



JUDGES MATTER

Judicial Service Commission interviews

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North-West Division of the High Court (Deputy Judge President)

Interview of Judge A M Kgoele

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CJ M. Mogoeng: Where were you born?

Ms Kgoele: I was born at the village called Kgomo-Kgomo

CJ M. Mogoeng: Kgomo-Kgomo must be somewhere around Hammanskraal area?

Ms Kgoele: Yes.

CJ M. Mogoeng: And you then became a Prosecutor and Magistrate, am I right?

Ms Kgoele: Yes, Chief Justice.

CJ M. Mogoeng: You prosecuted first in the Taung area?

Ms Kgoele: Yes, and by Pampierstad area.

CJ M. Mogoeng: And Pampierstad and then became a Magistrate, when?

Ms Kgoele: In, around 1991.

CJ M. Mogoeng: 1991?

Ms Kgoele: Yes.

CJ M. Mogoeng: And for how long were you based at a court before you moved to the Justice College?

Ms Kgoele: It's more than 10 years.

CJ M. Mogoeng: You were there for more than 10 years?

Ms Kgoele: Yes, I started at Taung as a Magistrate, additional Magistrate but I was also requested to head the office there. And I then moved to Pampierstad Magistrate Court as a Magistrate, also heading the office there. At some time, I was also, at the same time there was a crisis at Ganyesa Magistrate Court.

CJ M. Mogoeng: Yes.

Ms Kgoele: So, I was sort-of heading the two offices before I applied for a senior post, senior Magistrate post at Upington. I was appointed at Upington and in 2000 and – I think I left Upington around July 2000 to join Justice College as a trainer Magistrate or lecturer if I may put it.

CJ M. Mogoeng: Yes. Now let's go back to Upington. I see that you say you helped to establish that court. Tell us about the challenges and how you went about setting up that court?

Ms Kgoele: The first challenge that I realised when I was at Upington was in as far as domestic violence cases are concerned. Firstly, at that particular time, they were being dealt with on Monday and Wednesday, not on all the days; meaning Monday, Tuesday, Wednesday, Thursday, Friday. And people were coming from far, Groblershoop and other places they also did not have information as to when are the domestic violence cases only heard at that office.

CJ M. Mogoeng: Yes.

Ms Kgoele: So, I realised that the victims will come on a Tuesday and then they were to be sent back.

CJ M. Mogoeng: Yes.

Ms Kgoele: So, without dwelling much on that, in as far as that is concerned I then introduced a system where the domestic violence cases and or reports or complaints where being dealt with on all the days.

CJ M. Mogoeng: Yes, well ... [interjects]

Ms Kgoele: And another?

CJ M. Mogoeng: Yes, please proceed.

Ms Kgoele: Another angle in as far as domestic is concerned that I dealt with was we did not have office space, we were still in the small office space, the old one before the new one. The new one was being in the process of being built. Therefore there were no offices where the victims they were laying complaints were being interviewed. It was done in the casual, lack of a better word, it's not a casual but at the clerk, where there is a counter.

CJ M. Mogoeng: Yes.

Ms Kgoele: And a victim will be on the other side, and the interviewer will be this side.

CJ M. Mogoeng: Where people could pass by and overhear what they are saying?

Ms Kgoele: Yes.

CJ M. Mogoeng: Yes.

Ms Kgoele: So, I then looked around, I found a tearoom; an office that was being used as a tearoom.

CJ M. Mogoeng: Yes.

Ms Kgoele: And then, I then held a meeting requested all the officers that can't we use, we did have a problem of resources.

CJ M. Mogoeng: Yes.

Ms Kgoele: So that we can use that office for victims, to deal with complaints so that at least the complainants will be in a private place.

CJ M. Mogoeng: Yes.

Ms Kgoele: Yes.

CJ M. Mogoeng: Now ... [interjects]

Ms Kgoele: And ... [interjects]

CJ M. Mogoeng: Oh, yes, please carry on.

Ms Kgoele: I am not sure if I can continue but it is not on domestic violence. But on children court enquiries.

CJ M. Mogoeng: Yes.

Ms Kgoele: I found a backlog of children court enquiries. There were a lot of cases that were a backlog in the clerk of the court in as far as children court cases are concerned. Where there were no orders, they were sort of like dormant. Nothing was happening in as far as those files are concerned. I then requested the clerk of the Children's Court to make a list of those cases that were a backlog and in Upington we were being served by an Association of Social Worker, in Afrikaans one; I don't, I forgot the name but Afrikaans Vroue, but it was an association of Afrikaans Social Workers and the Department of Social Workers. Most of the cases that were a backlog were from the Department of Social Welfare.

CJ M. Mogoeng: Yes.

Ms Kgoele: I then made a list, wrote a letter. Our head, our Regional Office was Kimberley. I then wrote to Kimberley to indicate to them this backlog and to assist us in facilitating with the Department of Social Welfare to deal with that. And after that the response was amazing, we got reports; because we had a list as to what was running short in that particular file, what was the problem. We had an overwhelming response to such an extent that initially at Upington Children's Court was only being done on Tuesdays. So, I took that responsibility and allocated the second day, we were doing it on Tuesday and Thursday to deal with the backlog.

CJ M. Mogoeng: Yes.

Ms Kgoele: Yes. Those are some of the things that I did also the moral, the staffs' moral. I am not sure if I can continue. I found that the prosecution and the clerk of court officials were not having a good working relationship. You will find that the prosecutor will regard themselves as better or superior to the other. There was not a harmonious relationship. They also didn't normally have team building exercises, so I did one and also, I held meetings with all the stakeholders in the office trying to indicate to them how important a clerk is to a prosecutor vice versa to give an example that if you want a charge sheet you should not demand it, you must ask for

it and then the clerk will then also give it freely, not if you demand it that is not a good working relationship.

CJ M. Mogoeng: Yes, all right. I ask all these questions because upon arrival I got a sense that you needed to settle down first.

Ms Kgoele: Yes.

CJ M. Mogoeng: Now I can see you are settled, you are comfortable, you feel as welcome as you really are. Am I mistaken? That you are fine now, comfortable?

Ms Kgoele: Yes, I am.

CJ M. Mogoeng: You are, right. Now, when did you become a High Court Judge?

Ms Kgoele: In 2009.

CJ M. Mogoeng: So, you've been a High Court for how many years?

Ms Kgoele: It is plus minus 9. If I include my acting stint. Because I acted continuously.

CJ M. Mogoeng: Yes, for how long, by the way?

Ms Kgoele: 1 year and you can say maybe 6 months.

CJ M. Mogoeng: Yes.

Ms Kgoele: But I am not precise.

CJ M. Mogoeng: Those days of part of ensuring that women and black people come into the judiciary we were allowed to give long-acting stints and that is how you were able to stay there for that long.

Ms Kgoele: Yes.

CJ M. Mogoeng: Yes.

Ms Kgoele: And it was during your tenure as the Judge President of that division.

CJ M. Mogoeng: Yes, I forgot to disclose that you use to bring me good atjar from Marabastad. I've never tasted atjar like that before. And you have applied for a leadership position, you work in the division. Give us your vision what are the problems? How do you think they should be, they should be tackled to make sure that courts function well, to make sure that there is collegiality and stability in the court, to make sure that Regional Courts and Magistrates Courts function well? Just in your own words, just give us a brief sense of the contribution you hope to make if appointed to the position of Deputy Judge President.

Ms Kgoele: My vision firstly is to see the Judges in the Division having a buy-in in the case flow management. By that, I do not necessarily mean that they do not that buy-in, but I think if all the judges are given the opportunity of dealing with pre-trial conferences, I think the buy-in can be enhanced. I am saying this because mostly at the moment the JP and sometimes the Acting JP Judge Hendricks mainly deal with pre-trial conferences. So, if the pre-trial conferences in both civil and criminal matters can be allocated to each judges they deal with it on a daily basis; I think we can have more buy-in and case flow management can be enhanced. More especially because since the case flow management started I think we are having good results. The JP is dealing with pre-trial conferences in as far as criminal cases are concerned and it has helped because in most of the time when you go to, I may mention circuit, you'll find that the trial or the file is ready to continue. Then you are able to continue with the matter unlike in the olden days when you will find that advocates or legal counsel come with excuses that they did not consult and other things. But when a pre-trial conference has been held by my JP in the file you will also find a pre-trial conference minute that will indicate that everything was done. So, you are 100 percent sure that the trial, it's ready you can proceed unless there are exceptional circumstances that probable counsel can advance not to proceed on that particular day.

CJ M. Mogoeng: Something else as part of the vision?

Ms Kgoele: Am I allowed to look at my notes?

CJ M. Mogoeng: You are allowed to look at your notes.

Ms Kgoele: Okay. Another vision that I can talk about its mentorship. I am of the view that the mentorship programme should be dealt with actively in our division. Chief Justice, I am a product of a mentorship programme that was started by the former Minister, Minister Mabandla. In that programme we were mentored by senior judges, we were allocated to senior judges. We even used to call it “shadowing of a judge”; meaning you’ll be allocated to a judge and the judge will allocate even work to you, you will deal with the work as if you are a judge. I am saying this because normally you will find that Acting Judges are not mentored as I compared to myself as we were being mentored in the programme which was introduced by Minister Mabandla. I received a valuable mentorship under Judge Legodi and I gained a lot because sometimes I see that sometimes you are an acting judge. If you are not mentored in the manner in which I was mentored, you are left alone. You need somebody to take your hand along so that you may be able to swim in as far as your Acting stint is concerned. That’s my vision.

CJ M. Mogoeng: Clarification there.

Ms Kgoele: Please.

CJ M. Mogoeng: When a judge is acting there, is it made clear to him or her that senior judges are available at all times to assist or are they made unaware of the availability of senior judges to assist ... [interject]

Ms Kgoele: They,

CJ M. Mogoeng: In, yes.

Ms Kgoele: They are made aware that senior judges are available, and you can contact them.

CJ M. Mogoeng: Were there cases allocated to them? Are they aware that in much the same way as Judge Legodi was mentoring you they can come to senior judge and say, you know I've got this problem, how do you people approach this thing? I have this draft judgment look at it and tell where I have gone wrong. I am not asking you to write it for me, but guide me. Are they aware that they could be assisted in that fashion or not?

Ms Kgoele: Yes, Chief Justice.

CJ M. Mogoeng: Oh, I see. All right, carry on with the vision.

Ms Kgoele: My other vision again, it is in as far as pre-trial are concerned. At our division, we are having circuit courts. I will concentrate mainly in as far as criminal cases are concerned. We have circuit court, a circuit court at Mogwase [?] which is a bit far from Mafikeng. We have a circuit court in Temba which is also far from Mafikeng and Vryburg. Now, mostly these pre-trials are held at the main city, at Mafikeng. So, my vision will be if this pre-trial cases can be also done at the circuit courts. I had seen my JP having started that and I have an experience that it can work. Because on another occasion I did that at Mogaswe. My JP was supposed to go there, but then he said I should do those pre-trial cases there. It was during a circuit court I had criminal cases but because we do pre-trial cases in the morning it means I had to do them before we start court and we managed. I managed to do that. So, I had the first-hand experience that it can work because this bringing access to justice. Our community does not have money, sometimes to even travel to Mafikeng. So, if we go to them, bring justice to them I think it will be, our judicial system will be effective.

CJ M. Mogoeng: Well, let me suggest something that could work along those lines. I've seen colleagues in one of the federal district courts in America do it telephonically. You just put the different set of lawyers on speakerphone, you talk to them, they can hear you, they don't even have to travel. They can be wherever they

are. You ask them the right questions, you satisfy yourself about what you need to satisfy yourself about because we have the documentation in front of you. And that is how you resolve issues as a way of case management process or a pre-trial conference. Even the case progression officer in those jurisdictions where you have them to check what other steps have been taken towards getting, ripening the case for hearing. You do it telephonically; yes, have you done x, y x? Yes, no I see your documents are here. That sort of approach do you think you could explore that if appointed as well?

Ms Kgoele: I think so. It can even be better than even the one that I suggested.

CJ M. Mogoeng: It will be cheaper.

Ms Kgoele: Yes.

CJ M. Mogoeng: Yes. Other aspects of the vision if there are others?

Ms Kgoele: In as far as these three lower courts are concerned I know there are problem of backlog, many cases which are still on the roll. I do not have the statistics but when I was enquiring I hear that there were many cases that were still on the roll. Now my vision it's that we are having reception court. The reception court in my view, I looked at it, it is as if it is not being utilised fully as it supposed to be doing. I am thinking about, I know the prosecutors do, the senior prosecutor do what we term, screening of cases before they even go to the Reception Court. That is helping, that is also helping. But in the Reception Court, if the cases there can be dealt with, I'm comparing them with the system which we are using in the High Court. I am also concentrating on criminal matters now. In criminal matters in the High Court, in most of the time, we find the cases that are in a way trial ready. Because they started there at the Reception Court, then down there and when they come almost to the High Court they are almost trial ready, although we hold pre-trial conferences. When I asked whether there are pre-trial conferences being held there at the District Court I was told there are none. Now what I mean with my vision it's if the prosecutors that are dealing with the Reception Court can make sure that before the case is being allocated to a Magistrate, it is trial ready. If that can be monitored I

think it will be better. I am saying this because then my vision will be that then it will then go to the senior Magistrate who is overseeing other Magistrate and the Magistrate will, the senior Magistrate should also verify if the case is trial ready. And probably that there is where we can even think about now, introducing the pre-trial conference to also facilitate if the matter is not trial ready. Before it is even allocated to a trial Magistrate. In that way I am having a vision like: you will probably in an office have for example 4 or 5 Magistrate, maybe with a senior Magistrate. The senior Magistrate doing what like in the High Court the JP or the DJP is doing allocating cases to judges then it will be in the Magistrate Court, the senior Magistrate will be allocating cases to the relevant trial judges, the trial Magistrate, and then this will ensure that when the matter goes to that particular Magistrate it is trial-ready and it must proceed unless like I had indicated postpone under exceptional circumstances. So, I think many cases can be dealt with in that way. They can be finalised, maybe it can alleviate the backlogs.

CJ M. Mogoeng: Anything else? I am just asking whether you are done? Have you said out the visions ... [interjects]?

Ms Kgoele: I can say the last thing, Chief Justice.

CJ M. Mogoeng: Yes, please.

Ms Kgoele: The issue of sharing of information amongst stakeholders. I mean like judges, magistrates, police officers; the stakeholders in as far as the justice system is concerned. I am of the view that if we have, I am not talking about meetings. A meeting with like the PEEC but I am saying where we are having information sharing and maybe a judge explaining a certain procedure or how to deal with evidence all those kind of things. So, I think if we can introduce that it can even improve the relationship of stakeholders at the same time enhancing our dispensing of justice.

CJ M. Mogoeng: I don't understand. It's a PEEC where you share those ideas.

Ms Kgoele: Yes.

CJ M. Mogoeng: Why is the PEEC not enough for the purpose of sharing that information?

Ms Kgoele: The PEEC, unlike this one that I am talking about, the PEEC mainly deals with backlogs as I've seen it.

CJ M. Mogoeng: No, it deals about, with everything that affects the court system or the justice system.

Ms Kgoele: I was going to come to that.

CJ M. Mogoeng: Okay.

Ms Kgoele: But as you had already said everything. But this one I mean maybe I used the word information, but I am trying to say we are teaching each other. Like I gave an example, evidence. We talk about admissibility of documents on that particular day like I can say training. Not in the sense of training as such, but we come together we talk about how we deal admissibility of documents, confessions amongst ourselves.

CJ M. Mogoeng: As judicial officers and who else?

Ms Kgoele: Other relevant stakeholders.

CJ M. Mogoeng: Like the police, or what? Which stakeholders?

Ms Kgoele: I mentioned the attorneys, I mentioned the even the legal profession, that is what I was trying to say.

CJ M. Mogoeng: Yes. I am genuinely trying to understand because the attorneys have got their own training programmes and when they need a judge to come and facilitate at their training programmes they do that. The same applies to the advocate's profession. But at PEEC level you identify all problems and even propose workshops for those who appear to need workshops. Let me give you an

example, at any SAPC level which has cascaded down to PEEC's we said to the police you're investigating skills are generally suspect. You people need to have workshops held invite attorneys, invite advocates, invite prosecutors, invite judges if necessary to deal with issues like how to take a proper witness statement. So that people don't lose cases because an incompetent police person took a statement and did not know what kind of a statement would be satisfactory. We dealt with forensic laboratory ... [interjects]

Ms Kgoele: Evidence.

CJ M. Mogoeng: Ja, forensic evidence for forensic laboratory issues. The department of health is part and parcel of that. We deal with post-modern reports. Preparation of reports relating to injuries and you have who else? You have the Social Development Department there; you people, the reports you generate in relation to cases whether it is divorce, whether it's a criminal case, whether it affects children; we are not happy with the quality of your reports. This is what needs to be done. If you want to organise a seminar, conference or a workshop these are the people you could invite. And then they do that. That is why I am saying, I need to understand what you are talking about now.

Ms Kgoele: After you have an explanation, Chief Justice, then it means my concern are been catered for in the PEEC. Because all what you have said that was what I was trying to talk about.

CJ M. Mogoeng: Except for one thing. My assumption is preparing for this interview you would have familiarised yourself with the role of the MEEC and the PEEC so that as Deputy Judge President remember, it is supposed to be chaired by the President, the Judge President. In their absence of the Judge President, the Deputy Judge President must step in to chair the PEEC understanding what it is about. Have you familiarised yourself with the responsibilities and workings of the PEEC?

Ms Kgoele: Yes.

CJ M. Mogoeng: At least as part of the preparation for this interview.

Ms Kgoele: Yes, Chief Justice.

CJ M. Mogoeng: Yes.

Ms Kgoele: Yes.

CJ M. Mogoeng: Okay. All right. Yes? Please feel free to interrupt me if I am interrupting you. You are the main person, you shouldn't be interrupted unless it is strictly necessary.

Ms Kgoele: From the preparations that I did, I did not find where they were talking that they also facilitate the training as we had been, the Chief Justice has been explaining.

CJ M. Mogoeng: Yes, did you ask them? Did you ask them?

Ms Kgoele: No.

CJ M. Mogoeng: Okay. Now, let's move on to the Magistracy. What problems are there in the North-West problem that relate to court performance that you have identified and how, well we will come to the how are you going to deal with them later. What are the problems? Which courts have which problems?

Ms Kgoele: In as far as my preparation is concerned I only dealt with the office which is near to me, which is Molopo.

CJ M. Mogoeng: Yes.

Ms Kgoele: In my preparation, I realised that there is a shortage of experience Magistrates. I could see that at some stages the Magistrate who have retired are being utilised. Like even in the Regional Court, even in the District Court at some stage Mr Mokoatle [?] was, I can cite Mr Mokoatle [?] was being used although he has been retired. I realised that probably, maybe it is because there is no enough

experienced people that can be appointed as Magistrate. In my view, there are legal practitioners that can be appointed as Magistrate and I have realised that they are appointed as acting Magistrates, but what I have realised nowadays is that there are fewer experienced prosecutors that are appointed.

CJ M. Mogoeng: Yes.

Ms Kgoele: And in my view, I am off, I think that they are a good pool of were experienced Magistrates can be sourced. But when I was trying to inquire as to why it doesn't happen as rapidly as it can, they are not appointed as acting magistrate, I then realised that the impediment is in as far as the fact that to be appointed as an acting magistrate if you are a prosecutor it means because of the prosecutors having been delinked from the office of, from the department of justice. They have to resign. Now, you resign you are appointed an acting magistrate and then if your acting stints expires because you do not, you cannot even labour a legitimate expectation that you will be permanently appointed. So, I think that is an impediment, probably that is why the experienced prosecutor do not even apply for being acted, I mean being appointed as acting magistrate. But I am still of the view that it is a good pool where we can also source a pool of experienced magistrates, but obviously, it will need higher authorities to deal with this issue.

CJ M. Mogoeng: Yes, but my question was what court performance related problems are you aware of that effects the Magistracy and you said you've checked Molopo. Apart from the appointment of Magistrates what court performance related problems are there?

Ms Kgoele: Because of what I have already indicated that there are few Magistrates then ... [interjects]

CJ M. Mogoeng: Who are experienced?

Ms Kgoele: Experienced and even appointed.

CJ M. Mogoeng: Yes, then obviously it affects the court performance. Remember I also touched on the backlog of cases. How is the state of backlog there and what apart from appointments what do you think should be done to tackle it in Molopo?

Ms Kgoele: As I indicated earlier maybe we should look into enhancing the effective functioning of the Reception Court, as I have indicated.

CJ M. Mogoeng: No, that I understand.

Ms Kgoele: Yes.

CJ M. Mogoeng: What is the extent of the backlog in Molopo?

Ms Kgoele: I couldn't get the statistics, I mean written statistics during my, my ...

CJ M. Mogoeng: And that is the only court that you have enquired from?

Ms Kgoele: Yes.

CJ M. Mogoeng: Yes. I thought you would do more. I was telling them I pass by Ceres, I can tell you the backlog state is there. I can tell you about the state of the courtrooms. I am familiar with Rustenburg. I am familiar with Ga-Rankuwa, I'm talking North-West only. I am familiar with the challenges in Lehurutshe and how the court in Groot Marico is doing. I thought as a candidate you, for the position of Deputy Judge President you would be curious to know the challenges that would immediately confront you upon appointment if you are. But I accept that you haven't done that. What about the High Court itself? What are the challenges apart from what you have mentioned and how do you plan to tackle them? Particularly as they relate to court performance.

Ms Kgoele: At the High Court we do not have a backlog in as far as criminal cases are concerned.

CJ M. Mogoeng: Yes.

Ms Kgoele: I have checked it.

CJ M. Mogoeng: Yes. Relationships?

Ms Kgoele: The relationships amongst colleagues it's okay, Chief Justice.

CJ M. Mogoeng: Yes, there is collegiality there are no problems?

Ms Kgoele: Yes.

CJ M. Mogoeng: Okay, JP Leeuw. Oh, I am sorry I interrupted you

Ms Kgoele: I wanted to just add a challenge that I have realised it is in as far as resources, but we are managing. Like at the circuit courts.

CJ M. Mogoeng: Yes. I thought your High Court was leaking and needs attention?

Ms Kgoele: Yes, also but it needs attention, but we are able to dispense justice.

CJ M. Mogoeng: Yes.

Ms Kgoele: Yes. That is important.

CJ M. Mogoeng: Okay. JP Leeuw?

JP M. Leeuw: Thank you CJ.

Ms Kgoele: Let me start with last issue that you raised with regard to ... [interjects]

CJ M. Mogoeng: JP if you could bring the mike closer to you so that we can hear you, we struggled earlier.

JP M. Leeuw: Yes, the last issue with regard to case flow management, judicial case flow management in criminal matters. I first want to say that the criminal, the pre-trials in criminals' matters are being done at a different circuit courts, are you aware of that?

Ms Kgoele: Yes JP, that is why I said you do them at a certain stage you even request me to do them at Mogwase.

JP M. Leeuw: Yes, that day, when I asked you to do it Mogwase it was because I had to do other cases in Mafikeng. The challenge is if I give it to all judges to do, the criminal pre-trials it means you cannot preside over that criminal trial when the matter becomes before court. So is why I go sometimes too, I make sure that a judge who does the pre-trial in criminal matters does not preside in the matter. Now coming to pre-trials in civil matters. You were all given an opportunity to do pre-trials, not so?

Ms Kgoele: Yes, JP.

JP M. Leeuw: And are you doing it?

Ms Kgoele: At the time when I was given an opportunity or allocated them I was doing them. But recently a few only come to me.

JP M. Leeuw: When did you do pre-trials. When were you allocated pre-trial matters?

Ms Kgoele: I don't have a specific day, but there were at a certain stage where you were giving all of us pre-trials in civil matters. You even sent out a notice at a certain time that we should do them at half-past eight. We even adhered to that to do pre-trials at half past eight.

JP M. Leeuw: I don't want to say what you are saying it not the truth. I allocated, oh you couldn't hear me. Sorry. This one.

[Crosstalk]

JP M. Leeuw: Yes, I initially invited all of you to do pre-trials and the experience or the result thereof was that you and other judges, who I don't want to mention their names, did not do the pre-trial according to how it is prescribed in the pre-trial manual. Do you remember that?

Ms Kgoele: Can I ask for clarification?

JP M. Leeuw: Or let me rephrase it.

Ms Kgoele: Yes.

JP M. Leeuw: How do you conduct a pre-trial in a civil matter?

Ms Kgoele: The parties will appear before me with the file. After the file has been allocated to me and I will have gone through the file to check how far the file its trial ready. And when the parties appear before me I will have already identified what are the things that are in the file that still needs to be done. For example, expert witnesses whether are admissions already made and all that. And when the parties appear before me we talk about all of that. If it is not done. And we even determine from the parties when all that is outstanding in the file can be done. After that, we complete a pre-trial conference minute. That is where we indicate for example, when are the parties going to exchange their pleadings, their discovery of documents expect when expert evidence should be filed. We ride them, we commit them to dates. Whether they are admissions that are supposed to be made if there are any. Determine how long will the trial take. We record all of that and we even went, go to an extent of committing the members, I mean the parties to even say to them by such and such a date. All those days will appear in the pre-trial minutes. By such and such a date then a notice of setting down if the matter is ripe for hearing will have been filed. And then we sign the pre-trial, I mean the proforma that we normally use at the office. I sign it as a judge. And if there is also, for example, a further pre-trial that the parties will want to deal with, if they are not even able to deal with on their own you can commit to a date to come before you. Or if you see that

they are able to deal with a pre-trial a further pre-trial conference if there is a need, then you write, you commit them to a date. You write a date there. Everything it is on the pre-trial.

JP M. Leeuw: Yes. ... [interjects]

Ms Kgoele: And the filing of the pre-trial conference minutes if they did it on their own they must file it beforehand on such and such a date.

JP M. Leeuw: Yes, it's just that my comments were belated, and I apologise for that. Because I challenged you to produce or give me at least one case which you case managed. You couldn't find any.

Ms Kgoele: JP not that I couldn't find any, in my reply that I have sent to the JSC I have indicated that because I received your comments in a short space of time I have also indicated that in more or less 48 minutes, I mean 48 hours, if I calculated it and because I was working as a recess, I am currently a recess duty judge. I had cases to deal with on Monday and tomorrow, I couldn't get time to go to the Registrar's Office to look for the files because it will mean that I will have to, even ask the clerks to assist me to go through all the civil files that I had dealt with to check the minutes that I have signed so that I can produce them. But as I have indicated here I couldn't have that time.

CJ M. Mogoeng: Yes. JP are you pursuing that? I think she has provided an answer, Mam. She says the time was brief, it didn't allow her to, yes.

JP M. Leeuw: Yes, just one question related to that Chief Justice. Are you, even if you couldn't find anything. All those matters that were removed from the roll as well as those which were postponed, did you also case manage?

Ms Kgoele: Yes.

JP M. Leeuw: Yes. I leave it at that because as you say. Now, the memorandum that you were given for you to make submissions relating to judicial case flow

management, do you know what the amendment to Rule, the, what was in the amended, the proposed amendment Rule 37(A) what was the proposal there?

CJ M. Mogoeng: JP I think it could be approached differently. Let it not come across as cross-examination. And let it come, let it not come across as if there is animosity. Let it not, it is not coming out well now. Let's try and manage it better.

JP M. Leeuw: Should I leave that question?

CJ M. Mogoeng: You may depending on how you pose it. Colleagues have the manifest concern also and some have registered concerns with me about the manner in which question were being put to the candidate.

JP M. Leeuw: Yes, or rather let me put it this way then. The memorandum that was given to you in the morning at about 9:00 and you responded in the afternoon about 14:00, had you read those amendments? The proposed amendments?

Ms Kgoele: At that particular time, yes.

JP M. Leeuw: Now, with regard to mentoring, you have raised a concern about mentoring that needs to be done at the division, not so? Or the mentoring similar to that one that was being conducted during Minister Mabandla. You remember?

Ms Kgoele: I did not raise it as a concern. I spoke about it when the Chief Justice was asking me about my vision what I will want to see happen.

JP M. Leeuw: Oh. Now, you are the president of the AWG and you are conducting mentoring programmes, not so?

Ms Kgoele: Yes, JP.

JP M. Leeuw: Do you have any, in your programmes which deal with judicial case flow management?

Ms Kgoele: Mentoring programme dealing with judicial case flow management?

JP M. Leeuw: Yes.

Ms Kgoele: No JP.

JP M. Leeuw: And most of your members are Magistrates who really need that kind of training, not so?

Ms Kgoele: I think so JP.

JP M. Leeuw: Yes. We will leave it at that. Now I sent a concern or a memorandum relating to ... [interjects]

CJ M. Mogoeng: If you can bring the mike closer to you JP, Commissioners say they can't hear you at times.

JP M. Leeuw: Yes, I brought a, brought it to your attention the concern that what reached by the DPP with regard to an issue relating to a postponement and cases that were not finalised. Remember, remember that memorandum.

Ms Kgoele: Yes, JP.

JP M. Leeuw: And you responded by saying the DPP from that memorandum you did not understand that memorandum to mean that you should give reasons why the matters were postponed. Not so?

Ms Kgoele: Yes, JP.

JP M. Leeuw: But I asked you to give me that explanation because a concern was raised. And you told me that I should go and look at the files because the reasons appear in those files. Is that not correct?

Ms Kgoele: I wish to correct what my JP had said. And we should do that by looking at the said memorandums are concerned. I am not sure whether all the commissioners will have a copy of my reply because I see it here ... [interjects]

CJ M. Mogoeng: We do. We saw your response.

JP M. Leeuw: Yes.

Ms Kgoele: Allow me CJ to page so that I can get to the relevant ... [interjects]

CJ M. Mogoeng: Absolutely, feel free to do that.

JP M. Leeuw: It is a letter dated the 12th of March 2013.

Ms Kgoele: 12th of March, thank you JP.

JP M. Leeuw: The last paragraph.

Ms Kgoele: Sorry, it is the wrong one.

JP M. Leeuw: It's the wrong one?

Ms Kgoele: Ja.

JP M. Leeuw: I'm trying to check which annexure is it. Annexure E is the one that came from the DPP. Yes, it's on, it's a letter dated the 15th of September 2011.

Ms Kgoele: Yes.

JP M. Leeuw: The last paragraph thereof.

Ms Kgoele: Annexure G. In that letter I indicated in paragraph 2 that I do not understand the letter from the DPP to be saying that I fail to finalise cases. And if

you can look at the matter itself, from the DPP which is annexure E, I did not see where they are saying I did, I cannot finalise cases.

JP M. Leeuw: Yes, can I read it to you maybe. You say: "*All I can say is that all the matters which are postponed and are part-heard have self-explanatory reasons recorded in the record of proceedings of files why they were postponed or are part-heard*". My question is; was this you were refusing to give me reasons why the matter were partly-heard.

Ms Kgoele: I was still going to go there, JP and then you came in. I was still going to answer.

CJ M. Mogoeng: Can I interrupt you, people? Let me tell you the public perception of that a colleague has just brought to my attention. Ugly public spat underway in hashtag JSC with JP Monica Leeuw castigating a junior for failure to respond to various issues. That's why I tried to intervene earlier. Just be aware of that. The public perception out there about the manner in which you people are proceedings.

Ms Kgoele: Okay. Can I, I finish my reply?

CJ M. Mogoeng: All means, you must finish otherwise it will look like you haven't answered, or you don't have an answer.

Ms Kgoele: Yes. Thank you. I initially, I reiterate, I did not understand the letter to say to me I cannot finalise cases. As I have indicated it doesn't say so. And in as far as the sentence where I say; [1:02:11 audio interruption] the letter of the DPP also doesn't say that but the letter comes from my JP say; something along that, but specifically that. We can look at it on page, on page that is annexure H. Paragraph 2 of annexure H it is couched as follows: "*Furthermore a concern has been raised about your failure to finalise cases. I have already answered in this*". Now the next sentence starts with: "*Maybe*". "*Maybe you should indicate the reasons which you caused to have parted matters*". So, my understanding was my JP was not saying to me, give me reasons. I understood it to mean that my JP was trying to say, maybe I can give the DPP reasons as to those cases and which in my view that is why I

answered in that manner. That I do not even understand the letter to say that I should give reasons to the DPP which in my view I could not do as a judge.

JP M. Leeuw: Thank you, CJ.

CJ M. Mogoeng: Thank you, JP. MEC?

MEC: Thank you, Chief Justice. Evening Judge Kgoele.

Ms Kgoele: Evening Honourable Commissioner.

MEC: Judge Kgoele what will be your efforts to encourage competence and qualify persons especially the women to avail themselves to act as judges? In order for them to acquire experience.

Ms Kgoele: Can I ask the Honourable Commissioner to repeat the question?

MEC: What will be your efforts, meaning what is it that you will do, to encourage competent qualified persons especially the women to act as judges in order for them to acquire experience?

Ms Kgoele: Thank you. I will encourage them to request the divisions in which they are for being mentored and also, like I have indicated before to be shadowing the judges. So that they can be able to see what the judge does in court and to gain further experience and after that to apply for acting positions and if they have been given that opportunity to act then I avail themselves.

MEC: How is it normally done? That is the recruitment?

Ms Kgoele: I will talk about the association that I am a member because at the moment we are mostly concentrating on women to be appointed to the Bench. What we normally do, this process is province driven. In all the nine provinces we have what we call provincial coordinators. The provincial coordinators are the one that are driving the provinces into the main association. We request them, there is a policy,

we request them to send a memo to our members to apply for being considered for acting appointment. We have a criteria that we had developed as to if you qualify in as far as this and that its concern then you can send your CV. You send your CV to the PCs. The PC's will then take those CV's and we have a committee that deals with the screening of the CV's. Because we cannot, we must screen check whether they are, they can competent, we cannot just take each and every one. We must screen competency and then after screening competency, if we have a particular list or members that are that can be eligible, we draw a list. After drawing a list, because as I've said it is province driven we will then approach the relevant, the committee will then approach through me, will then approach the relevant JP's to submit the names so that the JP can consider appointing them as Acting Judges. But in some other provinces we had seen that the JP's before we even finalise this process they send us a request that please send us the names so and depending again on the province; how active, how fast the province can deal with the names, submitting them to, the CV submitting them to the committee for screening and ultimately to the JP. Then it goes faster and that is why I said it is province driven.

MEC: How will you ... [1:10:23 inaudible]

CJ M. Mogoeng: I think your mike is off MEC.

MEC: Pardon me, Chief Justice. How do women in comparison to the male counterparts usually respond? Is it satisfactory according to you?

Ms Kgoele: Yes. It is satisfactory MEC.

MEC: No thank you. Judge Kgoele, the province North-West is inundated with traditional leadership disputes which I've frequently taken to High Courts. The reality is often these disputes are not ventilated by the relevant structures. For instance. the Royal House before. Now how can the High Court help to have matters handles squarely within the spirit of the North-West Traditional Leadership and Governance Act?

Ms Kgoele: MEC, normally when we come into play, that is when a matter or a dispute is already in court, as judges. But I know as you have already indicated that the traditional, the Royal House has a role to play. I also know that the office of Premier also has a role to play. There is also a, in each province there are commissions, what do they call them, where the traditional leadership disputes are being handled. As I have already indicated they normally come before us when they are already a dispute and they are matters before our court. We deal with them. For example, there is one that I have already dealt with and fortunately, it was handled by the commission, the Provincial Commission and in that matter, they were applying to review the decision of the Commission and we deal with that. But, I think to facilitate those matters because as indicated by the MEC it seems as if they are increasing nowadays. A dispute resolution mechanism can be resorted to where ever possible.

MEC: Actually, Mam, I actually meant those cases that have skipped the structures such as the Royal House, because it must start there before it goes before the courts. If you are able to realise that really this has skipped, this case has skipped that level at the Royal House, what is it that you do? Or how do you then advise, how do you handle it.

Ms Kgoele: Remember I said, there is this commission that deals with the dispute. So, it has to go there. Because it is the body that deals disputing as far as traditional leadership is concerned. And unlike even the courts, in that commission, there are experts in as far as issues that deal with traditional leadership are concerned. So, they must go there if they skipped firstly the Royal House.

MEC: If you allow me, Chief Justice, to make a follow-up. What in the instance like is the case now, that there is no commission in the province? I am talking in that instance? Because before it goes before the court actually the Royal House, the Royal Family they are the ones who is to say who is the correct person to be the cause. Now if it has skipped such and there is no even commission in the province like is the case now, do you consider that it has skipped some processes. Some structures? That supposed to have to deal with it or you just proceed with it? Thank you.

Ms Kgoele: As a judge, we normally don't because that is not as I've already indicated in our expertise. As I have indicated the commission is the one that has, it has normally it consists of people that are experts in issues of traditional leadership. I hear you when you say, Commissioner, that there is no commission. I was not aware, in the province, but in terms of the Act there should be one and there is also a national commission. In my view probably, the national commission can deal with that.

MEC: I don't want to make dialogue, let me just stop here. Thank you.

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

COMM Fourie: Thank you, Chief Justice. Good evening Judge.

Ms Kgoele: Good evening Commissioner.

COMM Fourie: I will limit my questions that I wanted to post to you to only one. Have you got your completed questionnaire in front of you?

Ms Kgoele: No.

COMM Fourie: Perhaps you can be provided with that. But if I wish to refer you to paragraph 16.5 where you list 5 reserve judgements.

Ms Kgoele: Yes.

COMM Fourie: I also see that your questionnaire was completed and dated the 30th of January of this year.

Ms Kgoele: Yes.

COMM Fourie: So, I assume that as on the 30th of January according to you, you had those 5 outstanding judgements.

Ms Kgoele: Yes.

COMM Fourie: Let me firstly ask you whether any of those judgements have been delivered since?

Ms Kgoele: Can I ask the page that you are referring to so that I can ... [interjects]

COMM Fourie: Paragraph 16.5 on page 6 of your questionnaire.

Ms Kgoele: 16.5. They have all been delivered.

COMM Fourie: Can you give an indication when?

Ms Kgoele: I don't have specific.

COMM Fourie: No, you don't have to give me specific dates, were they a week ago, two weeks ago, a month ago, soon after the 30th of January?

Ms Kgoele: Some in January, when was it. It is in ... [interjects]

COMM Fourie: No, it couldn't have been before the 30th of January.

Ms Kgoele: Yes, in February.

COMM Fourie: All of them delivered in February?

Ms Kgoele: Yes. All of them. Thank you, Chief Justice. Then I don't have any further questions as far as that is concerned.

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

MIN F. Muthambi: Thank you Chief Justice. Good afternoon Justice.

Ms Kgoele: Good afternoon, Minister.

MIN F. Muthambi: I want us to go to page 3 of your CV. I hope you have it.

Ms Kgoele: Yes, it is in front of me.

MIN F. Muthambi: Ja, there's a CV on the its questionnaires for judges?

Ms Kgoele: Page 3?

MIN F. Muthambi: Page 3.

Ms Kgoele: Yes.

MIN F. Muthambi: I see you are the president on item 3 on paragraph 7. You are the president of the South African Chapter of the International Association of Women Judges.

Ms Kgoele: Yes.

MIN F. Muthambi: Since 2014 to date. Also, I've seen this institution has been busy nominating women judges throughout, that was my observation since I sat, since we started here on Monday. Again also, I see you are the president of the Southern African Region where you are representing women judges in the continent. Is it correct?

Ms Kgoele: Yes, at the present moment.

MIN F. Muthambi: I think for that, I think you deserve to be congratulated. Representing the country in the continent. Can I quickly understand what is the mandate of this Association of Women Judges?

Ms Kgoele: To empower women.

MIN F. Muthambi: And have you done that successfully? I see you've been a member since 2004 to date.

Ms Kgoele: Yes. We have done that through the mentoring programmes that we are dealing with and even encouraging them to apply for positions. The, nowadays we are having some of our members who has also been appointed at a higher post. Judge Connie Motlanthe has been appointed at, can I correct Motlanthe is the previous ... [interjects]

CJ M. Mogoeng: It is Mocomie now.

Ms Kgoele: Judge Connie Mocomie, appointed to the SCA. The DJP in Western-Cape Judge Patricia Goliath it is our member; the JP at the Free State High Court, JP Molemela has also been long been our member. That's where we had empowered them. There are others I am not sure whether if I am allowed to even talk about Justice Maya.

CJ M. Mogoeng: She says she was not empowered by your organization.

[laughter]

MIN F. Muthambi: She empowered you.

Ms Kgoele: She empowered me, yes. But I am trying to say this are the people that we can pride our self with as we started with them long time ago. Another one that I can mention is Justice Leona Theron, I can even check on my, there, there are some.

MIN F. Muthambi: No, it's okay, it's okay. You know why I was raising all these issues because when we started our meeting on Monday we considered a report from the Commission for Gender for Equality. They're getting reported since there is a lot of transformation especially when it comes to women, that was the issue as an organisation what are you doing to contribute. But when you do that I believe you also have a mentoring programme that is fine. Can you get to the real issues?

Judge do you have a letter dated 1st April 2017 that is written to the secretary of the Judicial Service Commission. Do you have a copy of it?

Ms Kgoele: Is it from my response, or is it the one from ... [interjects]

MIN F. Muthambi: No, the one dated the 1st of April 2017. From the JP to the secretary of the Judicial Commission.

Ms Kgoele: Okay, I will check.

MIN F. Muthambi: Do you have it? With its annexures.

Ms Kgoele: I think I do let me check it first.

MIN F. Muthambi: With its annexures. I want us to focus on it. You got it?

Ms Kgoele: Which date do we start?

MIN F. Muthambi: 1st of April 2017.

Ms Kgoele: 1st of April 2017.

MIN F. Muthambi: You got it?

Ms Kgoele: I'm still looking.

MIN F. Muthambi: You will not give it secretariat, for the sake of time, can you give her a copy? Give her a copy.

Ms Kgoele: Oh, the letter. Yes, on the first page. I thought we were talking about the annexures Minister.

MIN F. Muthambi: No, the whole document. I am gonna talk about the whole document. Just hold it, I'll take you through. You have it.

Ms Kgoele: Yes.

MIN F. Muthambi: Okay. Let's go to paragraph 2.6, page 3.

Ms Kgoele: Yes.

MIN F. Muthambi: Are you there?

Ms Kgoele: Yes.

MIN F. Muthambi: Tell me, I want clarity because this matter relates to you. It's on the top of the letter 2.6 it is written on the 26th April 2016 at around 9:33 am I send an email to all judges, ne?

Ms Kgoele: Yes.

MIN F. Muthambi: Okay, it's fine. All well and good. And then when you go to the same paragraph, "*I received comments*" did you see that after the roman figure.

Ms Kgoele: Yes.

MIN F. Muthambi: "*I received comment from Judge R D Hendricks and M Gupta which I consolidated with mine to submit the National Case Management Committee. Judge Kgoele did not show any interest.*" I want you to underline this. "*She sends an email to my secretary on the same day*", now it is no longer the 22nd of April it is the 21st of April 2016 at 11:45 pm. Can you assist me, what is what here? Do you see the contradiction? I am trying to say ... [interjects]

Ms Kgoele: I am not sure how am I going to assist you because I am not the author of this document.

MIN F. Muthambi: But I think I want you to express an opinion because is related to you.

Ms Kgoele: Okay.

MIN F. Muthambi: Express an opinion.

Ms Kgoele: The dates do not correspond as the Minister has indicated so there is a problem in the, but I want to say that the fact that I had indicated that I don't have a comment to make does not necessarily mean I do not have an interest in case flow management.

MIN F. Muthambi: Okay. Then let's come to 2.7; "*Because of a lack of interest in the judicial case flow management I nominated Judge Nadia Gupta whose is a junior judge*". So, I am mindful of your response earlier. Do you see?

Ms Kgoele: Yes.

MIN F. Muthambi: Is there, was there any motive, maybe for a junior judge then to be nominated, instead of you?

Ms Kgoele: Once again, I, it is a difficult question to answer because the provocative for nominating a person to a committee rests with the JP.

MIN F. Muthambi: Okay. Let's go to ... [interjects]

Ms Kgoele: But I had indicated that doesn't mean that I did not have interest in case flow management. I think if the JP herself would have approached me I would have gladly accepted.

MIN F. Muthambi: Okay, yes. Then let's go to page 4 of the letter. Are you on page 4 Judge Kgoele?

Ms Kgoele: It's paragraph 3.2.

MIN F. Muthambi: Yes. Can you also help me annexure D1 and D2? I am only seeing annexure D on the attached letter.

Ms Kgoele: Should I respond? I also replied if the Chief Justice can allow me to look at my response to that.

CJ M. Mogoeng: Absolutely.

Ms Kgoele: I did not get annexure D1 and D2.

MIN F. Muthambi: Okay, I'm covered. Judge?

Ms Kgoele: No, let me finish my, my ...

MIN F. Muthambi: Okay.

Ms Kgoele: My reply. As you said it is a very big concern which is true. Paragraph 56 of my reply if you do have my, a copy of my reply. Page 12. I am saying there, and this is also my reply now Minister.

MIN F. Muthambi: Okay.

Ms Kgoele: I do not know what material and technique the JP use to compare me to my colleagues, Hendricks J. The comparison according to me it is unscientific. Nonetheless, annexure D1 and D2 on which much reliance is placed to do this comparison are not attached as alleged. I am accordingly not in a position to sensibly respond to the allegations made therein.

MIN F. Muthambi: Okay. Fair enough. Then I presume you were appointed on the 25th of November 2009, as per your CV on page 2?

Ms Kgoele: Yes, Minister.

MIN F. Muthambi: And then when this thing started it is 11, they started around 2011. Like the issues that we are dealing from paragraph 3.3, 3.4 it is 2011 matters, am I wrong?

Ms Kgoele: You are right, Minister.

MIN F. Muthambi: And then, at the time when this started you were a junior judge, I must say that. Junior? I don't know. Pardon me, I am not good with terminology.

Ms Kgoele: Yes, I am still a junior judge.

MIN F. Muthambi: Okay. Then did you, were this shortcoming in you brought to your attention then at 2011?

Ms Kgoele: Minister, they were not brought to my attention. And as a junior judge, as you had indicated I would have expected my senior to have called me to talk about them on a one and one basis as a leader so that if they are a serious concern then I should change. I should be able to change. It, like I have indicated in my letter, I was very much surprised about the manner in which they came out. Especially because as I have indicated in my letter it appears that they came after I received some positive comments from other professional bodies. And ... [interjects]

MIN F. Muthambi: And then, okay, sorry.

Ms Kgoele: I respect the concern that were raised by my JP, but I would have appreciated if they could have been brought to my attention as you have indicated. Unlike coming out to the public as it is, and I am expected to respond to it in public. More importantly in a short period of time that I was requested to respond to it whilst I was preparing for my interview.

MIN F. Muthambi: Are you done? Okay. Let's go to 5.1, page 6 of the complaints.

CJ M. Mogoeng: Commissioner Notyesi? Are you raising something?

COMM Notyesi: [1:34:10 inaudible]

CJ M Mogoeng: Continue Minister.

MIN F. Muthambi: It is the same document dated the 1st of April, for the benefit of my fellow commissioners. I started by congratulating you being the president for both the South African chapter and the Regional body. I think you need to also school us here where we are seated to say, my understanding that you are accountable to that body. Maybe you'll have to school us to say how did it happen now in your area of work then you have to, the complaints. Can you link it with the complaints as is indicated here? To say there is complaints from the North-West Magistrate who are members of the organisation that a list of aspirant judges was submitted at that division of the High Court. My understanding was that you are the president so all women in, can you explain to us then how does it relate then to work there as a judge in North-West Provincial Division?

Ms Kgoele: I was also surprised as a president. Because as I've already indicated we are having various provinces, we are having structures in various provinces where in my view if there are complaints they should be directed to those structures so that they can ultimately come to me as a president. But as I've indicated in my reply. We haven't received those complaints what is even worse is that although I did not indicate it in my reply is that in November last year I conducted a leadership training programme to the members of the executive committee and to the, what I have already indicated or termed the provincial coordinators. In that training we also had a meeting talking about the issue of list provincial coordinators to provide lists even explaining to them how to go about doing that and submitting it to their committee that is responsible for sifting the said names and further that they should do that by the end of January. At that particular time, I may also indicate that during that time we had already received a letter from the JP of the Free State and that is why we were even encouraging the other provincial coordinators to do as we were requesting them so that we may fast-track the sending of the list to other JP's of other provinces. So, I was caught by surprise by this complaint when we had that meeting as late as last year November. And I haven't received any complaint up until now.

MIN F. Muthambi: My last one, is annexure E. You have annexure E, under complaint?

Ms Kgoele: Yes.

MIN F. Muthambi: I am trying to check with my fellow commissioner nearby whether it is only mine that is incomplete. She's confirmed it's not only mine. Did you get the one with the signature of the author of the letter, cause that we are having ... [interjects]?

Ms Kgoele: This, the annexure E here it is not complete, but I think I have a complete one, I am not sure. It's not complete on the letter of complaints.

MIN F. Muthambi: The question is on the letter, on the complaint. So, you have seen the what the complete one?

Ms Kgoele: Not on the letter of complaint. But I know that the contents of the second part was. But on the letter of complaint, it was not on.

MIN F. Muthambi: It was not complete.

Ms Kgoele: Yes.

MIN F. Muthambi: Okay, but I think you have already given your version.

Ms Kgoele: Yes.

MIN F. Muthambi: What that meant, is meant to be. Can you share with us is there things that we don't know when it comes to the relationship between yourself and your supervisor? Because that is very key. We've made our own observations, but I don't think it's to say, is there any cordial working relationship between you and your supervisor?

Ms Kgoele: In my view, yes.

MIN F. Muthambi: Okay. That's it.

Ms Kgoele: Pardon?

MIN F. Muthambi: Is that all?

Ms Kgoele: Yes. I was only surprised to receive these complaints which I had initially indicated that they came as a surprise as belated as they are. Dating back from 2011, but I was not apprised of them and they came as a surprise.

MIN F. Muthambi: Are you not aware of any complaint against you to the JSC on your conduct?

Ms Kgoele: There is none up to this far. I don't have any. Unless I was not made aware of it.

MIN F. Muthambi: Thank you, Madam Judge. Thank you.

CJ M. Mogoeng: Judge Kgoele, have you always had a healthy relationship with the JP? Because I had asked, remember I said, with colleagues are there no problems. Have you always had a healthy relationship?

Ms Kgoele: In my view, yes.

CJ M. Mogoeng: What about, oh I am sorry I interrupted you.

Ms Kgoele: A healthy relationship, yes Chief Justice. But in a work situation, you may find that sometimes you differ.

CJ M. Mogoeng: Yes, you don't have to be friends.

Ms Kgoele: Yes.

CJ M. Mogoeng: What happened as a result of her objection to your appointment as a judge. Remember it was a public matter, JCS matter, she raised an issue about your suitability. What did that still allow a healthy relationship to flow between the two of you?

Ms Kgoele: Yes JP.

CJ M. Mogoeng: Because it was reported in the media.

Ms Kgoele: Yes JP, because if you can look at it, it is no 8 to 9 years that I have been working with my JP, and ...[interjects]

CJ M. Mogoeng: Yes, but there was no misunderstanding?

Ms Kgoele: Yes.

CJ M. Mogoeng: The relationship was just healthy.

Ms Kgoele: Yes, except where I was probably differ like you can see where the letters that she has attached them in as far the DPP where I said I did not understand this, I understand it that we, cause in my view.

CJ M. Mogoeng: Yes, 'cause I just wanted to get clarity. She, the way her letter is structured, the way yours is structured, the way she puts questions to you, the way you respond. Yes, JP. I don't get a sense that there is a healthy working relationship between you. There seems to be a lot of sarcasm going one way or the other. Yes, JP... and the way she puts questions to you seems to be in a cross-examination or a way there seems to be something. An unscientific, I don't understand, are you sure there is a healthy relationship between you?

Ms Kgoele: Yes, Chief Justice.

CJ M. Mogoeng: Thank you. Commissioner Msomi?

COMM S. Msomi: Thanks, Chief Justice. Good evening Judge.

Ms Kgoele: Good evening, Honourable Commissioner.

COMM S. Msomi: Thanks for calling me Honourable.

[laughter]

COMM S. Msomi: Have you had an opportunity to act in that division as Judge President or Deputy Judge President?

Ms Kgoele: No, Commissioner I have not.

COMM S. Msomi: Following-up on the question that the Chief Justice has just raised now. What could be the reasoning behind the letter that the JP has put up in as far as you are concerned and your suitability for this position?

Ms Kgoele: Honourable Commissioner I do not know. More especially because I don't know why the JP wrote that. I cannot answer for my JP because definitely, I am not in her mind.

COMM S. Msomi: Do you communicate with your JP via her secretary?

Ms Kgoele: In cases where I went to her and did not find her yes, I do. But in most cases, I communicate with her.

COMM S. Msomi: On a face to face basis?

Ms Kgoele: Yes.

COMM S. Msomi: Is someone had to ask you if you do command respect from your colleagues in that division, what would your response be? Either as a jurist, as a leader and so forth? What would your comment be?

Ms Kgoele: Can I ask for clarification. If you are saying colleagues are confining it to the judges?

COMM S. Msomi: To the judges that you work with. Your peers?

Ms Kgoele: Yes. I will say yes, I do.

COMM S. Msomi: Will the, in that case then, would it be a celebration of some sort if you were to emerge out of this process as the Deputy President of that division?

Ms Kgoele: Yes, I hold that view.

COMM S. Msomi: And finally, in your own words, there are two candidates vying for the same position. What sets you apart from the other candidate. Why you? Why should you emerge as the Deputy Judge President? Thank you, Chief Justice.

Ms Kgoele: Should I continue in the absence of the Chief Justice? Firstly, it's is because I am an experienced judge, jurist. Secondly, I had various leadership and management positions although as you indicated Honourable, but it was in as far as the lower courts are concerned. Secondly, I mean thirdly, I have an advantage because I am a woman, but I am not necessarily trying to say that I should be appointed because I am a woman. But I am trying to say that I am a woman who is competent and who has potential. The other reason is that, as we had indicated. There are no, the transformation in as far as woman in leadership position it is going at a pace which is very slow. My appointment will enhance the transformation in as far as leadership positions is concerned. And it will enhance the trust that the community has on the judiciary. Again, if you appoint me then the community will also see that the JSC it is serious about transformation. Lastly, I can say that it will be history in the making that a Judge President and DJP are women.

COMM S. Msomi: Sorry just a final one, because it is a follow-up. It's a follow-up. The follow-up question is basically, it is very clear from the documentation that has been produced, fairly or unfairly that the person that you are going to work with for

lack of a better word, I am going to say, she regards you as a problem child. How are you going work with someone who regards you as a problem child? Thank you.

Ms Kgoele: As Judges, we have to be professional in our work. Very professional. Unfortunately, we are judicial officers. As a DJP I am supposed to support the JP. The JP will remain as my senior. Whom I expect to delegate work to me. Which I will do as I had already done in the past, it works. If you can look at it the complaints are not that I am not a fit and proper judge. They do not relate even to my judicial work. So, it means I work professionally, I do my job when allocated. I will not even refuse to do my job.

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

COMM A.J. Nayambi: Thank you CJ.

CJ M. Mogoeng: Before Commissioner Nayambi goes, we still have two more candidates and we are not leaving until we are finished.

COMM A.J. Nayambi: I'll make it simple. I'll ask just one question. The other questions have been canvassed. Evening Judge.

Ms Kgoele: Good evening Honourable Commissioner.

COMM A.J. Nayambi: I've seen that you've attended a number of workshops. I am interested in the one that was combatting corruptions and enhancing integrity in the judiciary. My question is, do we have corruption in the judiciary and maybe share with us two outstanding things that you learn out of this one. Thanks, CJ, that is my only question.

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

Ms Kgoele: The first question it's I am not aware of any corruption in the judiciary.

CJ M. Mogoeng: Commissioner Norman? Oh, are you still answer, Mam?

MALE: Yes, still answering.

CJ M. Mogoeng: Oh, the pause was too long. I thought she was done. Yes.

Ms Kgoele: I was trying to recollect my thought because it is long time ago when I attended this combating of corruption what I learned in that workshop, because if I am not mistaken it was in Mauritius, I learned that it is not South Africa only which was having a serious concern about the issue of corruption. Other countries, like Mauritius and the other that were there, also shared their experiences in as far as that is concerned. So, although I said it is not there, I am not aware, but it is a concern that all the countries are grabbling with.

CJ M. Mogoeng: Have you completed colleague?

Ms Kgoele: Yes.

CJ M. Mogoeng: Thank you. Commissioner Norman.

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

Ms Kgoele: Good evening Honourable.

COMM T. Norman: Sorry, just one question. I just want to know between the years 2014 up until January this year did you ever get to hear anything from the JP that look you are giving me problems, you are not doing things that I want you to do?

Ms Kgoele: No.

COMM T. Norman: Thank you.

CJ M. Mogoeng: Thank you. Commissioner Mampuru?

COMM Mampuru: Ke a leboga Chief Justice. Dumelang Mme.

Ms Kgoele: Dumelang [1:53:40 vernacular].

COMM Mampuru: Can you stand criticism? And are you able to take unpopular decisions? That is question number one. Number two, can you define to this commission what you call a phenomenal woman? Thank you.

Ms Kgoele: Yes, I can stand or accept criticism. Yes, I can take unpopular decisions. Maybe I should even cite an example that is in this complaint.

COMM Mampuru: I'll appreciate that.

Ms Kgoele: Where I was sitting in an appeal as a full Bench. And where we had taken a decision to postpone a matter but then it appears that it was a concern but it, as if it is an unpopular decision because later, yesterday I received another complaint about that very same case. So yes, I can take an unpopular decision, but I do not as a judge, as a judicial officer I do not take a decision without inform facts.

COMM Mampuru: A phenomenal woman?

Ms Kgoele: A phenomenal woman is a woman that can accept criticism and even take unpopular decision whenever necessary.

[laughter]

COMM Mampuru: I am not satisfied with that response. Can you elaborate a bit? You are given me the same.

Ms Kgoele: A phenomenal woman it is a strong woman who is courage's, who has leadership qualities, who can stand his ground, and finally is able to make or take decisions.

COMM Mampuru: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Mampuru. Commissioner Mutitele

COMM Mutitele: CJ I thought I'd ask about the phenomenal man, but I don't think it will assist sisters to come to the conclusion, so I'll pass.

CJ M Mogoeng: Thank you Commissioner Notyesi?

COMM Notyesi: Commissioner Msomi had covered my questions.

CJ M Mogoeng: Thank you. After all this, can you really. Sorry is it you? Ja, sure. Commissioner Masuku? And then you JP.

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

Ms Kgoele: Good evening Commissioner.

COMM T. Masuku: What really keeps you going as a judge?

Ms Kgoele: I have passion in doing my job. I am a hard worker and I think the experience that I gathered spun over 20 years and keeps me going as a Judge.

CJ M Mogoeng: Are you done, my brother?

COMM T. Masuku: Yes. Thank you.

CJ M Mogoeng: JP?

JP M Leeuw: CJ I just want to clarify certain issues which will create some misunderstanding when we leave here. At the time when Judge Kgoele came for an interview when she was appointed as a judge. I didn't file an objection. The letter of objection wherein it was stated that she needed more time to act came from you CJ ... [interjects]

CJ M Mogoeng: I am the one who objected.

JP M Leeuw: Yes. So, what happened I was punished, because at that time I wasn't even appointed as a Judge President.

CJ M Mogoeng: Okay.

JP M Leeuw: I was acting as a Judge President and the effect thereof was that when we went back to the division now, and she was appointed. We, even up to now, it is not true that we are having a good relationship. She has on and off days. Two days she can come to the tearoom she doesn't talk to anybody, and the fourth day she is okay. So those are the experiences that we have. And I don't want to mention the name because now we are in the public meeting, but there is one other judge who sided with him. If I give the colour of that judge, it will clear who I am talking about.

CJ M Mogoeng: No, I think that that... [interjects]

JP M Leeuw: Yes, that is what I wanted to clarify ... [interjects]

CJ M Mogoeng: So, in a nutshell, the relationship is not healthy between the two of you?

JP M Leeuw: No, it is not.

CJ M Mogoeng: Okay, I think that is fine. Judge Kgoele just comment on that before we excuse you.

Ms Kgoele: It is unfortunate that my JP says that, but I still maintain I don't have any ill feeling or grudge against my JP. I think in my view as I have already explained that the relationship is good. And it had, she had added this are like this other one that are just coming out now, which were not even brought to my attention, but I don't come to the tearoom. And now if I say, I'm going to say that is not true then it will my word and that of the JP I don't know how it will affect finally come out.

CJ M. Mogoeng: Yes. Well thank you... [interjects]

Ms Kgoele: But it ...

CJ M. Mogoeng: No, no please say what you want to say.

Ms Kgoele: If I may add it's if they are a serious concern as I've indicated earlier even as in far as conduct it is concerning. I think it should have been long, brought to my attention and even reported.

CJ M. Mogoeng: Yes. Thank you very much, Judge Kgoele. We apologise for keeping you this long. You are excused now.

Ms Kgoele: Thank you.