



# JUDGES MATTER

## **Judicial Service Commission interviews**

**09 April 2018.**

### **Supreme Court of Appeal**

#### **Interview of Judge E D Baartman**

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CJ M. Mogoeng: Good afternoon Judge Baartman. Please switch on the mic. There is some -- just keep on pressing, it will come up.

Judge E. Baartman: Good afternoon Chief Justice.

CJ M. Mogoeng: Are you -

Judge E. Baartman: Good afternoon Commissioners.

CJ M. Mogoeng: -- Are you well?

Judge E. Baartman: I am well thank you.

CJ M. Mogoeng: Where did you do your first degree?

Judge E. Baartman: At the University of the Western Cape.

CJ M. Mogoeng: Yes, and how long did it take you to complete that degree? The first one?

Judge E. Baartman: That is one I did not complete. I think I took 4 years?

CJ M. Mogoeng: Four years?

Judge E. Baartman: To complete, yes.

CJ M. Mogoeng: And the next one? Was that BA or something?

Judge E. Baartman: That was BJuris, Chief Justice –

CJ M. Mogoeng: B Juris.

Judge E. Baartman: -- And the second one was my LLB.

CJ M. Mogoeng: Yes.

Judge E. Baartman: And my LLB I completed over a period of 4 years. -

CJ M. Mogoeng: Yes.

Judge E. Baartman: -- I was working I was doing it part time –

CJ M. Mogoeng: Wow.

Judge E. Baartman: -- My B Juris I stopped, we ran out of money halfway and then went back to University.

CJ M. Mogoeng: Wow.

Judge E. Baartman: Yes.

CJ M. Mogoeng: And you soldiered on even if the financial resources were not readily available to help you proceed with your studies smoothly?

Judge E. Baartman: That was so.

CJ M. Mogoeng: And when did you act in the High Court for the first time?

Judge E. Baartman: I started on the 6th of October 2008 and then I stayed there, Chief Justice, until I was appointed in August 2009.

CJ M. Mogoeng: Do you recommend that system or do you think it favours others against – some people against the others? Tell us about that manner of allowing people to act before they make themselves available for appointment.

Judge E. Baartman: I think it is a good system. When I started acting I had already been on the Regional Court Bench and the District Court Bench. You really have to act to see the difference between the High Court and the lower Courts. The level of complexity just is that much higher. To then decide whether you should make yourself available for that.

CJ M. Mogoeng: That is quite interesting because we have had at least one Magistrate, District Court Magistrate come here and say: “We all give judgements, there is no difference between a Judge and a Magistrate. I found it very easy, I am ready, appoint me”. So you really did get to appreciate the difference between the two levels – the different levels of complexities? –

Judge E. Baartman: There are –

CJ M. Mogoeng: -- At the Magistrates level and the High Court level?

Judge E. Baartman: Chief Justice there are levels of complexity. I have risen through the ranks of the Court and I can tell you it is not the same, it is not that easy.

CJ M. Mogoeng: Yes, and did you find warmth, assistance from all colleagues at High Court level when you acted? Or was there some resistance from the likes of me?

Judge E. Baartman: There were resistance, but on the whole, it was a collegial environment and that is what one is looking for, for a collegial environment. –

CJ M. Mogoeng: Yes.

Judge E. Baartman: -- And on the whole, that is what I found at the Western Cape. There was resistance, yes.

CJ M. Mogoeng: How did the resistance manifest itself?

Judge E. Baartman: In my case, I am sure it would not be the same for everyone. Because at the time that I went to act I had been a Deputy at the NPA and the resistance then came from the Bar because I was also on the Judicial – on the Cause for Aspirant Judges and I came from that cause wanting to act but was still permanently employed. So I resigned and once I resigned to come and act that was – I think a lot of people thought it was a brave move because you did not know what was going to happen with the acting. But once I decided to change course in my career then, you know, you have to take the good with the bad. –

CJ M. Mogoeng: Yes.

Judge E. Baartman: -- So I resigned, then I went and started acting. With only one term being offered to me.

CJ M. Mogoeng: Yes.

Judge E. Baartman: But I have never been one to shy away from a challenge or wanting comfort.

CJ M. Mogoeng: We do not have much time available, but I must ask you this question. As you know the principle behind resisting, and it is not accepted by everybody, but the principle behind resisting the appointment of prosecutors to act as Judges is that they are likely to be favourably disposed to the executive. -

Judge E. Baartman: Yes.

CJ M. Mogoeng: -- They are too attached to the executive to be fair-minded when cases affecting the executive come before them. Did you find yourself in some way influenced by your background in dealing with cases involving the State that came before you impartially? Was your impartiality somehow challenged or compromised by reason only of your background as a Prosecutor?

Judge E. Baartman: No. No, it was not. Speaking for myself I was also before being the last stint as a Prosecutor; I then already been on the Regional and the District Court Bench before I went on to the cause and then wanted to act in the High Court. So it was easier for me to see the difference once it was pointed out to me that it is really not something that is desirable –

CJ M. Mogoeng: Yes.

Judge E. Baartman: -- I think it is undesirable.

CJ M. Mogoeng: You also think it is undesirable?

Judge E. Baartman: Yes, that is why I resigned.

CJ M. Mogoeng: Okay. Now for how many years have you been a Judge of the Western Cape High Court?

Judge E. Baartman: Since 2008 in October, when I started acting, to date.

CJ M. Mogoeng: And you were fairly settled as a High Court Judge, you would say?

Judge E. Baartman: Yes, I am –

CJ M. Mogoeng: And for how -

Judge E. Baartman: -- Am confident of that.

CJ M. Mogoeng: -- Yes, and for how long have you acted as a Judge of the Supreme Court of Appeal?

Judge E. Baartman: For 12 months. I started in –

CJ M. Mogoeng: Twelve months. Continuously?

Judge E. Baartman: Continuously.

CJ M. Mogoeng: Is that a system you would encourage? Or are you more for a system that requires of Judges to come act for a term or two terms go back and then have another acting stint?

Judge E. Baartman: I can only tell you what worked for me. –

CJ M. Mogoeng: Sure.

Judge E. Baartman: -- To be there for the year worked for me because it is quite – you have to make changes to your life and to how you work and by the first 6 months you just get into the different system of working. –

CJ M. Mogoeng: Yes.

Judge E. Baartman: -- So it worked for me that my stint there was continuous.

CJ M. Mogoeng: I have heard all sorts of reports about that working environment, the Supreme Court of Appeal which I will not articulate but what is it about the Supreme Court of Appeals as a working environment that you think requires for starters urgent attention, if any, to make acting there or serving there as a permanent Judge accommodating and conducive to anybody, regardless of background, who comes in?

Judge E. Baartman: Chief Justice, the one thing that surprised me was that once you enter the SCA it is as if people forget that you are a Judge. And I think it - or some people, not everybody, please let me say –

CJ M. Mogoeng: Sure.

Judge E. Baartman: -- Some people forget that you are a Judge. And I think if people can just accept that the person coming there has been a Judge for five, six, in my case longer years and has consistently – speaking for myself – performed satisfactorily at the High Court to have people in the profession say this person should be considered for acting at the SCA as happened in my case. You do not come from the street when you come to the SCA, you are a professional, you have already proved yourself in a profession before – in the profession before you are elevated to the Bench. And then in the High Court, you have also proven yourself. So one should not start from the premise that X does not know what they are doing or will probably not fit in.

CJ M. Mogoeng: In practical and easy to understand terms; how does this attitude manifest itself? What do people do to make you feel that you do not belong? You are an intruder of sorts “this is our space, you should not be here, it is others who should rather be considered to come and act here”?

Judge E. Baartman: Chief Justice it is in the way people deal with you as a colleague and the judgements that are allocated to you as a scribe.

CJ M. Mogoeng: What kind of judgements are allocated? To who – without mentioning names, categories rather?

Judge E. Baartman: Categories. If a person is considered worthy – for lack of a better word – they will be allocated in the normal cause of events. If not, the allocation is more different, and also one sees the expectation of your judgements. That people are surprised that you can write – I mean, you – you would think this is a fairly straightforward judgement I am surprised that are surprised that I can write. Yes.

CJ M. Mogoeng: Anything else that is of concern that needs urgent attention?

Judge E. Baartman: No, Chief Justice otherwise the people going there must know that, as with everything else, you are a newcomer and if need be you need to prove yourself again, but you are a professional you have done that – in my case, you know – rising through the ranks. I have done that many times so this is no different. It is a different environment and there are different rules.

CJ M. Mogoeng: Yes. What convinced you that you are ready for the Supreme Court of Appeal? Notwithstanding the challenges you have alluded to and probably others that you might be uncomfortable to articulate?

Judge E. Baartman: Chief Justice having been there for the year I was able to do the work. I was in many matters there. I was even in the Oscar Pistorius matter. I was involved on the panel. Many people did not think I should be on the panel, by teatime –

CJ M. Mogoeng: Which many people? At the Court or elsewhere?

Judge E. Baartman: -- At the Court. I am talking specifically talking at the Court that an Acting Judge should not have been part of that panel. By teatime, I had changed people's minds, so that. In addition to that, I am committed to see something from beginning to end, an example of recent – I wrote a judgement in our Court now, on the 10th of February 2017 about the inappropriateness of using Section 112(1)a for shoplifting. On 16 February, the State Prosecution circulated that judgement for notice to all their Prosecutors. On the 17th of February, the Magistrates circulated

that judgement among themselves. Shortly thereafter the Magistrate of the Strand contacted me, thanking me for the judgement and explaining a problem that they have. We worked out that she should then collect some of the days that they complain about and send them to – I discussed it with my JP and then my DJP and followed the process. Shortly thereafter forty-seven appeal records landed at the Court. My Registrar navigated the process as I discussed with my JP before; he allocated the matter. I then had nothing more to do with it. On 9 March the Review Court set aside forty-two of those judgements and the Court remarked that it was a travesty of justice that peoples spend time in prison for such petty offences. Peoples liberties is something I do not take for granted, even at that level I was prepared to see that case through from beginning to end.

CJ M. Mogoeng: President Maya?

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

Judge E. Baartman: Good morning President Maya.

PRES M. Maya: You have previously interviewed for this position and the Chief Justice has covered most of my questions, so I do not have much to raise with you. First, I just want to pick up on your comment in response to a question put to you relating to the manner in which Acting Judges are treated in the Court. The issues you raised are valued and there are some of the things I am fighting to change in that environment. Now, I want to ask you how? Just give me a practical solution, how would you advise me to help change those attitudes?

Judge E. Baartman: One of the things that I found startling there was the second term that I was there when roll came out Senior Judges had nothing to write. It was the embarrassment of the day. I mean, it is unbelievable that there was a Senior Judge with nothing allocated to that person to write. So I think if you can start there. Just the time when the roll comes out already, it is like twitter going around the place X has got nothing to write, A has got nothing to write - that they cannot be right. I have just been involved with [Not clear] for the compiling a Guide for Judgement Writing for Judges. It is a project that lasted over time and we have just handed in

our completed project, a Guide to Judgement Writing for Judges before the end of this year every Judge – every Magistrate and Regional Magistrate in the country will have a copy of that guide. Now you cannot say that a person who can be involved and can complete such a document cannot write a simple judgment. When you are talking about permanent Judges as the SCA, even more, I saw peoples very integrity, their confidence levels dropping on the day the roll came out.

PRES M. Maya: Well I can assure you that that one aspect has changed. -

Judge E. Baartman: Thank you.

PRES M. Maya: -- I have taken full control of work allocation in the Court and everybody, all the Judges in the Court, gets a fair stab at writing judgments so it is not an issue anymore. Is there any other suggestion you could give me?

Judge E. Baartman: No –

PRES M. Maya: All right.

Judge E. Baartman: -- That was it. Thank you.

PRES M. Maya: The other thing I wanted to ask you relates to a concern expressed by my predecessor, President Mpati when you last interviewed for this very position.

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Judge E. Baartman: Yes.

PRES M. Maya: -- He expressed a concern that you had not – you still needed your – as he put it you needed time to hone your skills and he was thinking of giving you more acting stints. Because he felt that you were not ready for the Court, and according to my calculation you had already been at the Court for three terms -

Judge E. Baartman: Three terms.

PRES M. Maya: -- And where in your fourth term -

Judge E. Baartman: Yes.

PRES M. Maya: -- Just to finish a year. A very short term, four weeks really. How would you respond to that concern?

Judge E. Baartman: Judge Maya – President Maya sorry, I would at the time my response was, and it still is; that I do not agree. That I was ready then and I am even more ready now to take up a permanent position at the SCA. I have come through the ranks of the Court. I have physically grew up in the Courts in my career and I bring an independent mind to the Court. But a mind that is informed and I am also open to be persuaded by colleagues and can admit when I have come to the wrong conclusion. But I also try and strive for the right conclusion. But you have seen me change my mind and say I was wrong, I can do that. And that is what that Court needs. That is a mature attitude towards any matter that is allocated to you.

PRES M. Maya: Well I can vouch for your willingness to be persuaded otherwise because I remember you and I sat in a contentious matter and you had taken a certain position but ultimately, we all agreed to go a unanimous road. -

Judge E. Baartman: Yes.

PRES M. Maya: -- And I admire that, allot.

Judge E. Baartman: But you will also remember that in that matter I said give me overnight to reconsider my decision.

PRES M. Maya: Yes. Now the other thing, I am almost done. The other concern that has been raised about you is that – well not here before -

Judge E. Baartman: Yes.

PRES M. Maya: -- But it is a general impression amongst some colleagues in the Court that your skills, your judicial skills lean more towards the criminal law side and that you may not be adequately competent to deal with the wide range of difficult Constitutional and Civil Law questions that are frequently brought before the Court. What is your answer, would you respond to that charge?

Judge E. Baartman: Judge Maya, nothing that happens in no matter that appears in the SCA is not something that I would or could have dealt with in the High Court. I have been on the High Court Bench since 2008 to date, only three of my matters has been interfered with on Appeal. That must with respect show a consistency to get it right first time.

PRES M. Maya: Last question. Another concern is that the volume of your reported judgements considering the time you have been a Judge is rather too low and that makes it difficult to assess whether you have what it takes to become an Appellant Judge.

Judge E. Baartman: President Maya, the judgement that I just referred to where the Prosecutor circulated it, the Judge at the Magistrate circulated amongst themselves and resulted in forty-two convictions and sentences being set aside was also not reported. I think once we set up our own system of reporting you will see a lot more of me. I do not know what the criteria is but it is most certainly not for lack of skill on my part.

PRES M. Maya: Thank you Judge Baartman. Thank you, Chief.

CJ M. Mogoeng: Thank you, President Maya. Commissioner Msomi.

COMM S. Msomi: Thank you so much CJ. The first question is going to be a followup to the question that has been raised by Judge President Maya, and that relates to the comment that has been made by the GSB with regards to what they call your failure in any way to develop Common Law over the last few years when you have been a Judge? Are you able to tell this Commission if you have written any judgements during your tenure which has developed our Common Law?

Judge E. Baartman: Can I just – Commissioner in answer to that question and the comment of the GCB my response is this; the matter that they are referring to was a matter that was in the High Court twelve months earlier and confirmed by the Supreme Court of Appeal. The matter came before me now with the precedent from my own Division and a precedent from the SCA and I am criticised for not having developed the Common Law in that case. The SCA has at recent as March 2008 spelt out the necessity for precedent and for us complying with precedent a Judge is not above the Rule of Law. Unless you convinced that the judgement has gone before you in your own Division and the SCA are clearly wrong you are bound by those. The Common Law is developed in line with the Constitution. The Constitution Guidelines is for us to comply with. If that means that you do not get to write popular judgements, so be it. But it does not mean that you can just ignore the prescripts of the Constitution. We are all subject to the Rule of Law.

COMM S. Msomi: So the long and short of it is that you have not written any judgement that has developed Common Law?

Judge E. Baartman: Not in the sense that they are asking for it.

COMM S. Msomi: Last question because we have been allocated two question each. Is a question that has been raised by the Black Lawyers Association when they were asked to comment about you. Their major concern is that when you look at the progressive organisations that are involved in the transformation of the legal profession and the judiciary which are mainly NASAPO and BNA your name does not appear at all. Are you able to respond to that concern raised by them?

Judge E. Baartman: Yes, I would like to respond to the concern. I have been active in the profession for a very long time. Members of BLA has been recipients of my involvement to the extent that I have mentored some when they came acting as recently as last year I made myself available to an Acting Judge who came left and was really drowning in reserve judgements. I made myself available over weekends

and said Sunday afternoons I am also available. I have not joined organisations, but I have most certainly been there for the profession.

CJ M. Mogoeng: Judge in fairness to you, I think what the Commissioner seeks to know is; as a matter of principle is there any reason why you did not make common cause with organisations broadly regarded as progressive? Seeking to advance the interest of the previously disadvantaged lawyers? Is there any reason? Do you have an explanation?

Judge E. Baartman: I –

CJ M. Mogoeng: What about the good that you might have done? Deliberately or coincidentally?

Judge E. Baartman: -- I have attended the functions of both organisations. I regularly interact with them, although I have not joined them physically. But I have certainly not been absent from the activities.

CJ M. Mogoeng: Commissioner Singh?

COMM N. Singh: Thank you very much, Chief Justice. Excuse me I have got a cold. Judge Baartman. I think I have been largely covered by President Maya and Commissioner Msomi but to refer one matter Chief Justice to Judge Baartman. I do not know if you can recall the Grootkraal Primary School matter and the matter of -

Judge E. Baartman: Yes.

COMM N. Singh: -- Eviction? Now my information is that this matter has been outstanding for five or six years now and there have been a lot of case management, and that is something we were talking about earlier – you have, you know, consultation and consultations but it hasn't been brought to finality. It is about eviction and there is concern that this matter is taking far too long, and they are not getting a response from the Judge in this regards. If you can just comment on that. Thank you.

Judge E. Baartman: Okay. Commissioner that matter – you will hear when the matter was argued counsel for the applicant thanked me for taking the matter by the horns and forcing the parties to finally get somewhere with that matter. The one part of the judgement has been written and that is on appeal. Judge Hennie made an order in 2011. The Education Department has to date not complied with that order. I have made an order that they should comply with that order of the 2011 and that order compels the department to make a decision about the school and then follow the proper procedure with the consultations with the community. That has not been done and I was asked to override that order. Orders of Courts should be complied with. Judges are also to see to it that their own orders are complied with and not being compliant in court orders not being complied with.

COMM N. Singh: Thank you, Chief Justice. Thank you, for clarifying that Judge Baartman.

Judge E. Baartman: Thank you.

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

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

Judge E. Baartman: Good afternoon Commissioner.

COMM Fourie: I have also been largely covered but I am concerned, and I need to share it with you and give you the opportunity to respond thereto. I am concerned that from the comments, and also the previous time we interviewed you to which President Maya referred, there seems to be a concern of whether you are really ready to be a Judge of the Supreme Court of Appeal and without referring to what has been referred previously the Black Lawyers Association in their conclusion which you have read says: “The BLA is not convinced that Judge Baartman has demonstrated that she is ready to be appointed at the SCA and as such BLA does not support her appointment to the SCA”. Then the General Council of the Bar says: “The judgements the candidate wrote during her tenure as an Acting Appellant Court

Judge at the SCA are brief or did not reverse legal or factual issues of any complexity and so were not in the opinion of the team particularly helpful in assessing the candidate suitability". And then the last quote from the GCB it says: "The candidate failure to engage substantively on Constitutional issues or develop the Common Law suggests that the candidate lacks the sort of jurisprudential record indicative of an aptitude for Appellant level jurisprudence". That is what I was referring to when I started engaging you and it concerns me and I think you should be afforded the opportunity to try and allay those concerns that have been expressed.

Judge E. Baartman: Thank you, Commissioner. Through the Chief Justice, one of the concerns that the GCB raised was a matter where the legislature came and said; this Section of the Act is unconstitutional. We agree with the applicant - the section of the constitution - of the Act is unconstitutional. We have redrafted that Section, here it is. Everybody agrees that in its new form it will be constitutional. This is waiting to be Gazetted we just need that procedure. In those circumstances where the matter is not opposed everybody agrees to expect the Judge in those circumstances to write a long judgement and display my skill in Constitutional Law really is unfair. And I think it is not appropriate. It is not in dispute. Everybody agreed to that. When you have an opportunity to – the facts are what they are. You cannot make the facts more, you cannot go on two – for pages and pages of an issue that is not in dispute. The second issue that they talked about was an issue where once again once you have an agreement between parties there is no need for you to make more of the case than what there is. The cases that I have written in the – the matters that I have written that are included in the bundle one of the matters looks very easy, but it is not very, it was not very easy. In fact what happened in that matter was that the accused was sentenced a suspended sentence. He did not comply with all the conditions of suspension, he came back to Court and the Magistrate imposed a different sentence. We were then faced with setting aside that because the Magistrate was not allowed to do that. But in such a way to make sure that the accused is not again – when he is again convicted for theft does not end up serving a seven-year prison sentence when he is sentenced to prison for six months. The order that I suggested at the end might look simple. I had some convincing to do of my fellow Judges on that panel to say: "It is not that simple. We have to take this

person out of the jurisdiction of the Magistrates Court and make sure that he only faces the sentence again when he is in the Regional Court. When different considerations will apply.”

COMM Fourie: So in your conclusion, you say that those negative remarks are –

CJ M Mogoeng: Your mic is off Commissioner.

COMM Fourie: Sorry, thanks, Chief Justice. So your conclusion is that those concerns by some of the Law Bodies are not justifiable and we should not consider them in considering your suitability to be appointed there?

Judge E. Baartman: I am saying in the cases that they have mentioned it is not justifiably consider that I have been on the High Court Bench for almost a decade and only three of my matters have been interfered with on Appeal. It is a tendency to get it right first time.

COMM Fourie: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Fourie. Commissioner Nayambi?

COMM A. Nayambi: Thank you CJ. Afternoon Judge Baartman.

Judge E. Baartman: Good afternoon Commissioner.

COMM A. Nayambi: It is one question. It is in relation to your first attempt to get to CA and now, anything that you think can stand out that is significant that we must seriously consider for your suitability for SCA that has had happened between then and now?

Judge E. Baartman: The case that I just mentioned about the forty-two matters that was then set aside, I think is something that must inform my suitability and my commitment to the Rule of Law and justice for all people. These forty-two people are people who would ordinarily never been seen or heard.

COMM A. Nayambi: Is that the only thing?

Judge E. Baartman: That is the only thing.

COMM A. Nayambi: Thank you CJ.

CJ M. Mogeong: Thank you Commissioner Nayambi. Commissioner Norman?

COMM T. Norman: Good afternoon Judge Baartman.

Judge E. Baartman: Good afternoon Commissioner.

COMM T. Norman: Following up on the question that the President of the Court has asked about the former President suggesting that maybe you need more acting stint, my concern really is you have been away from the Supreme Court of Appeal for almost two years now. How have you kept abreast of the developments in that Court which would not necessitate according to you another acting stint?

Judge E. Baartman: You can see that I have just answered that as early as March this year the Court granted a judgement that supports my view on dealing with precedent. Remember that the SCA deals with appeals only specific appeals, the issues are very narrow that they come there. In the two years since I have been there, I have been doing the matters that end up on their desk eventually.

COMM T. Norman: Thank you, Chief Justice.

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

MIN M. Masutha: Thank you, Chief Justice. Good afternoon, Justice Baartman.

Judge E. Baartman: Good afternoon Minister.

MIN M. Masutha: At this point in time the composition of the Cape Bar is such that less than 20 members of that Bar are African, out of over 400 members of that Bar.

Judge E. Baartman: Yes.

MIN M. Masutha: Less than 70 actually 68 to be exact are black generic. A recent nomination list for silk consisting of 17 candidates, only one of them was black generic, incidentally, African who is a member of this commission, Advocate Maseko. The same position was three years ago in 2015, where out of the 17 or so candidates for silk only 1 was black generic. This projects that Bar is one of the least transformed but the worst of the least transforming Bars that I am aware of. Now, having been part of the legal community in the Western Cape as long as you have been, what is it in your opinion, do you believe, can be done, should be done, ought to have been done a quarter of a century into democracy to transform the demographics in the profession generally so that it can become an effective feeder into the transformation of the judiciary?

Judge E. Baartman: I think the Government as one of you biggest litigators is probably one of the biggest culprits there. When I left the NPA, about four of my colleagues with me left and went to the Bar. They complain – you ask them how they are, one has left the Bar in the interim and they just not being briefed. The State briefs continuously still white males.

MIN M. Masutha: So in your opinion, the solution lies exclusively in the State changing briefing patterns in the Western Cape? -

Judge E. Baartman: No, no.

MIN M. Masutha: -- Or does it take it more than that? I just want to -

Judge E. Baartman: No, no –

MIN M. Masutha: -- Get your full answers.

Judge E. Baartman: -- Sorry, I did not say it, I said that can assist the problem. If the matters that the state use –

MIN M. Masutha: In other words, my apologies Chief Justice, I wanted you to give me a much more holistic picture which I believe given the length of time you have been in the legal profession generally within the Western Cape you should have a bird's eye view of the environment there. So that you look at it, if you can, more holistically. I accept the issue and the responsibility of the State and I am not downplaying that.

Judge E. Baartman: Minister people are very resilient but if you are not briefed, if you are not getting an opportunity to be seen in the high-profile cases you – people do not have confidence in you to brief you in other matters. The State can assist black advocates in the briefing patterns. In getting them exposure, because that what you need as a lawyer is exposure so that other people and private firms can have confidence in you. People leave the Bar because they are not being briefed. There is nothing wrong with them. There is nothing wrong with their skills. There is nothing wrong with their argument – their ability to argue, to articulate themselves, to write, to interact in the Court. But if they are not getting briefed there is nothing they can do. They leave the Bar.

CJ M. Mogoeng: You have exhausted your quota Minister.

MIN M. Masutha: I -

CJ M. Mogoeng: It was to elaborate to cover four questions. I am just trying to be fair to everybody.

MIN M. Masutha: Sorry, I did – I miss something Chief Justice?

CJ M. Mogoeng: No I am saying your questions Minister were too long to –

MIN M. Masutha: All right.

Judge E. Baartman: -- Cover even four questions.

MIN M. Masutha: The difficulty is that I don't think my question has been properly understood and engaged because it focuses on the aspect of this –

CJ M. Mogoeng: No I understand but you factor that into your portion of time. –

MIN M. Masutha: All right.

CJ M. Mogoeng: -- As you put questions you will -

MIN M. Masutha: All right I will –

CJ M. Mogoeng: You will -

MIN M. Masutha: I will leave it there.

CJ M. Mogoeng: thank you so much Minister. Thank you. Judge President Japie.

JP A. Japie: Thank you, Chief Justice. Judge Baartman what is your view and value of a dissenting judgement?

Judge E. Baartman: It depends on the issue dealt with in the dissenting judgement. If it is an issue of law or an issue of principle, then a dissenting judgement is a very important judgement. I was involved in a matter in the SCA which followed the precedent -

CJ M. Mogoeng: Wouldn't you just want to confine yourself to the answer if you want further clarification –

Judge E. Baartman: Okay -

CJ M. Mogoeng: -- They can follow up.

Judge E. Baartman: -- They can ask for it. I think it helps develop the Law and future Courts might use that if it is an issue of principle or an issue of the Law.

JP A. Japie: My next question is this and it is purely for the Judges sitting at first instance who looks to the Supreme Court of Appeal to give guidance on what has become very complex procedural matters in Courts below -

Judge E. Baartman: Yes.

JP A. Japie: -- And it goes to various questions that had been put to you about your lack of experience do you think at this stand you could give guidance to the lower Courts on complex procedural issues bearing in mind you have never been in private practice, is that correct? And your experience of the Bench was limited to criminal matters and it appears family law matters. Keeping that in mind what would your answer to my question be?

Judge E. Baartman: Keeping that, with all of that in mind I say: "Yes. I am perfectly in a position to do that. In fact, I am well placed to do that".

CJ M. Mogoeng: One last question I want follow-up. What is it about you that moved Justice O'Regan to support your appointment?

Judge E. Baartman: It was because –

CJ M. Mogoeng: -- Is it friendship? Is there something else? What is it that convinced her that you are the right – if you know?

Judge E. Baartman: The Centre for Law and Society was moved, I think, by my involvement they are in the Western Cape. They see and hear the comments about me. About my behaviour in Court. They read a lot more of my judgements than are our in the Law Reports and that is why they supported me.

CJ M. Mogoeng: Thank you very much Judge Baartman. You are excused.

Judge E. Baartman: Thank you, Chief Justice. Thank you. Commissioners.