ask the JP to take over?

Mr Tlaetsi: Yes, Sir.

CJ M. Mogoeng: Yes. Well, I may come back to you about court performance if the ground is not fully covered at the end of when my colleagues would have heard their chance. Judge President Kgomo.

JP F. Kgomo: Thank you, Chief Justice. Deputy Judge President Tlaetsi, I think what is missing from what you have informed this body is to give them the dates when you acted as Judge President in the Northern Cape and when acted in the Labour Appeal Court and whether you are presently acting as the Judge President at the Labour Appeal Court. Can you supply those?

Mr Tlaetsi: Yes. For the Northern Cape Division of the High Court, I acted as Judge President from the 1<sup>st</sup> of August to the 15<sup>th</sup> of November 2006. And then for the Labour and Labour Appeal Court, it was the 7<sup>th</sup> of April 2013 to the 31<sup>st</sup> of August 2013. And then again last from the 16<sup>th</sup> of September 2014 to the 31<sup>st</sup> of December 2014, again it was from the 4<sup>th</sup> of April 2016 to the 18<sup>th</sup> June 2016. At the moment I have started acting from the 3<sup>rd</sup> of April 2017 and stint with run up until the 17<sup>th</sup> July 2017.

JP F. Kgomo: That is in the Labour Appeal Court?

Mr Tlaetsi: In the Labour Appeal Court.

JP F. Kgomo: Yes. Can you, have you acted only once as Judge President in the Northern Cape?

Mr Tlaetsi: On two occasions, Sir, Judge President.

JP F. Kgomo: You've seemed to have rolled them up.

Mr Tlaetsi: 16<sup>th</sup> September 2014 to 31<sup>st</sup> December 2014 was the second stint, and the first one having been on the 1<sup>st</sup> of August 2006 to the 15<sup>th</sup> of November 2006.

JP F. Kgomo: Yes. Judge can you just tell this body about your membership of legal organisations and your role in them and your community involvement.

Mr Tlaetsi: Yes. During the years 1996 to 1998 as a young attorney, I was involved in the Community Policing Forum in the Mafikeng area and I was the chairperson of the first Community Policing Forums when they were established. And thereafter, in 1994 during that period they coincided till 1999 I was at the University of North West where I served as a council member. At the same time, I was a counsellor at the Mafikeng City Council when the new municipalities were started. That was from the year 1994 to 1999, during that period I served as the chairperson of the executive committee. At that time, we did not have executive lawyers' system and then I was a board member of the Water Board which was then known as Potsilo Water Board in the province. Again, in the community I have been a member of the African National Congress, I was the first chairperson of the mother to branch then and also, I was part of the Judicial Executive Committee and then we also had a body which was a non-profit organisation which used to be called Conscious in that body we use to act on human rights abuses in Bophuthatswana at the time. We represented various communities which were exposed to repression and I took up some cases for them. Just bear with me ... Ja, I think that's, that basic.

JP F. Kgomo: Yes. And Judge, ...[interjects]

Mr Tlaetsi: Perhaps I need to add that I was a member of the Lawyers for Human Rights Executive Committee member and also the Treasurer for Human Rights for the period 1989 to 1996. I was a member of the National Association of Democratic Lawyers which is NADEL. I was the first branch secretary and also became a MEC member. When we started as members of the Pretoria and district branch before we launched our own branch in Mafikeng at the time. I was also a council member of the Bophuthatswana Law Society as it then existed and became its President for the years 2002 to 2003 and then later I joined the North-West Circle of the Law Society of the Northern Provinces. At that time, it used to be called Transvaal Law Society that was during the year 2002 to 2003 and also appointed to the District Resolution Committee of the Society.

JP F. Kgomo: Yes.

Mr Tlaetsi: Thank you.

JP F. Kgomo: And in those capacities, did you take up, of course, I was also a member with you, did you take up any *pro bono* work or unpaid work for indigent people?

Mr Tlaetsi: Well, we use to do a lot, a lot of *pro bono* work and the expectation was that if you are an African and you got some skills, or you are educated it is best for you to serve your people without expecting any remuneration, I can indicate that at that time for us it was difficult to get any funding, so we just decided to do these cases. I was also an abolitionist against the death penalty. I participated in various applications of stay of executions and campaign against the death penalty at the time. I also participated in educating communities in the villages around Mafikeng on their rights, conscientise them on the constitution that was going to be in place, maintenance all sort of problems that a community would face. And during the first elections we volunteered as NADEL members, we worked with international observers to observe the elections but prior than we had conducted some workshops

to conscientise people on their rights and how to vote and participate in that whole process.

JP F. Kgomo: Yes. And very briefly you, your body, or it was our body then; NADEL may have saved someone from life imprisonment can you briefly allude to that occasion and what was called the Tebbutt Commission.

Mr Tlaetsi: Okay, I recall that when there was what we use to call the invasion of Mafikeng and Bophuthatswana but not the siege. Were we had various open bakkies of members of the AWB invading Mafikeng as lawyers on the ground then we had to run around try and assist and after the aftermath of that occasion there was an intention to prosecute some of the Bophuthatswana Police Officers who participated in that but the perpetrators we felt at the time were not being prosecuted, so we became a force against such conduct, by the regime at the time. I remember we made as NADEL representations to the Tebbutt Commission so that the prosecution of that so-called, the then police officer who is alleged to have shot those people has to be prosecuted at the time without due process being undertaken holistically and upon proper investigation.

JP F. Kgomo: Yes, and in fact, the police had arrested the wrong person, it was a mistaken identity wasn't it.

Mr Tlaetsi: Yes, this definitely was a mistaken identity. They acted on rumours they were saying he was from Lehuru some was saying it was from Klerksdorp some from Taung and that was a difficulty that we faced at the time.

JP F. Kgomo: Yes. Can you inform this body about your participation in case flow management?

Mr Tlaetsi: Yes, I represented the province at the, the division at the National Case Flow Management Committee which is headed by former Deputy President of the Supreme Court of Appeal Mthiyane and we, in that role we are trying to streamline processes in the courts so that cases should be, should, the process should run smoothly, properly and effectively. And also in the Labour Courts, we are also

involved in that kind of processes which has been in the rules before although it needed some fine-tuning to be in line with other High Courts.

JP F. Kgomo: Yes, and would you say case flow management has had an impact on the cases disposed of?

Mr Tlaetsi: Definitely it has at the time and I recall the mandate that was given to me when I had to act as Judge President for the second stint was to introduce the case flow management processes at the Northern Cape Division and things started moving and I'm assured that it's still in place and it is working quite well. It needs to be supported and continued with.

JP F. Kgomo: Thank Chief Justice.

CJ M. Mogoeng: Thank you JP. Acting Premier Shushu?

APREM N. Shushu: Thank you, Chief Justice and good morning.

Mr Tlaetsi: Morning Premier.

APREM N. Shushu: I think that you have indicated your activism in communities and assisting indigent people to have access to courts or to the justice system.

CJ M. Mogoeng: Acting Premier if you could speak a bit, please we can't hear you from where we are sitting.

APREM N. Shushu: Thank you. All right, I am sorry about that. I was saying that in the responses that Judge Tlaetsi has given it seems that he has been quite an active person in terms of assisting the general public, especially those who do not have, who cannot afford to have access to the justice system. I just want to check given the dynamics and the profile of the people in the Northern Cape and the fact that generally they're people who are poor do not necessarily have access to the Justice System or do not have equal access to the justice system. And in your period as the at the Labour Court, you indicated that you have actually assisted

those who do not afford to have access to the court processes. What mechanisms should be put in place, or will you put in place to ensure that the poorest of the poor have equal access to the justice system in the Northern Cape.

Mr Tlaletsi: Yes, I think the starting point will be to have some discussions with community leaders together with the legal aid board to try and establish what kind of problems are there on the ground. And if we find, depending on the nature of the problems one should see how the Legal Aid Board could be strengthened to deal with that. Also, you could also look at establishing a *pro bono* or community-based organisation to assist people in those far-flung areas where we do not have, where our services could not reach, but I believe that at the moment the division is able to reach all the areas. One should also be in contact with the various heads of clusters of the Magistracy because some of the functions of the Judge President is to coordinate tradition functions within the province itself and that way and through the established structure of the provincial at the PEEC one will be able to pick up this problems and take them up. Thank you.

APREM N. Shushu: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Acting Premier. Commissioner Nayambi?

COMM A.J. Nayambi: Thank you, CJ. Morning Judge Tlaletsi.

Mr Tlaletsi: Morning Commissioner.

COMM A.J. Nayambi: From the questionnaire 16.1 they ask you to list cases that you have written judgements and why do you think they are significant. We indicated that there must not be more than 10. When it was good you decided to give us 14, but in not in any of those judgments, you indicated why you think they are significant. Maybe if we can deal with that part.

Mr Tlaletsi: I did not know if the Commissioner had access to page 18?

Male: 18?

Mr Tlaetsi: Page 18 of the document.

COMM A.J. Nayambi: Yes.

Mr Tlaetsi: Ja, you do find a summary and the significance of all those cases. It runs up to page 23.

COMM A.J. Nayambi: Oh, it is not in page 8?

Mr Tlaetsi: 18, I am not sure if one is missing.

COMM A.J. Nayambi: No, I'm referring to page 8.

Mr Tlaetsi: 8?

COMM A.J. Nayambi: Ja, if you can turn to page 8. Where you listed them.

Mr Tlaetsi: Ja, that's the list but most those cases are there, the sum- the, I call it summary of cases on page 18.

COMM A.J. Nayambi: Okay.

Mr Tlaetsi: Yes.

COMM A.J. Nayambi: The Northern Cape Society of Advocates indicated about sometimes reasonable delay of judgements. Maybe a comment about that?

Mr Tlaetsi: Thank you. I think if my memory services me well the cases that they are referring to are the cases that in the Labour Appeal Court. Shortly if I were to explain that on the average per term we sit in about 20 to 22 cases and then the term would have to write on the average between 4 and 5 judgments. The way the Labour Appeal Court operates, judges come from the High Court for a term, and then after the sittings you write, you prepare your draft and then you circulate it

amongst colleagues and then they have to comment and then if there are any improvements, suggestions you deal with those. Those, that takes some time. Some of your colleagues, of course, going back to their divisions they became mulcted in their day to day work of the division and they wouldn't have time to respond timeously. That may not be an excuse, I accept that, but it is a process that goes, that takes some time. We have been trying to improve that system, but you see one good thing that we inherited from Judge Zondo when he was the Judge President of the Labour Appeal Court is that the Judge President, as well as the Deputy Judge President, must try to be hands-on, at least sit in almost every case, if possible by dividing the two amongst themselves. Because you may have judges coming from the High Court sitting in the Labour Appeal Court and planning judgements only to find that they are in conflict with some of the judgements that have already been handed down. So as a method of quality assurance one has to check and make sure that they are not in conflict with and if there is a need to do something or repair, rather address the situation then it can be done.

COMM A.J. Nayambi: Was it not necessary for you to deal with that when CJ posed the question about delayed judgements?

Mr Tlaetsi: About?

COMM A.J. Nayambi: CJ posed the very same question but in a different way.

Mr Tlaetsi: Well I had, well I am, I may have understood it differently from you Commissioner. I thought you said what can be done to deal with this problem of delayed judgments.

COMM A.J. Nayambi: The, can you share with us your understanding of the doctrine of separation of powers?

Mr Tlaetsi: Well we have three distinct arms of the State; the judiciary; we've got the executive; we've got the legislature each operating on its own and then I am not too sure how much you want to know and whether there is a specific thing that you want to know about separation? But each arm of State has got a space, within which to

operate and they will obviously be checks and balances between the judiciary with its review powers over the other arms of State. And obviously there will be accountability between the executive and the legislature, but the judiciary is not expected to account to either the executive or the legislature.

COMM A.J. Nayambi: Who is making law between legislature and judiciary?

Mr Tlaetsi: Making law?

COMM A.J. Nayambi: Ja.

Mr Tlaetsi: Statutory Law is made by the Legislature and there could be some room for the Common Law development by the judiciary.

COMM A.J. Nayambi: How does the judiciary account?

Mr Tlaetsi: Through its judgments; through its reports to the public.

COMM A.J. Nayambi: Thank you, CJ.

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

COMM S. Msomi: Thank you so much CJ. Morning Judge.

Mr Tlaetsi: Good morning. Good morning, Sir.

COMM S. Msomi: Judge I am also going to pick-up on my fellow commissioner with regards to the judgments which had been outstanding, or which have been outstanding for a while. I am not sure if you can hear me?

Mr Tlaetsi: I do. I do, yes.

COMM S. Msomi: The point being, I mean if you are a leadership position and there are delays; and I think you've correctly considered that you have to take full

responsibility for it. Now there is a matter that was brought to my attention this morning which has been outstanding for over 10 months in KZN and that was the matter in respect of Dr Sbongi Muzungu [?] against the Premier of KZN; it has been outstanding for 10 months and I am told you were the presiding judge. Now it may well be that you are not the person entrusted amongst yourselves to write that judgment but obviously, you are expected to crack the whip. Are you able to confirm here that you are going to crack the whip if you are appointed to be the Judge President of Northern Cape so that the norm and standards which make reference to 3 months, at least, for judgments to be handed down that that gets adhered to?

Mr Tlaetsi: Yes. Obviously, the easiest answer is to say one will crack the whip. But before you crack the whip or use the stick there has to be, we have to check what the circumstances that have caused that problem. The specific case I think that you are referring to is we find ourselves in a difficult situation where the judge who was assigned to deal with that matter is at the moment hospitalised, and we have taken it upon ourselves to prepare that judgement and then it is in the process of being prepared by one of the panellists on that base to get it out. He had assured us that he had started working on it, there was a communication breakdown at some stage and when we really discovered that he was sick and then we working on the judgement. But cracking the whip, yes. One will crack the whip, but then one has to be careful of the circumstances. One has got to be collegiality and have an atmosphere where you all work as a team. Without compromising standards.

COMM S. Msomi: I mean, of course, I don't want to open a dialogue around the issue. But I am going to quote Chief Justice said, I think it was on Monday: "that justice delayed is basically justice denied". It is so unfortunate, I mean if I look at these cases that there are people who have had to wait for 7 months, 10 months to basically know their fate. But coming to my second question, how would you describe your leadership style? What can your colleagues expect from you?

Mr Tlaetsi: Consultative, listen at all times, discuss, try and reach consensus, get everybody to be part of the decision so that you can, it can be easy to implement. The ultimate responsibility, however, lies with me and where we cannot consensus I would hesitate to make my own decision on the issue. But having considered all

other views I might be wrong, that's the reason why I have to be open and be open to persuasion, I am not going to come there with my own decision without listening to other views.

COMM S. Msomi: The last question from me. It is a follow-up again to the question that my fellow commissioner raised and that was in reference to the separation of powers.

Mr Tlaletsi: Yes.

COMM S. Msomi: And I am just take it further and say, what is your understanding of judicial activism? And what do you understand to be the rule of the judiciary in a developmental State?

Mr Tlaletsi: Yes, the role of the judiciary is to interpret and apply the law. The room for judiciary activism can be found within the Constitution itself and the law that is applicable, or that one has to interpret and apply. But ones you do that within the spirit and the letter of the Constitutions itself not go all the way to start legislating as a judiciary while guided by the principles of fairness, transparency and make sure that justice between men and men is attained.

CJ M. Mogoeng: Before I forget the Judge, you are referring to is this the one who is currently hospitalised, and I understand he was in ICU? I had an occasion to speak to his wife a week or two ago. Is that the same judge?

Mr Tlaletsi: That is the same Judge. I am happy that Chief Justice managed to speak to the wife.

CJ M. Mogoeng: Yes.

Mr Tlaletsi: Thank you.

CJ M. Mogoeng: Commissioner Modise.

COMM T. Modise: Thank you, Chief Justice. Good morning Judge Tlaletsi.

Mr Tlaletsi: Good morning, Mam.

COMM T. Modise: What do you consider to be your strengths and what are your weaknesses?

Mr Tlaletsi: I'm, my strength is working hard, devoting my time something that I want to do and to achieve and to not relax until I attain that goal. Weaknesses, it is at times I do over consult, listen and give, it's just, ja, sometimes I over listen, listen to much give more thought to something that is being said whereas at times one may have had to take a decision there and then.

COMM T. Modise: So why do you want to be a Judge President of the Northern Cape High Court?

Mr Tlaletsi: Firstly, I've been nominated, and people think that I do have the qualities, the experience to be there and I given my experience I think I may be equal to the task and serve my people in that capacity.

COMM T. Modise: Judge Tlaletsi?

Mr Tlaletsi: Ma?

[laughter]

COMM T. Modise: What do you think about the current system [37:30 vernacular] the disciplinary, [vernacular] the lawyer, [vernacular] the judge. Do you think it works? Do you think it is effective?

Mr Tlaletsi: Lawyers are you referring to the Law Society, the way it operates and advocates profession how they operate?

COMM T. Modise: I am, I think that there should be a system that would not [38:00 vernacular] are aware of [vernacular] discipline the lawyer [vernacular]

CJ M. Mogoeng: Commissioner Modise, unlike in parliament we don't have interpreters. Just in case they want to follow-up and so on.

COMM T. Modise: Ja.

CJ M. Mogoeng: Thank you.

COMM T. Modise: [38:20 vernacular], Justice Tlaetsi the, in my own thinking there should be disciplinary systems which have been put in place for the behavioural or conduct of lawyers and judges in this country. I want to know whether you are familiar with it or with them and whether in your own thinking these are effective?

Mr Tlaetsi: Yes. Well for judges the Judicial Services Act has been passed it makes provision for the discipline of judges or to deal with complaints against judges. I think the process is there, the procedure are there. There has been challenges at the moment with the application of those processes, but they have been the subject of judicial interpretation. I believe over time we will get things back on track and then they will be applied. The attorneys and the advocate's profession their respective bodies do have disciplinary powers over and power and to oversee the conduct of their members. And I think it is only fair that they, they do work and that they should continue to put that in place.

COMM T. Modise: Is that your firm opinion that in both circumstances the systems work?

Mr Tlaetsi: The system in my view do work although some members of the public will expect that ones you write a letter then he wants to see something be done harshly, drastically. Some of the complaints must be served first and to establish whether you do have a genuine complaint. So, there is some measure of self-correction and discipline within the system itself.

COMM T. Modise: So, the public and I are wrong to think that the systems that you actually have do not deliver that type of conduct you expect from some members of your judiciary or legal fraternities?

Mr Tlaetsi: I wouldn't say, Ma, they are wrong, I would say that is a perception but if they follow-up cases they will realise that something is being done. It is only that, like I mentioned, there has been some challenges regarding some of the procedures. Because it is a very new system for the courts that has been implemented against judges. But generally, maybe it is one of the issues that one needs to deal with and inform the public that something is being done. I think there have been cases which have been reported to the media that had been attended to. So, it depends again how does one perceive that a problem has been solved to his or her own satisfaction because some people will come with a sanction already and say I want this and that.

COMM T. Modise: CJ the, I don't want to express my opinion. Thank you very much.

CJ M. Mogoeng: Thank you, Commissioner. But the system is new, it has had its teething problem, problems I beg your pardon. But are there no judges that have been disciplined ever since the system was put in place?

Mr Tlaetsi: There have been Chief Justice, and I think there has been a result.

CJ M. Mogoeng: Now, compared to those who haven't disciplined in terms of numbers, which is a huge number?

Mr Tlaetsi: Definitely it is a very, very few. I have served in one of the JP...  
[interjects]

CJ M. Mogoeng: JCC pro- yes ... [interjects]

COMM T. Modise: Process. Yes, in one of the tribunals. We had to stand back because of the challenges which were there. But, something is being done.

CJ M. Mogoeng: It is those that were referred to the tribunal where there has been a problem.

COMM T. Modise: That is so Chief Justice.

CJ M. Mogoeng: Yes. Like the Mtata case?

COMM T. Modise: Yes.

CJ M. Mogoeng: Yes, very well.

[Cross talk]

COMM S. Msomi: Sorry man, it's a follow-up to what has been raised.

COMM T. Modise: Okay.

COMM S. Msomi: You yourself appears from your pack that you have been a complainant, you have complained to the JSC? How did you find the process? Okay, let's go back first. What was that complain about and what was, how was it resolved, and how did you find the process. And were there any lessons learned from that process?

Mr Tlaletsi: Can I perhaps establish which in particular are you referring to?

COMM S. Msomi: [42:49 inaudible] ... Sorry. You lodged a complaint to the JSC against Judges Majiedt and Lacock in 2008.

Mr Tlaletsi: Oh yes, Okay.

COMM S. Msomi: Accusing them of misconduct.

Mr Tlaletsi: Yes.

COMM S. Msomi: And they apparently the title, the media went full force and it was titled, "Another racial spat in the Judiciary".

Mr Tlaletsi: Yes. The complaint ran its course it was adjudicated by the Judicial Services Commission. It came with its own verdict and we have accepted the outcome and bygones be bygones and we continued to proceed to run our lives on that basis and worked together. This is quite some time ago, I think in 2000 and 6, 7 when it was ultimately finalised. I have learned that one you have complained and there is a due process you have to accept, you must move on with your life.

CJ M. Mogoeng: We heard yesterday from Judge President Kgomo and Judge Majiedt that the misunderstanding between them was resolved. You were involved in that very same misunderstanding, isn't it? It related or among others too who should be Acting Judge President and so on and so on.

Mr Tlaletsi: I was caught up in crossfire.

CJ M. Mogoeng: Yes, I know.

[Cross talk]

CJ M. Mogoeng: It's the same complaint is it not?

Mr Tlaletsi: It is the same issue, yes.

CJ M. Mogoeng: It's the same issue.

Mr Tlaletsi: It's the same issue.

CJ M. Mogoeng: Yes, that was resolved by the JSC?

Mr Tlaletsi: By the JSC.

CJ M. Mogoeng: Yes. Are you done, Commissioner?

COMM S. Msomi: Just to say what lessons did you learn from the process? In terms of your own approach to conflict resolution going forward?

Mr Tlaletsi: Yes. I think openness, accommodation and accept the outcome, the due process we've had diversity workshop soon thereafter and I think that is the way to resolve most of these problems.

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

COMM Stock Thank you very much, CJ. Good morning Judge Tlaletsi.

Mr Tlaletsi: Good morning, Sir, Commissioner.

COMM Stock: What is your view around judicial accountability and gender transformation?

Mr Tlaletsi: I believe in gender transformation. I believe that those who had been disadvantage should also be given the opportunity to assert themselves. And we need to transform the judiciary must also account it's dealing with public money, public problems, public disputes, public issues it is only fair that they should also account.

COMM Stock: Now in, as a follow-up on in terms of the question that was posed to you about judicial activism by one of my colleagues, I just want to make a follow-up on that question. Say for example, based on the experience that you are having as an experienced judge you are being invited to render a lecture about the life and times of OR Tambo. And then you accept that invitation, you go and deliver the lecture. If a question is posed to you by some of the audience or one of the community members at that lecture what is going to be your response, are you going to say: you are a judge, therefore, you are going to respond through judgments or you are going to respond on the spot?

Mr Tlaletsi: It is quite hypothetical, what would have the question be? Maybe if one has a guidance as to what kind of question that would be then one can say will fall within the parameters within which a judge can express an opinion, or it is not advisable to express an opinion.

COMM Stock: No, for an example there is this notion that judges stay normally express their views or respond to issues through their judgments. Do you also agree on that notion? Or you've got ... [interjects]

Mr Tlaletsi: It's one way of, it's one way of expressing your view. But if I were to call by a community to address them on a point of law and their rights you don't need a judgment to do that. You go there and explain to them if you want something from historical jurisprudence what use to happen where do we find our self, you can impart that information. Actually, I think that should be one of our responsibilities to do that. But there must be parameters within which you operate. Don't express any political opinion, that is not your space as a judge.

COMM Stock Thank you very much, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Stork. Commissioner Didiza?

COMM T. Didiza: Thank you very much CJ. Good morning Judge.

Mr Tlaletsi: Good morning, Mam.

COMM T. Didiza: You have acted a bit as a JP in the division, am I correct?

Mr Tlaletsi: That is correct.

COMM T. Didiza: But you are also, there. If I may ask what do you think are the challenges in that division? Maybe give us one or two? And what you think you will do if you're afforded the opportunity to lead?

Mr Tlaletsi: You mean internally or externally?

COMM T. Didiza: I am saying in the division which you are applying.

Mr Tlaetsi: In the division itself. Yes. At the moment there are systems in place that is already a legal servities there. I think one should continue on the groundwork that has been done and perhaps improve there and there and move forward. I do not have a specific challenge that I can say I have come across.

COMM T. Didiza: But on the improvements there and there?

JP: [49:13 inaudible]

COMM T. Didiza: Don't mind the JP.

Mr Tlaetsi: No, no I do not. I am an open and honest person an expect it of any judge.

COMM T. Didiza: Well thank you very much. The other question ... [interjects]

Mr Tlaetsi: Maybe communication, we need to find a way of how we communicate with our stakeholders. I know there has been workshops which had been conducted by judges, but we should not have our own cocoon there be excluded. You have to be part of the community. So maybe that is how, how we should operate. And make the court itself user-friendly. Everybody must feel being part of the court itself. I know there have been instances where you meet people at funerals in Garies or wherever they will tell you, hey you know that place has got some bad memories for us. We do not want to go there. And I would invite them to come and see that that is their court. Their dispute should be resolved at that court.

COMM T. Didiza: Through CJ, Judge how will you ensure through the position that you are applying for if appointed improved general presentation in the judiciary but more specifically in the division?

Mr Tlaetsi: It's already there is a groundwork which has been done. We've got 4 women judges and 3 male judges at the moment. Perhaps one should improve on that. The work has been done. Just to maintain it and make sure that we keep it as it is. Not regress but to go forward, and affirm more women judges. Perhaps one that one should consider is a place like the Northern Cape there is room for self-development that could be part, one of the divisions that could be considered to take women, in particular, to act there as judges because that way giving the track record of the division you can then improve. I know it is a challenge that we all face with of getting women more, and more women onto the Bench.

COMM T. Didiza: Through CJ I just want to hear from you, I know there is a legacy, there is groundwork that has been done. But what I want to hear as a commissioner as a candidate what specific measure would you put to ensure that you don't regress but also to improve further and through that experience also your contribution to the judiciary as a whole. That is what I want to hear.

Mr Tlaetsi: Yes. Fortunately, I have been part of the process of where we are of the moment. All I need to do is maintain the momentum and make sure that we do not regress and get more people in. And also see that we cannot use the division as a training ground for more women to be empowered. Internally make sure that the women who are there and everybody else are empowered. One thing that I have in mind is like having workshops, like on, on issues like tender adjudication so that when we preside over those cases we actually understand what is happening. We would want to see a situation where we allocate tenders as we might be criticized for that.

COMM T. Didiza: Through CJ can I converse the point a bit further.

CJ M. Mogoeng: Yes.

COMM T. Didiza: There has been complaints that women judges are not given enough work. They are not most of the time given what you'd call complex cases to deal with. So, I just want to hear from you, you know I hear you have been part of it, but convincing me as a commissioner so that whether I look as I said, [53:04

vernacular]. It's going. So just a bit, just say this is what I will do. I hear you will maintain, but specifically, what would you do?

CJ M. Mogoeng: Maybe before he answers Commissioner just to be clear, is it women judges who are not given work or women lawyers?

COMM T. Didiza: Women lawyers, sorry.

Mr Tlaetsi: Oh, okay. Before, because it is before the add convincing might be difficult but try and persuade you that as a Judge President I'll have to keep stats as to how, who are the parties who are appearing before us. Have meeting with the profession. Where possible the Registrar can also have discussions with other departments and say how can we affirm women to be given the kind of work that will build them. And as the Judge President, I think I can go along those lines.

COMM T. Didiza: The last question through you CJ relates to the challenges that all of us as society are grappling with apart from the issue of gender is the issue of race. How would you ensure that through your position in leadership you will try and deal with issues of racial prejudices and ensure that the social cohesion particularly within your division?

Mr Tlaetsi: Yes. There should be no room for racial prejudices where I operate I will make sure that we have ongoing discussions especially that it is a small division manage to meet almost every day unless people some are on circuit court. So, the environment itself does not allow for that unless it is something that overtly that one may not be in a position to pick-up. But generally, we'll ensure that everybody is integrated. And having workshops that will be one way of dealing with that having a system where colleagues would prepare a particular, on a particular point of law and make presentation to other colleagues from their understanding of the law that they might be in. That can be somehow break whatever racial barriers that might be.

COMM T. Didiza: [55:31 inaudible]

AJP: Thank you Commissioner Didiza. Minister?

MIN F. Muthambi: Thank you. Good morning.

Mr Tlaletsi: Good morning, minister.

MIN F. Muthambi: Are you well?

Mr Tlaletsi: Not so much because of the flu, but I'm getting that climatized.

MIN F. Muthambi: Okay. As a starting point is the follow-up question that was raised by Commissioner Msomi.

Mr Tlaletsi: Yes.

MIN F. Muthambi: I just want to understand what is the, your relationship with your JP, your Judge President? I am raising it based on the dispute that was raised with a lot of unhappiness by some of your colleagues. I am mindful that that matter was resolved in 2008, wherein I believe some of your colleagues were agreed that it shouldn't have been you acting in the position, maybe some of them. But I just want to understand what could have sparked that complaint? Were you favoured? Or I want to understand or when the JP appointed you it was based on merit.

Mr Tlaletsi: I don't know if I was favoured. The decision was not mine, Minister, with respect.

MIN F. Muthambi: Then what could have caused that reaction according to you?

Mr Tlaletsi: Reaction from?

MIN F. Muthambi: From the colleagues, of the colleagues.

Mr Tlaletsi: From colleagues.

MIN F. Muthambi: Ja.

Mr Tlaletsi: Well some maybe thought they were hard done by, some were dissatisfied, some believed I shouldn't have been the one to be tasked with that function.

MIN F. Muthambi: But you believed you had all it takes to be appointed.

Mr Tlaletsi: Definitely.

MIN F. Muthambi: Okay. Then in terms of the representation at court, gender representation at court, at your court there. How is it?

Mr Tlaletsi: Gender, we've got 4 women judges and 3 male judges.

MIN F. Muthambi: Out of the number of how many?

Mr Tlaletsi: 7.

MIN F. Muthambi: Okay. Then I believe you've got this booklet that's returned April 2017, feedback from the law bodies.

Mr Tlaletsi: Yes.

MIN F. Muthambi: You have it? And then I want you to, to take through the GCB folder, for the Northern Cape Society of Advocates comments. If you look on page 227.

Mr Tlaletsi: Let me just get to that document, because I didn't print it to save paper, Minister.

MIN F. Muthambi: Ja. It's there, it's this one.

Mr Tlaletsi: Perhaps you could continue whilst I am looking at the documents.

MIN F. Muthambi: Did you get it?

Mr Tlaetsi: I haven't reached it yet. But ... [interjects]

MIN F. Muthambi: I'm requesting that they give you a hard copy for the sake of time.

Mr Tlaetsi: Yes sure, that is very kind of you, Minister.

MIN F. Muthambi: Here. It's page, it's the comments by the JCB, there is a folder written JCB in green. After that there is page 227.

Mr Tlaetsi: Yes, I do have the page.

MIN F. Muthambi: Then I want to refer you to paragraph 9.

Mr Tlaetsi: Yes.

MIN F. Muthambi: On your ability to produce judgment promptly.

Mr Tlaetsi: Yes.

MIN F. Muthambi: I want to refer you to 9.1. Especially that "*that the candidate is prone to unreasonable to delay the handing down of judgments*". You see that one?

Mr Tlaetsi: Yes.

MIN F. Muthambi: And then I want to take you through the whole thing so that we are together before I ask my question.

Mr Tlaetsi: But before you take your question, take care of the opening sentence of words.

MIN F. Muthambi: I am mindful of that Honourable Justice.

Mr Tlaletsi: It cannot be said.

MIN F. Muthambi: I am mindful of that.

Mr Tlaletsi: Okay.

MIN F. Muthambi: I'm mindful of that. I've read it.

Mr Tlaletsi: All right.

MIN F. Muthambi: Ja, I've read. Can you just listen to my question, I'm gonna give it, but I want to take you through so that I am able to ask what I want to ask you. I've read it. And then for your also sake I've read 9.3, I am mindful of that on the next page. So, what I'm trying to raise here Honourable Justice is that you know for 9.1 on this matter that is referred on 9.1 it took you 7 months to deliver a judgement; 9.2.2 it took you 6 months to deliver a judgment; go to the next page 9.2.3 it took you 7 months to deliver a judgement; 9.2.4 it took you 1 year 4 months to deliver a judgement; 9.2.5 it took you 8 months to deliver a judgment and the 9.2.6 it took you 8 months to deliver a judgment. So, my question is it acceptable to have such a record? I am taking it bearing in mind that now if you are to be appointed you are going to be the leader of the court and still we have expedition to say that you should be leading also in delivering judgment. What will be your reaction to all that is listed here? And I am mindful of what is written in 9.3 same the one that you were referring me at 9.1; 9.3 says it must also in fairness be pointed as a general rule the candidate delivered judgment promptly and without due delay, but we are seated here with the record, and what is your reaction to that?

Mr Tlaletsi: Yes, well from the first question is it acceptable I said it is not acceptable. The is certain is that as I indicated these are judgments of the Labour Appeal Court that goes through various processes and they had to go through that process of other colleagues having to have a bite on them.

MIN F. Muthambi: Okay. You are also holding a position of a Deputy Judge President of both the Labour and the Labour Appeal Court, am I correct?

Mr Tlaetsi: Yes,

MIN F. Muthambi: That's why I am going back to those issues. Because when you check those cases the majority, all of them in fact, with the exception of the last one that I am not so sure because it is not written here which court is it. They are all matters of the Labour Appeal Court. Am I correct?

Mr Tlaetsi: Yes, they are.

MIN F. Muthambi: Of which also to me you are the leader of that court, so this argument to say it depend on others because the mere fact that you are Deputy JP, yours is to also assist the JP of both courts so that there is service delivery. Because the bottom line we are talking about affected parties whose lives are at stake merely because this are mainly labour matters, that you should have then acted promptly. That is the point that I was trying to put it to you. Then also should you be successful now are you going to relinquish that responsibility of being the Deputy for both the Labour and the Labour Appeal Courts.

Mr Tlaetsi: Definitely I am.

MIN F. Muthambi: Okay, the last one for you, Judge, you might be aware that on the 31<sup>st</sup> of March 2017 the Department of Justice and Social Development they've published a notice which seeks to establish a local seat of the Northern Cape Division in Upington.

Mr Tlaetsi: Yes.

MIN F. Muthambi: That's where at the current seat of the Magistrate's Court.

Mr Tlaetsi: Yes.

MIN F. Muthambi: And then the plan, therefore, is to upgrade the Magistrates Court in order to have a permanent seat of the High Court there, as a one-stop centre. I, if

should you be granted the position are you going to support this process that the department is putting in place?

Mr Tlaetsi: Well that's a welcome support. We had always written and requested that it be done, and we will definitely be part of the whole process.

MIN F. Muthambi: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you very much, Minister. Commissioner Nkosi-Thomas?

COMM N. Thomas: Thank you, Chief Justice. Most of my questions have been taken care of. I'll just pursue one that remains unattended to and if it has been I apologise for raising it again. Good morning Justice Tlaetsi.

Mr Tlaetsi: Good morning Commissioner.

COMM N. Thomas: One understands your explanation around the delays in relation to the Labour Appeal Court judgements, in other words, the fact that other judges have to chip in and so forth, but I just want to ask you we've heard you as regards the problem, but concrete solutions are you able to propose so as to expedite and render the system a lot more efficient than it is currently?

Mr Tlaetsi: In the Labour Appeal Court? Yes. I think the solution if you could get more judges being available for the Labour Appeal Court and been the on a full-time basis. Somehow semi-full-time I think that can somehow assist. Legislatively, particularly in terms of the Labour Relations Act the Labour Appeal Court it is a court equal in status to the Supreme Court of Appeal, but the judges only come there on a term basis. If you could have them on a long-term basis, that can assist. Some are reluctant to come because they, although they are a final court with regard to labour matters because the appeals lie at the, with the Constitutional Court they are not really willing to come. So those are the administrative issues that need to be looked at. The stipend that may have to be paid, there was a suggestion of perhaps separating the Labour Court from the Labour Appeal Court that it should run on its own. But those are long-term issues that would need legislative interventions.

COMM N. Thomas: But is there an ongoing engagement with the decision makers, policymakers in that regard or not really?

Mr Tlaetsi: Not really, there have been those suggestions, but they have not gone any far.

COMM N. Thomas: Thank you, Justice.

Mr Tlaetsi: Thank you.

COMM N. Thomas: Thanks, Chief Justice.

CJ M. Mogoeng: Thank you. Maybe just to deal with that issue. Judges who serve on the Labour Appeal Court come from the High Court, is that correct?

Mr Tlaetsi: That is correct, Chief Justice.

CJ M. Mogoeng: Now when they go back to the High Court with reserve judgments and work is allocated to them by their Judges President is account taken of the other work that they coming back with from the Labour Appeal Court or are they given work like all other colleagues in that High Court?

Mr Tlaetsi: Our wish is that account be ... [interjects]

CJ M. Mogoeng: No, no the reality.

Mr Tlaetsi: Yes.

CJ M. Mogoeng: What is in reality happening. Does the Judge President say, Oh, by the way, you have work from the Labour Appeal Court, I must be careful not to give as much as work as your other colleagues, or not?

Mr Tlaetsi: No, no it's not taken, Chief Justice.

CJ M. Mogoeng: Does that contribute to the delay or not?

Mr Tlaetsi: It definitely does contribute because they have to do now new work that they get at the High Courts.

CJ M. Mogoeng: Yes. Commissioner Norman?

COMM T. Norman: Thank you, Chief Justice. Good morning Judge Tlaetsi.

Mr Tlaetsi: Good morning, Commissioner.

COMM T. Norman: Just on the issue of you, you've indicated that you will relinquish your position in the Labour Court once you if you are successful, but I would like to understand from today up until July where are you going to be based?

Mr Tlaetsi: I am still with the Labour Court.

COMM T. Norman: Yes, so between that, between now and July you will be permanent or fully employed?

Mr Tlaetsi: Yes.

COMM T. Norman: You are in sort of attached fully to the Labour Appeal Court?

Mr Tlaetsi: I will be operating in the Labour Appeal Court, ja.

COMM T. Norman: And then, the second question I have is I've heard about your attitude towards gender transformation and of course the statistics from your division speaks for itself. You've got 4 women judges and you've got 3 male judges. But we've heard from the Acting President of the Supreme Court Appeal about the challenges that face female judges in particular if they have young children having to be sent out on circuit. What are your plans around those areas so as to make sure

that those women judges that you have not only do you keep them as your judges, but also you make them comfortable in that environment?

Mr Tlaetsi: Yes, they will definitely, there has to be a reasonable accommodation of their circumstances. Those issues that one has to take into account especially issues like the circuit court. I know in the Northern Cape there has been that relieve judges who have their own unique circumstances are not going on circuit court.

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

Mr Tlaetsi: Thank you.

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

COMM T. Masuko: Thank you, Chief Justice. Good morning Judge.

Mr Tlaetsi: Morning, morning Commissioner.

COMM T. Masuko: You've indicated in your, when you're describing your previous life indicated a conviction that I share, which is that you are an abolitionist, or you were an abolitionist, I am not sure where you stand now ... [interjects]

Mr Tlaetsi: Forever. Once always.

COMM T. Masuko: But what do you say to your community of people who are faced with serious crime who have decided to take law into their own hands? Because they believe that the system of law has failed them. What do you tell them when they take law into their own hands in certain circumstances actually kill the people that are caught as criminals?

Mr Tlaetsi: It is a pity that is happening, and one should discourage them and try and make sure that they understand that there has to, firstly there has to be due process and let the, let them allow the law to take its course. If they have concerns about the death penalties there are other procedures that they have to follow through

the policymakers, but the law as it stands it does not allow anybody including the State to take life.

COMM T. Masuko: Thank you.

Mr Tlaetsi: Thank you.

COMM T. Masuko: It's probably a question you've answered but I just a single answer to it. Like with an elaborate response, what do you consider to be an indispensable quality of a Judge President? Just one indispensable quality that you, you know everything else may wait but this one it can't be, it cannot be there?

Mr Tlaetsi: Be open and in control.

COMM T. Masuko: Thank you. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Masuko. Professor Ntlama?

PROF N. Ntlama: Thank you, Chief Justice. Good morning Judge Tlaetsi.

Mr Tlaetsi: Morning, morning. Good morning.

PROF N. Ntlama: I have just two correspondent questions. There has been a concern that has been raised in almost all the candidates concerning the promotion of gender equality. If you are given this opportunity what would you envision as the outcome of that process of promoting gender equality in the judiciary? And secondly if again, you've been nominated the leadership position, what support system should be given to judges in undertaking their duties? I understand very well that judges have to have a thick skin, but I've been exposed to a criminal matter which involved a murder where there are some gruesome pictures which attached my heart. I felt very bad when I saw those pictures when somebody was killed brutally and then the way in which the counsels as well were interrogating the witnesses around the deaths. So, what is there to support the judges that found themselves in those situations?

Mr Tlaletsi: Yes. Thank you, on the outcome that one would expect out of matters to promote gender transformation I can only say it should be a successful one. Every effort must be put in place. Everybody must be committed to the system; serving judges, government; business everybody has to take, to put a hand. Judges are human beings they've got the human element. They also are members of the community. Seeing those gory pictures, of course, they leave an indelible mark on their memories. So, it is important that the existing resources of Social Services and being from the State from the public with the resources allowing that judges be taken through those sessions. Not only female judges but also male judges. So that they can cope and understand. So counselling services and other professional intervention should always be available. As judge you should always feel free to approach our leaders in the division to ask for that assistance where it is necessary, but nothing will really harm anybody if the JP also takes the initiative to, from to time, have one on one with judges who are dealing with that difficult cases, those gory pictures. And only that, and even other cases which might appear to be intimidating which might also place their lives in danger to find out how are they coping. Thank you.

CJ M. Mogoeng: Thank you Prof. Commissioner Notyesi?

COMM Notyesi: Thank you, CJ. Good morning Judge.

Mr Tlaletsi: Good morning, Commissioner.

COMM Notyesi: Perhaps mine should have been just a follow-up. It is one question. Your JP, Judge Kgomo has been one of the JP's that has been committing in the mentoring of many judges out of that ... [interjects]

CJ M. Mogoeng: Commissioner if you could, either use the next mike so that we can hear you well or speak into the mike.

[laughter]

COMM Notyesi: Thank you, Chief Justice.

CJ M.Mogoeng: Yes, Sir.

COMM Notyesi: What I am saying is that the JP of your division, Judge Kgomo has been one of the JP's who have been leading in the mentoring of main judges. A programme that produced judges like judge Mjambe, Phakathi[?] and many other judges. How have you, how did you see that programme and if you are appointed would you embrace the programme of mentoring and actually ensuring that that programme is going forward. I am just following up from Commissioner Didiza's question.

Mr Tlaetsi: Yes.

COMM Notyesi: It's the one she was saying what will be your concrete action on this regard.

Mr Tlaetsi: Yes, definitely mentoring whether female or male judges it is important. Definitely even women judges, I have practised as an attorney I don't think without mentoring I would have made it to where I am at the moment. I have been part of that process and I believe that I would embrace it, I would continue to do it in the Labour Courts we are also on that field. I've written letters to professional bodies the PLA Law Society, NADEL to say please sent candidates who could sit as *pro bono* judges to prepare them for appointment in the future on permanent basis.

COMM Notyesi: Thank you, judge, in fact I know those letters that you wrote.

Mr Tlaetsi: Thank you.

COMM Notyesi: Thank you very much. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you. Judge Tlaetsi you, there is a leadership position I need to cover some ground with you.

Mr Tlaetsi: Yes, Chief Justice.

CJ M. Mogoeng: I need to understand the kind of Judge President you intend to be if I appointed. Is it permissible for a Judge or Judge President to address meetings dealing with human dignity, non-racialism, non-sexism, universal adult suffrage, elections just at that level? Is it permissible or are you now demonstrating some desire to be a politician under the cloak of judgeship when you do that?

Mr Tlaetsi: I do not think it is permissible. Firstly, you are compromising yourself because how would you deal with those cases when they come before you?

CJ M. Mogoeng: All right.

Mr Tlaetsi: The public will already be knowing that you ... [interjects]

CJ M. Mogoeng: Your view.

Mr Tlaetsi: Got a particular view.

CJ M. Mogoeng: So, a judge is not permitted in a meeting: Black people should not oppress white people and white people should not oppress black people. Because a case may come.

Mr Tlaetsi: That's a neutral statement. That is what the Constitution prescribes, you cannot have such a situation.

CJ M. Mogoeng: What about men should not oppress women. Is he or she permitted to deal with those issues or is might he or she compromise himself?

Mr Tlaetsi: No, no, no that one it is something is an illegal thing that should be allowed to happen. There is nothing wrong with expressing that view.

CJ M. Mogoeng: Which part of the Constitution that affects society that might have political connotations is a judge not permitted to deal with? Look at the preamble for

instance which part of the preamble is a judge not permitted to address the meeting based on it? Or which of our values is a judge not supposed to address a meeting expounding on it?

Mr Tlaletsi: I do not see any. I mean the values that are enshrined in the Constitution are things that the public should be made aware of and that is the duties of the functions of a judge on a day to day basis.

CJ M. Mogoeng: And if a politician or a struggle hero dealt with those issues and you are delivering a memorial lecture are you permitted to express those views even if they coincide with the human rights struggle as or the struggle for human right as pursued by some hero?

Mr Tlaletsi: No, no there is nothing wrong with that in my view, Chief Justice.

CJ M. Mogoeng: But what you can't say as a judge serving or retired as that Chairperson Modise must fall?

Mr Tlaletsi: No, no, no that definitely ...[laughter]. Those are not hashtags for judges.

CJ M. Mogoeng: Now, bail.

Mr Tlaletsi: Yes.

CJ M. Mogoeng: I don't know what your own experience has been, and I am asking you as a possible appointee to the position of Judge President my sense is that the public and many leaders in this country believe that if you have committed certain, you are alleged to have committed certain crimes, you mustn't be granted bail and the perception seems to be bail is the beginning of serving the sentence that is rightfully due to you. What is your understanding? What teaching should be given to the public about bail?

Mr Tlaletsi: I wish we had that opportunity to explain to the public at large and say, you don't serve your sentence before you go through the due process and you are

convicted. The whole purpose of bail is to ensure that an accused person will appear before the court; will not interfere with the witnesses; would not interfere with evidence or evidential material. For as long as, and especially in petty crimes, you should readily grant bail. Because, we know that our correctional centres are bursting with people who should not be there.

CJ M. Mogoeng: And deny those who need rehabilitation the possibility to be rehabilitated? But is it a winnable struggle, for want of a better expression? Is there a chance that the public could be educated convincingly in that direction anymore?

Mr Tlaetsi: With hope, with hope it should be winnable, but we should continue to educate and with the hope that we will succeed. But those who make those public pronouncements I wish they could also understand that they should not do so. Because they are the one who are causing more of the problems that you are faced with.

CJ M. Mogoeng: As judge president, you'd be required to play an oversight over the Magistracy.

COMM J. Malema: CJ?

CJ M. Mogoeng: Is that a follow-up?

COMM J. Malema: Yes.

CJ M. Mogoeng: Very well.

COMM J. Malema: Now, judge.

Mr Tlaetsi: Yes, Sir.

COMM J. Malema: Your granting a bail to a person who killed his neighbour, a neighbour and this neighbour is going to be buried this weekend. The person is

granted bail, as people go to bury that neighbour this chap is there braaiing meat, what does it say to the judiciary?

Mr Tlaletsi: Well, at that moment there would have been formal proceedings for the bail application and all the legal requirements for bail would have been met. And the investigating officer and the State should place facts before the court which might suggest that, let's say the community may not take kindly to that if the person who is entitled to bail gets bail. And some conditions can be imposed on the release of that person.

CJ M. Mogoeng: Now, Judge Presidents, Judges President play an oversight role of the functioning of the Magistrates Court.

Mr Tlaletsi: Yes.

CJ M. Mogoeng: It has proved to be a challenge. Have you familiarised yourself with the performance of the Regional Courts and the District Courts in the Northern Cape?

Mr Tlaletsi: I have seen some of the reports that came through the PEEC. I have participated in the PEEC before and I've seen some of the reports that come through that structure.

CJ M. Mogoeng: Are they performance related challenges? Serious performance related challenges that require your immediate attention or not?

Mr Tlaletsi: I think the system that are there needs to be strengthened because they will from time in the PEEC they are being discussed and various department save for one, I think in the Northern Cape have been cooperative and I try to assist.

CJ M. Mogoeng: Everybody in Court all the days, even on Friday's is that your experience? I visited one court in one province on Friday, 09:00 am I looked for Magistrates of a particular court and there was nobody.

Mr Tlaletsi: Generally, I would say the, it not the experience but there would be those areas where one can not really lay his hands or her hands on those problems. And it is difficult for one to know if such happening because of them will not be reflected on the various reports that we would get.

CJ M. Mogoeng: So by and large things are going fairly well?

Mr Tlaletsi: By and large things are going very well.

CJ M. Mogoeng: Now my last question. I have seen all documentation, I think it is better to put it that way, relating to the candidacy of Judge Williams. I don't want to go into details, my sense is that it may be crucial that you go out your way to harmonise relationships between you and her to ensure that there is, there are no issues in the division. Any plan without going into sensitive details? If I am not clear, ask me to clarify my words.

Mr Tlaletsi: Well firstly I am not privy to those problems at the moment. But what I can say is after the publication of the shortlisting I phoned her and said to her my sister, me and you have been nominated for this position. I think we are not fighting we are giving the JSC the opportunity to appoint someone who would lead the division. Whoever gets it we should support each other.

CJ M. Mogoeng: Yes.

Mr Tlaletsi: And she said to me, definitely let's give legitimacy message to the process.

CJ M. Mogoeng: Yes.

Mr Tlaletsi: So, if there are any problems I will be first one to meet her, we are on speaking terms. There's never, we don't have a problem, let me say. And if there is something that needs to be ironed out I will definitely do that. If there is a need for external and professional intervention that's what one will do so that we can operate, cause that can cause a problem if it not addressed.

CJ M. Mogoeng: I close the issue by saying read the JP's representations about her, read her response. If appointed see it as project. Settle down with her make sure there is harmony between the two of you and all other colleagues.

Mr Tlaetsi: You've got my word for it.

CJ M. Mogoeng: Yes.

Mr Tlaetsi: Thank you.

CJ M. Mogoeng: Thank you very much, Judge, Deputy Judge President Tlaetsi. You are excused.

Mr Tlaetsi: Thank you, Chief Justice and Honourable Commissioners for this opportunity.