



JUDGES MATTER

Judicial Service Commission interviews

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

Interview of Judge B M Pakati

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Judge BM. Pakati: Good morning Commissioners, oh afternoon, I'm sorry.

Chief Justice CJ M. Mogoeng: Good morning. It is Judge Pakati?

Judge BM. Pakati: Yes.

Chief Justice CJ M. Mogoeng: Good afternoon Ma'am. Are you well and relaxed or a bit nervous?

Judge BM. Pakati: I am a bit nervous.

Chief Justice CJ M. Mogoeng: Okay, all right. Let me just try to ease you. You were a
magistrate before you were appointed a judge is that correct?

Judge BM. Pakati: That is correct, Chief Justice.

Chief Justice CJ M. Mogoeng: For how many years?

Judge BM. Pakati: I have been a magistrate since 1991.

Chief Justice CJ M. Mogoeng: Until?

Judge BM. Pakati: Until 2012, when I was appointed.

Chief Justice CJ M. Mogoeng: That makes it how many years? 1991 to 2012 is it, is it 11?

Yes, okay and in that capacity as magistrate did you fulfil some leadership responsibilities?

Judge BM. Pakati: I did, Chief Justice.

Chief Justice CJ M. Mogoeng: What did you do - focusing on leadership? What leadership responsibilities did you discharge?

Judge BM. Pakati: In actual fact my leadership duties started when I was a control prosecutor.

Chief Justice CJ M. Mogoeng: Yes.

Judge BM. Pakati: Because I was controlling five prosecutors.

Chief Justice CJ M. Mogoeng: For how long?

Judge BM. Pakati: I think it was from 1990 ...

Chief Justice CJ M. Mogoeng: All right, for about how many years?

Judge BM. Pakati: About, Sir, for about, I was a prosecutor for about 7 years.

Chief Justice CJ M. Mogoeng: Yes, and control?

Judge BM. Pakati: And control maybe about 2, 3 years, I'm not sure now.

Chief Justice CJ M. Mogoeng: Okay, all right. What leadership experience did you pick up there that you believe is still relevant to the role of a leader of a court?

Judge BM. Pakati: Communication.

Chief Justice CJ M. Mogoeng: Communication, yes.

Judge BM. Pakati: Problem solving. If there's problems and you know when there's something that needs to be dealt with as a leader, I would call the prosecutors and would sit and talk because I believe that communication is the best.

Chief Justice CJ M. Mogoeng: Yes, in which area was that, or city or town?

Judge BM. Pakati: It was in Butterworth.

Chief Justice CJ M. Mogoeng: Butterworth?

Judge BM. Pakati: Butterworth in the Eastern Cape.

Chief Justice CJ M. Mogoeng: Okay, all right, and were you appointed into a leadership position as a magistrate, or did you just happen to fulfil leadership, a leadership role, even if you are not necessarily appointed the leader of court?

Judge BM. Pakati: I was – after 1990, around 90, I accepted a position of magistrate and in that space of time I would, you know, organise training for other prosecutors

and there would be other magistrates who would be, newer, newly appointed and helping them here and there.

Chief Justice CJ M. Mogoeng: Were you the most senior magistrate? Or was there, did you have a senior over you?

Judge BM. Pakati: At that stage I had a senior.

Chief Justice CJ M. Mogoeng: Okay, so it is your senior that was the leader?

Judge BM. Pakati: Yes.

Chief Justice CJ M. Mogoeng: Leadership role related to training prosecutors?

Judge BM. Pakati: Yes.

Chief Justice CJ M. Mogoeng: Okay. In terms of running a court or contributing to the running of a court, at the leadership level, in what position did you fulfil those responsibilities, or was it still as a magistrate who has a leader above her?

Judge BM. Pakati: I did – I was appointed as a Head of Office when I was magistrate in Brakpan.

Chief Justice CJ M. Mogoeng: Brakpan?

Judge BM. Pakati: Yes.

Chief Justice CJ M. Mogoeng: When was that?

Judge BM. Pakati: It was when I came from Justice College. I think it was 1996, 7, around there.

Chief Justice CJ M. Mogoeng: Okay.

Judge BM. Pakati: And then I headed an office at that stage, because the Chief Magistrate had taken leave, and after that I moved from that office and I went to head an office in Maclear in the Eastern Cape, which was a one-man station.

Chief Justice CJ M. Mogoeng: One man or one woman? One person.

Judge BM. Pakati: One person.

Chief Justice CJ M. Mogoeng: Yes, okay. What experience, what leadership experience did you pick up that you can share with us? At that stage.

Judge BM. Pakati: At that stage I was the only magistrate.

Chief Justice CJ M. Mogoeng: Yes.

Judge BM. Pakati: In the office, and there would be two clerks, one prosecutor, and one – everyone. At that stage, I still would have prosecutors who would come and newly appointed and you know you would just give guidance here and there. Not building their case of course. So that, that is what I did at that stage.

Chief Justice CJ M. Mogoeng: Have you fulfilled any leadership role anywhere else, maybe an NGO, or a body of lawyers, or some other structure? Would you want to share with us what leadership principles you picked up, and how you put them into operation? Something like that.

Judge BM. Pakati: Chief Justice, before I go further than that, and I would want to also mention that I went to Cape Town as a Senior Magistrate. And there were two sections. I had my

own section, and the other Senior Magistrate headed his own section.

Chief Justice CJ M. Mogoeng: Yes.

Judge BM. Pakati: That is also where I, you know, grew up in terms of experience and
be in a position to stand up on my own, and be able to even disseminate, you know, my own experience to others, and would have meetings regularly so that we iron out things that were not, were not right in, when we were busy doing our office duties.

Chief Justice CJ M. Mogoeng: Okay, in your own words what has prepared you for this leadership
position, and or how have you prepared yourself for this leadership position? Why do you believe you're ready for it? What do you understand it to entail? How are you going to handle it if appointed?

Judge BM. Pakati: Justice, I, I take my, I draw my strength from the fact that I started then, when
in actual fact, I was an interpreter and administrative clerk. And when we were prosecutors, you know the courts that we were working in. That is now, you would, whilst you're busy leading a witness, a chicken and its chickens would walk into the courtroom, and goats and all that. And that's where I come from, and I draw strength from
the challenges that, that I, I went through in the process and because I did have challenges, but I managed them well. Because of my being silent, but I make it a point that things get done.

Chief Justice CJ M. Mogoeng: Thank you. If that's all, that you want to say? You don't have to say more than you want to say. I'm just affording you the opportunity to, to say what you believe needs to be said.

Judge BM. Pakati: Okay, if I may add even when I got in to the Northern Cape, I have

been helping in the mentorship. I was mentored myself, and then I also helped with the mentorship of the other acting judges. And I have been involved in, in liaising

between the original Court President, and the Judge President Kgomo and I would get information and have meetings with the Judge, with the Chief, the original Court President, and I would convey every information. The JP would know everything that's happening in the regional courts. I'm in a position to know problems that I

experienced In the Northern Cape, in some of the areas, because our areas are far-flung and the importance of us being there, is to get justice to the people wherever they are in the division.

Chief Justice CJ M. Mogoeng: Thank you, JP.

Judge President: Thank you Chief Justice, and good afternoon Judge Pakati.

Judge BM. Pakati: Good afternoon JP.

Judge President: Yes, how do you see your role as the Deputy Judge President?

You

can say whatever you want to say as your role as the DJP.

Judge BM. Pakati: The DJP is a person who should be working hand in hand with the Judge President

in terms of disseminating cases to, in allocating cases to colleagues. And that should be done transparently fairly and equitably, and communicate to the Judge President of any challenges, if there are challenges, and, or even solve them. Because I, I don't even think that sometimes problems should reach the Judge President before you can solve

them. I'll make an example, for instance in the Northern Cape there are about four Acting Judges, and JP Kgomo allocated me to mentor two of them. And it so happened that two Acting Judges came to my chambers, and they explained to me that they were confused, because when they came they were told I was going to mentor them. And now my sister Phatshoane called them to say she is going to take

over, and they asked me because of that confusion to approach JP and explained to him, and then I said to them there's no need to approach the JP. We can solve the problem before it goes to the JP. And I explained to them that because they didn't know now where to take their cases in terms of mentoring. They didn't know who was responsible to mentor them, whether it was my sister Phatshoane, or myself. So I said to them they can take, they can be, they can subject themselves to mentorship to any, any of us that they feel comfortable. And thereafter I informed my JP about that, and he did not say I did it wrong.

Judge President: I see. At management level you'd be, you would be appointed to be part of management. What tools will be at your disposal in managing the court as a whole and colleagues?

Judge BM. Pakati: The most important thing JP, in the Northern Cape, is the fact that there is a division, and that division, the gap needs to be closed. That, that process needs someone who is going to do that in working together with the JP.

Judge President: The Norms and Standards, the document that you understand. Is that not one of the tools at our disposal to manage the court?

Judge BM. Pakati: Yes, yes it is JP, it is.

Judge President: And then we also have the Superior Courts Act.

Judge BM. Pakati: Superior Courts Act, yes.

Judge President: And the in the Judicial Services Act is also available to the JP to ensure that, ensure that the court is run properly. You have touched on transformation, but I

see the Society for Teachers of Law says you should elaborate on your contribution on transformation. Would you want to add on to what you have already said, if there is anything?

Judge BM. Pakati: Transformation in the Judiciary, JP?

Judge President: Yes, I think they said you must elaborate on your contribution towards transformation of the profession.

Judge BM. Pakati: Oh. I, like ... I've been saying that I contributed in terms of the two ladies that I mentor are ladies. And one is coloured and the other one is black. And I think they, they're gaining something out of that.

Judge President: And then do you think that should you be appointed you will get the support of the colleagues. Firstly, the colleagues on the bench with you. The organised professionals all in the Province.

Judge BM. Pakati: I don't see any problem JP, of the support with my colleagues, because even though I mentioned the fact that there is a division in that division. Since you have come and joined us, you have shown us that we don't really need to be divided. You put us together the minute you came. That for us was a positive, it's a positive contribution. Because we used to, this group would go that way, and the other group would go the other way, and now we all sit together and do things together.

Judge President: I'm not vying for any higher position, but then having mentioned that, are there any other things that you think as the DJP you could improve on?

Judge BM. Pakati: We could improve, JP, on access to justice, taking into account that our courts are far from, from Kimberley and one needs to travel about 800 kilometres into Springbok. So our courts are suffering in terms of the fact that there would be one magistrate, maybe in one office, and once that magistrate gets sick then the roll collapses. So we need to do something about that.

Judge President: Thank you, Justice?

Chief Justice CJ M. Mogoeng: Thank you Judge President. MEC?

MEC: Thank you Chief Justice. Good day Madam.

Judge BM. Pakati: Good day Commissioner.

MEC: Thank you very much for the opportunity to pose a few questions. You have earlier on elaborated one part of the things that you gained when you were in charge of the courts as a magistrate. I just want to check what combination of qualities constitute a good leader, because I think the position that you will be, that you've applied for, is that of a leader within the Northern Cape Division of the High Court.

Judge BM. Pakati: A leader should be a person who is conscientious, articulate, you know, diligent in what they are doing, and be able to work with their colleagues, and to engage colleagues in a transparent way, fair way, and if, maybe, you have to distribute work you do that in an equitable manner.

MEC: Okay, do you regard the retired Judge President of the Northern Cape, Judge Kgomo as your mentor?

Judge BM. Pakati: I regard him so high as my mentor.

MEC: Okay, so what, what is your, what do you make of the reflections that Judge President,

retired Judge President Kgomo, has made. For ease of reference, he wrote you a letter and then, for ease of reference, on the conclusion part of it on, under 24 he says, 'finally and in summary Pakati J is not a participative person. Swartsman J. called her the silent one. She has never contributed or engaged when bills or statutes or presidents setting judgements, certain judgments were discussed at tea or during judges' meetings. She can be very moody and aloof as pointed out. She has been shown to make elementary, but far-reaching mistakes. She lacks in the area of good human relations and emotional intelligence. She lacks all around leadership skills and qualities. These are some of the aspects that Pakati J requires guidance on, and I hope to assist her as I have done from 2009 over and above'. What do you have to say about those reflections made only by the retired Judge President Kgomo?

Judge BM. Pakati: Chief Justice I have prepared a document responding to what JP Kgomo said about me in that report, and I do have saved a few copies if you if you would allow me so that you can be able to have an insight in them. Before I, I ...

MEC: You may distribute them, but what I think that any is to do is to afford you the opportunity while we are listening.

Judge BM. Pakati: Okay, because, all right.

MEC: To set the record straight, from your point of view and also to the extent that our website is accessible to the public and they might have read all these things, for the public to hear you explain your position.

Judge BM. Pakati: Chief Justice, I wish to state this, that I hold JP Kgomo in high esteem.

He contributed in me being in this position. This report came as a shock to me. Can I have a moment?

MEC: Take your time Ma'am. Take your, if you want to go out for a while do so, we'll wait for you.

Judge BM. Pakati: Can I try and continue Chief Justice?

MEC: Try and continue, but every time it proves to be difficult just give me an indication.

We'll give you all the time you need to be comfortable.

Judge BM. Pakati: Thank You Chief Justice. You know the person that has been described in this record, in this report is not me. It is definitely not me. I'm just going to make an example about just this period that JP Kgomo was in, he was in Kimberly attending his farewell function. I was on duty that week. I had a number of files to take care of. He arrived on a Wednesday. I went to him, I hugged him, and I greeted him. At that stage the report was in my possession. If I was this person, described here, I would not have done that. I attend, I left my motion roll on Thursday and attended his function that was hosted by the Bar in the Northern Cape. I went back to chambers to continue with my motion. I left my chambers after 3 a.m. The following day, which was a Friday, I attended his function. I even sent a message, my message was read amongst the messages that were read when my JP now, was reading messages of those people, those judges who also hold him in highest. I wrote as follows, 'retirement from meaningful service is a milestone worth celebrating. In an age where many start and never finish what they started, pausing and reminiscing on inhaling your achievements is what we do with delight from the depth of our hearts. JP Kgomo, you have been everything to us, a mentor, a leader, a guide and a pillar

of strength. As you now depart from active service, we wish you a serene and tranquil retirement. We will miss interacting with you, in a manner that we did, while you were our leader. Happy retirement'.

Chief Justice CJ M. Mogoeng: Yes MEC?

MEC: No, thank you Chief Justice, no further questions from me.

Chief Justice CJ M. Mogoeng: Thank you so much Commissioner Msomi?

COMM. Msomi: Thank you so much. Good afternoon Judge Pakati.

Judge BM. Pakati: Good afternoon Commissioner.

COMM. Msomi: Judge Pakati, I'm also going to dwell on this, because I think it's such a critical document. And I think this is your opportunity basically to, to respond fully. Judge Kgomo says in his opening line, 'you have raised your hand prematurely'. Obviously, that leads to a question that says: what interests you about this position? Did you say you resume the position prematurely and you still went for it? What about this position, why so much interest in it?

Judge BM. Pakati: For me it is important because it's serving the people, the community that I started serving a very long time ago. It's not about me having to have that name. It's is a contribution that I would want to make for our people.

COMM. Msomi: Thanks Judge Pakati. You, a picture has been created of a spoiled brat.

Someone who throws her toys out if things don't go her way. What do you respond to that? In other words, it's either your way or the highway. Otherwise you're going to stay away from tea for several days and don't speak to people. Is that true?

Judge BM. Pakati: Like I indicated Commissioner, I am also shocked with this report, because I, you know I, I agree I am this quiet person. But quiet as I am, or silent as I am, I would never, not to JP Kgomo, never. If I, for instance, if I may make an example. The day he says that I went to his chambers crying, and I said why he was comparing myself to Mamasebo J. That is not so. What happened on that day, I had gone to his chambers to lay a complaint that Mamasebo J. was disrespecting me, and Mamasebo J. had before that, had complained to him. Let me put it this way there was a petition that we were doing together. She wrote a judgement I did not agree with her judgement and because I did not agree with her judgement I said to her, 'I'm not agreeing with your judgement. It's either you look at it again, or I don't know what you want to do with it, but I'm not in agreement with you'. And then she came to my chambers again, and she said to me she doesn't understand what I don't agree with her judgement, like, you know, in that disrespectful manner, and she said it's fine go write that judgement of yours that we want to write. That was what I did not like. So that's what I had gone to JP to report, because after JP had called me, after she laid a complaint, JP explained to me what she said. And then I said to JP, 'JP this is the position in her judgement. She says that she does not know why the Prosecutor said the case was postponed to whatever other date and I was of the view that the record was straight'. There was nothing hidden in the record as to why the matter was postponed to that other day, because apparently she didn't read the record. And in actual fact she withdrew her judgement and JP co-signed my judgement.

COMM. Msomi: I may be asking you to speculate on this.

Judge BM. Pakati: Okay, so sorry can I, can I just finish. And I'm sorry, I'm sorry to disturb you. And after I had informed him about that he said to me, 'You know you should tell me about things that make you unhappy'. But he didn't come back to me about that complaint to date. And now it's, it's something else. It's me who was wrong. I don't

know how I can be wrong when I'm reporting a colleague who is, you know, showing disrespect towards another colleague.

COMM. Msomi: If you had, if I were to ask you to speak it, maybe you know as a matter of fact. Why as a matter of fact. Why is Kgomo doing this to you? What is the hidden agenda? Why this report? What forms the basis of this report? As far as you know.

Judge BM. Pakati: As far as I know, when I came to Kimberly in 2009, I started mentorship for two months of August and September. I left and then I came back and started acting on the 9th of November 2009. I acted from that period, you know, I sometimes, I had to go to Temba to do my parted matters and my sister Phatshoane joined us in January 2010, and there was also another Judge who also acted then. She's now in KZN and when, when Phatshoane a DJP came, you know when the post was advertised in April for interviews in April 2011, I applied for Gauteng and she applied for the Northern Cape, and it was, JP mentioned that he was, he wanted to appoint her and not even the other lady who was also the acting, who was more senior to her at that stage. The reason was, is, he head hunted her. Now, getting to your question, the previous time what happened was Phatshoane a DJP applied, and I did not apply in April, because I knew that JP has said it, that this is the person that he wants. So it would have been useless for me to apply at that stage. Because I knew that he said it and so I didn't apply, Williams J. applied, and what turned out, JP Kgomo wrote a report again in Williams case, and she withdrew. Because I believe that Williams J. withdrew because she was saying that there's a perception that Phatshoane was groomed and whatever. I am saying because I have been in that division. It's not a perception, it is a fact.

COMM. Msomi: I'm sorry CJ to create a dialogue but.

Chief Justice CJ M. Mogoeng: You are following up. It's, I think it's necessary to clear up this thing.

COMM. Msomi: So is it your contention before this Commission that Phatshoane is the anointed one.

Judge BM. Pakati: He is.

COMM. Msomi: She is.

Judge BM. Pakati: I'm sorry, she is Commissioner. I will, I will say that even after, after she did not make it in April this year. After the, the session the whole session of the Commission, JP phoned me, and he said to me when I said to him, 'JP you know I heard that Phatshoane did not make it, and I phoned her and I said I'm sorry about that, and JP said to me Phatshoane shouldn't worry because even if he goes, her position will be secured'.

COMM. Msomi: Obviously I mean in a conduct of this nature, I think you've said it perhaps not in so many words, but it would appear to me that this document is concocted, is full of lies, intended solely to block any persons away from ascending to the DJP.

Chief Justice CJ M. Mogoeng: If you could still use moderate language. There are many ways of putting across your point as effectively as you want to, but once you, you, I think, it's something else coupled with then why is Kgomo doing this to you? Please.

COMM. Msomi: Just a final question then. You are up against a candidate who has basically acted in the position. Why should this Commission look at you favourably? Thank you.

Judge B M Pakati: I just want to mention that in the Northern Cape, all positions that are there –

be it that it's Library, its Case Flow Management, anything at all. There's only one and only

one person who does that. Phatshoane J. I believe that if you are a leader, you disseminate work transparently, fairly and equitably because once there is favouritism there will be disharmony in the division. That is what is happening in that division.

Chief Justice CJ M. Mogoeng: Hlophe JP.

Judge President Hlophe: Thank you very much Chief Justice. Judge Pakati, I have two questions

for you. The first relates to Case Flow Management in general. And with specific reference

to your division. And the second one relates to the use of official languages in the courts.

Judge BM. Pakati: Yes.

Judge President Hlophe: Let's deal with the first one. If you are successful today you will be

the second in charge in your division. Inter alia you'll be responsible for allocating work or

rather assisting the Judge President in terms of allocating work. Given that the resources

at our disposal are getting less and less, and we're expected to do more and more.

What steps if any will you take to ensure that the backlog in your court is alleviated or eliminated? And if there is no backlog at the moment, to ensure that it never arises?

Judge BM. Pakati: JP, I can say that at this point in the Northern Cape, in the High Court there is

no backlog in the High Court. And apparently we are the ones that are doing the best in as far as case flow is concerned because we, we have a turnout of two to three months rather than nine to twelve months of the turnout. I don't know if I answered.

Chief Justice CJ M. Mogoeng: I missed it. You have a two, two to three months. All right continue JP.

Judge BM. Pakati: That that's what is in the in the PEEC minutes. That it takes two to three months. That is now from the beginning and then within six months the matter must have been ready.

Judge President Hlophe: Can we just unpack that what tools have been used by the Judge President in your court to ensure that you do not have the backlog. That's what I'm trying to get. And how would you improve on those tools to ensure that the backlog never arises.

Judge BM. Pakati: There are officers in the registrar's office who use templates in order to, because they don't have their IT system, in order to place the matters. So what happens is that the matters are distributed amongst the Judges and each Judge is engaged in case flow management. And after that, they go back to the Registrar's Office, those that are trial ready are given certificates that they are trial ready.

Judge President Hlophe: I think we cross purposes. I'm asking what are the tools that the Judge President uses in your division to ensure that there is no backlog. Exactly what it is that you do. That's what I'm trying to get at.

Chief Justice CJ M. Mogoeng: Maybe you could use another word for tools, just to simplify it further.

Judge President Hlophe: How does the Judge President in your division go about, in terms of

allocating cases, and in terms of motivating judges to finish matters timeously? How, what exactly does the Judge President do to ensure that matters are in and out of the system and that there is no backlog. That's what I'm trying get at.

Judge BM. Pakati: The, the Judge President allocates matters to all the Judges. All the Judges do Case Flow. So what happens is that when the cases are with you. You, do, you, you sit with Counsel in order to find out which cases, and you even, you know pressurise in terms of, not pressurised in terms of, you know, putting pressure on them. But at least getting them to start and finish their matters. So that they are finished early or efficiently.

Judge President Hlophe: Can we deal with my second question, namely the, the use of languages in the courts. Which of the two prevailing schools of thought do you belong to. The one that says all 11 official languages in the country must be developed fully, so that at the end of the day there's jurisprudence in Setswana, in Xhosa, in Venda and so on. Or the one that says, given the limited resources, for now let us use English as the language of record. So that at the end of the day we speak one language and one language only. Sorry for purposes of the record.

Judge BM. Pakati: I belong to the school of thought that says, yes, all the eleven languages are protected by the Constitution. However the language of record should be English.

Chief Justice CJ M. Mogoeng: Thank you Judge President. Commissioner Enyambi.

COMM. Enyambi: Thank You CJ. Afternoon.

Judge BM. Pakati: Good afternoon Commissioner.

COMM. Enyambi: As were dealing with this leadership position you were very clear about your relationship with the Judge Kgomo. So if you, maybe you can share with us your relationship with Judge Phatshoane.

Judge BM. Pakati: Okay, you know it's, that's a difficult question in terms of, you know we talk, we relate, but. That relationship of, you know, the closeness is just, it's just not there. We do, for instance, when we arrived here I sent her a message first, before she arrived, and said good luck with your interview. And she responded, and she said good luck. That's what I'm trying to say that we, we do talk but there is that tension.

COMM. Enyambi: I like the honesty. They, you talked about the issue of the, the division that you are experiencing in the division. Do you think the appointment of either of you will assist in dealing with the division that are currently happening in Northern Cape?

Judge BM. Pakati: I think that this Commission is capable of appointing someone, who is able to do that. My problem is that if all of us in Kimberley know what was happening, in terms of why is everything done by whomever, maybe that is going to be a problem. I don't know.

COMM. Enyambi: Can you see yourself submitting under the leadership of Phatshoane?

Judge BM. Pakati: Let me tell you something, that I forgot to mention, when I informed JP Kgomo, over the phone. No I started with JP Thlatse, I found him fortunately, he wasn't in Kimberly and I said to him JP can I see you, and then he said yes, and then I said to him I received nominations and I would want to apply, and then he said to

me you have a right to apply, you may apply if you want to apply, it's your decision, so he didn't stand in my way of applying and I said to him JP, you know, that I'm, I'm a bit scared of JP Kgomo, to just tell him myself. First just go there on my behalf, and tell him, and then he did that, he found him, I don't know how the conversation went, and then he came back to me, and he said to me, yes, I have spoken to him, you must then phone him. I said I, I'm not strong enough to face him that day, because JP told me that he didn't take kindly to that, that I was going to apply and then I called him the following day and then he told me that I should wait because Phatshoane must go there, meaning this Commission, and if she doesn't get the position then I can apply for April. If she does she will hold the position for two to three years and then I can apply because she has been asked to go somewhere else. I don't know why he didn't tell me he has to coach, she has to go somewhere else so she will hold this position about two to three years. She has been invited to go somewhere else because, can I continue?

Chief Justice CJ M. Mogoeng: Yes, please proceed.

Judge BM. Pakati: Because she said she was not ready to go wherever she was called. I don't know where that place is and then I should wait, that's why I should wait. I have been waiting for Phatshoane since 19 since 2009 when she, she came, no one can just say to me that having been a Magistrate these years, and she just came out from, from, what can I say, from practice and then she's ready before I am ready because if even Judge Swartsman indicated in our course that, but the course was not an easy one, and you used to say that even the magistrates they understand better because they deal with judgement writing on a daily basis.

COMM. Enyambi: So my, my last question.

Chief Justice CJ M. Mogoeng: Is that one answer? Can you submit to the leadership, that was the question, if appointed DJP?

Judge BM. Pakati: Yes and then what happened was, after I spoke to JP and he indicated to me that

I should not raise my hand I went back to JP Thlatse, and I said to him I spoke to JP, and I did not say what JP said to him, I just said I spoke to him and then he said to me: Right, now that you have spoken to JP, go and talk to Judge Phatshoane, and so I went to her. It was a Friday, I went to her chambers and I greeted her and I said to her my sister I want to tell you that I have received some nominations, and I would want to apply and I could see in her face that she was, she didn't take kindly to that, and she said, I'm going to quote her now what she said, she said, 'I cannot say you should not apply, but I am not ready for any competition', and after she said that, I said to her: do not take it as a bad competition, just take it as two women in this division are able to go and face the JSC, and it is the duty of the JSC to see who of us is capable to do the job, and she said, in response... Oh no, I said, you know what, after, if we together go, I will support you if you get appointed, that's what I said to her and I expect the same that if I get recommended, you'll support me, and she did not respond to that, then I left her.

Chief Justice CJ M. Mogoeng: Can I take it that you've answered the question.

COMM. Enyambi: Yes let's deal with the comment of the law of the law bodies, the BLA is all the view that you still need some acting capacity, and the National Forum of Advocates it's all, it's indicating that they can't comment because you are unknown to them, if you can comment about that too.

Judge BM. Pakati: I don't know what they mean if they say I'm unknown to them, because I've been in that division since 2009, and in actual effect I wouldn't be surprised with that comment from the, from the from, no, from the from the bar, is it, is it a bar, no I don't know why they say in answer, in actual fact they are free to say what, whatever they want to this is their opinion. The BLA you may say that I need acting appointment because I did not act, and I'm coming here at a disadvantage, because the acting appointment was given to someone, and not to other judges, and now we are not on par. That is the situation at the stage. I'm at a disadvantage, because I was not given an opportunity.

COMM. Enyambi: My last one: if you can share with us your understanding of

Judicial accountability.

Judge BM. Pakati: Judicial accountability is that judges account via their judgments, because they have to, is it that when you do something you need to have a reason why you did that. That's why in cases, that's why in cases, you give reasons as to why you make a kind of decision, because you should account, and if someone is not satisfied with what you have your, with your decision, then they can go to the Appeal Court.

Chief Justice CJ M. Mogoeng: Thank You CJ.

Judge BM. Pakati: And they also, there's also review processes.

President M. Maya: Good afternoon Judge Pakati.

Judge BM. Pakati: Good afternoon Commissioner.

President M. Maya: I think I should start by disclosing that you and I were at university together.

Judge BM. Pakati: Yes.

President M. Maya: But we were not friends (laughter). Few questions for you.

Judge BM. Pakati: I can't hear you.

President M. Maya: Few questions for you, from him.

Judge BM. Pakati: Yes.

President M. Maya: In a previous interview before this body, you indicated that some of your colleagues in the Northern Cape did not accept you, and actually did all they could to make you unwelcome, feel unwelcome in that division. Has that situation changed?

Judge BM. Pakati: Because the two colleagues are not they anymore, so that is not a situation anymore.

President M. Maya: We know that the judicial bench is very rough tearing and judges are known to be a difficult bunch, now you don't seem to disagree with the personality that retired Judge President Kgomo attributes to you of being this, this silent person, whatever that means. Now what I want to know from you is whether in your opinion you have what it takes, that is, if you are appointed you have what it takes to, to myself that the troops so to speak and get your colleagues to rally around you in other words simple ways can you assert yourself and affirm when the need arises.

Judge BM. Pakati: I can affirm myself, because this would not be the first leadership position that I'll be holding, and the fact that I'm not participating is honestly not true. In this report that I compiled, I mentioned somewhere that when we were talking about the original courts, what needed to be prioritised in the original courts was that, because I know I was a Regional Magistrate, that the Regional Magistrates will have a lot of cases for the day and they will instead prioritise criminal matters rather than civil matters, so it was my idea that I shared at that stage that, what if in the Regional Court there is a Regional Magistrate who is dedicated to civil matters, so to see to it that there's no backlog.

President M. Maya: My last question is, as you are well aware, defying the pace in terms of gender has proven a huge challenge, and we are still a long way from achieving what the constitution expects from us in this regard. Do you have any ideas that you can share with this body, as to how we can address this challenge?

Judge BM. Pakati: From, from, from, from, as in the perspective of judges?

President M. Maya: Yes, as a judicial officer, and especially if you are appointed into a leadership position.

Judge BM. Pakati: Okay, my contribution would be, you know, if women need to be empowered, they need to be empowered, and it is, for instance, now in the Northern Cape, we have three women that are assisting us, so helping them get to wherever they have to get would be at least helping women to get better positions in the Judiciary.

Chief Justice CJ M. Mogoeng: Thank you President Maya. Commissioner Malema.

COMM. J. Malema: Thank you very much a CG. Judge, what type of people do you regard as people who don't deserve your respect?

Judge BM. Pakati: I don't know if I understand your question.

COMM. J. Malema: It is a very simple question. What type of people you look at and say this one will never get my respect.

Judge BM. Pakati: No there's none. If I were to tell you that in my division, everyone, I mean everyone from cleaner to officer to what, all of them, they get respect from me, everyone.

COMM. J. Malema: Let's leave the division in the interview. Let's have a just a general discussion about life. I, I've got no respect for rapists. I've got no respect for corrupt people. I've got no respect for people who steal from the poor so I will not respect

such people. Generally, in life, not in a division where I work, in life people who beat up women, I've got no regard for them. What type of people do you regard as people who are not deserving of your respect?

Judge BM. Pakati: You know I, because there's a constitution that upholds everybody's right, I cannot be judging people when I have no matter in front of me because they are not guilty until proven guilty.

COMM. J. Malema: Okay let me, let me help you. I'm going to ask the same question until we find an answer. Do you respect people who divide colleagues?

Judge BM. Pakati: I don't know what you really mean by respect because, you know, if someone divides colleagues and they are in a senior position, I don't know what, what I can do in order to change them, because I'm junior they are senior.

COMM. J. Malema: I don't want you to do anything. Do you respect a person who divides c colleagues?

Judge BM. Pakati: Okay, I will say no.

COMM. J. Malema: Do you respect a person who practises nepotism?

Judge BM. Pakati: No.

COMM. J. Malema: Do you respect a person who is a factionalist?

Judge BM. Pakati: No.

COMM. J. Malema: So why do you respect Kgomo who divides colleagues and even prefer

one colleague over the other, according to your testimony?

Judge BM. Pakati: It is because it's not, I don't want to look at his bad side only because he affected my life on the positive side also.

COMM. J. Malema: So if we're to ask that Judge President Kgomo must come back for whatever reasons to be a Judge President, will you vote with us after the things you said about him here?

Judge BM. Pakati: I don't know if I will do that.

COMM. J. Malema: This is a person you respect.

Judge BM. Pakati: That's why I'm saying I don't know if I will do that. I will have to decide and think about it.

COMM. J. Malema: So you can, you will never respect a person who's got preferences over other people even outside a due process.

Judge BM. Pakati: Even outside due process?

COMM. J. Malema: I mean to say this one is going to be DJP outside this process, it's an unacceptable practice, you'll agree, that when, when a person says, no I've got my own preferred JP, and there are other colleagues who are applying for the same, but you are the boss preferring other people, even before they get subjected to a due process?

Judge BM. Pakati: I see, no.

COMM. J. Malema: Why would you respect someone who does such things.

Judge BM. Pakati: I, it's just I give him respect. I don't know. He's an elder and I don't want to be...

What, what he did, he did it for himself, that's why I'm able to come here and say it.

COMM. J. Malema: Now elders are allowed to do unconstitutional things, according to a judge.

Judge BM. Pakati: No.

COMM. J. Malema: You said you respect him as an elder.

Judge BM. Pakati: No, but then the respect that I'm talking about is I can't talk to him anyhow,
that's the respect I mean.

COMM. J. Malema: Judge, I don't want any other respect except the respect of colleagues here.

Judge BM. Pakati: Okay.

COMM. J. Malema: Yes, we're in a professional arrangement. We're not in some village under the tree. We're in a professional arrangement here. I'm saying to you, here is a man who gives judiciary, according to the things you said, he gives judiciary a bad image. Should we respect such people who prefer other people who damage the good image of this institution called a judiciary? Should we respect such people?

Judge BM. Pakati: No.

COMM. J. Malema: And therefore, why would you come here and say to us you've got the highest respect of a man you described in a manner you did, professionally?

Judge BM. Pakati: It's because I wanted to also appreciate the fact that he has been a mentor to me. I can't wish that part away. He was a mentor to me, that's why I said the report that he wrote was also shocking to me because we never had problems before. I always thought that we are on the same page until the report came out.

COMM. J. Malema: You respect Judge Phatshoane?

Judge BM. Pakati: I do.

COMM. J. Malema: Will you call it, hey JP, and subject, DJP and subject yourself to a leadership if she gets appointed.

Judge BM. Pakati: I will do so.

COMM. J. Malema: Do you strive for unity where you work?

Judge BM. Pakati: I do.

COMM. J. Malema: And why are you not having the type of a relationship we expect from colleagues between you and Judge Phatshoane?

Judge BM. Pakati: Why do I not, can you repeat that?

COMM. J. Malema: Why are you not having the type of relationship we expect of colleagues between you and Judge Phatshoane?

Judge BM. Pakati: Is because you must remember that there was this run-up to this Commission,

so that's why maybe there is you know there's that kind of tension because now we are competing.

COMM. J. Malema: And then we expect that hardened attitude to disappear after the appointment
or all will it continue.

Judge BM. Pakati: Isn't it that after the appointment, if she gets appointed, I have already
mentioned that I said to her I will support her and that is what I told her that if I get recommended, she may do the same.

COMM. J. Malema: But is maturity not expecting the two judges to accept that these are
professional positions they don't belong to you they belong to the people of South Africa and therefore if any of you gets appointed or contest for this position you don't have to be personal, like that you are two senior people in society, to be personal to a point where you even create hostility amongst yourselves to a point that you said the things you said about her. Why didn't you work towards creating a better relationship even before these interviews as leaders?

Judge BM. Pakati: I did. I even approached JP. In fact, JP went to my chambers and we spoke about
It, we spoke about it. I even said to Judge Lalawe I would have loved that when we come here we have a better relationship.

COMM. J. Malema: All these negative things you said about JP Kgomo and, and you
must understand me I, I appreciated the comments that JP Kgomo I made about you and if he was here, we were going to ask him about those issues, but you said some things about him and you are the one who's being interviewed here. All these things negative things you say about JP Kgomo, have you raised them with him? Have you raised them with a chief justice or any other body in the judiciary, as a way of

showing that firstly your leadership and your responsible judgement will not allow wrongdoing to continue, especially when it has come to attention?

Judge BM. Pakati: I only received this report when it was sent to me. That was after I had applied.

COMM. J. Malema: Not the report. The things you said about judge Kgomo here. Have you raised them with any senior person or anybody, the body which has been established by the JSC or any other?

Judge BM. Pakati: No I didn't.

COMM. J. Malema: So why do you raise them here, now when Judge Kgomo is not here to answer for himself and say that things you say about him.

Judge BM. Pakati: Even if he was here I would have said these things because this is what happened.

COMM. J. Malema: You didn't say them to him. If you are that brave and you are the leader who wants to be a Deputy Judge President, why didn't you say to Judge Kgomo why do you keep one person acting when we are all here? We've got capacity to act, and only say it in his absence in an interview that is publicised all over the world, without even bringing such to his attention.

Judge BM. Pakati: Would it, I think it would have been the same because he says I, I want things to go my way. Maybe that could have not been a proper way of dealing with it, having him saying that I want things to go my way, which is not correct.

COMM. J. Malema: Judge, his such things because you raised your hand. If you don't want people

to say such things about you, keep your hand in the pocket. You raised your hand and therefore you invited people to make comments about you. He didn't raise any hand. He's not here to answer for himself. You raised the things that you never raised with him before. What type of behaviour is this?

Judge BM. Pakati: It is the same, Commissioner, that when these things that is raising, he is raising them because I raised my hand. For all these years that I worked with him he never brought these things to my attention.

COMM. J. Malema: Did you bring the things you said about him to his attention?

Judge BM. Pakati: No I didn't.

COMM. J. Malema: So why are you raising them now? Is there revenge?

Judge BM. Pakati: No it's not.

COMM. J. Malema: Are you genuine about them?

Judge BM. Pakati: I am.

COMM. J. Malema: Why didn't you raise them with him or the Chief Justice or any other body in the judiciary if you are genuine about them? Where else have you raised these things except today here, because Judge Kgomo said negative things about you?

Judge BM. Pakati: But, but he should also I have raised these things before. These things come from 2010. I have been with him from 2010 up to now and nothing, there was no report against me, not at all.

COMM. J. Malema: Judge Kgomo is not on an interview to answer for the things he said about

you, you are here, we're interviewing you. Why, if you are genuine, do you only raise these issues now here about Judge Kgomo and you didn't raise them before?

Judge BM. Pakati: It's because I'm responding to his comments.

COMM. J. Malema: Thank you. CJ?

Chief Justice CJ M. Mogoeng: Thank you Commissioner Malema. Minister?

Minister: Justice thank you very much. The, actually, my calculation of the number of years that you served as a magistrate it comes to 21, because if I understood you correctly you said from 1991 to 2012.

Judge BM. Pakati: Yes Minister.

Minister: There's been questions about the, the quality of experience as a magistrate compared to that of a judge – that there's a vast difference. Should we put any much emphasis on the preparation that your stint as a magistrate had on you in preparing you to assume, firstly the role of judge and secondly possibly assuming a leadership role within the judiciary, upper judiciary itself?

Judge BM. Pakati: I think it should have an, an impact because it's an experience that I acquired.

I was dispensing justice then, even though not at the same level, I am still dispensing justice now.

Minister: I'm not sure if your question is satisfactory.

Judge BM. Pakati: Yes.

Minister: Yes, it's both dispensing justice, but I specifically raised the issue of the, the level of the

quality of justice, compared to the true levels. Do you, do you feel that apart from the fact that you were dispensing justice, that the level at which we are dispensing justice was weighty enough, for us to take into consideration those 21 years of your professional life? Should we attach much weight, as I saw to, to enquire to that particular experience and if so why?

Judge BM. Pakati: I think so. It should be taken into account because that was not the only thing that I did in order to prepare myself to be a judge. I also attended a course that was held in a seminar for aspirant judges.

Minister: No, no we can get to those aspects later, just confining myself to 21 years of experience in the lower judiciary as a magistrate and I'm trying to get a sense of whether how much weight I should attach to that period of your career development in assessing your readiness to assume a leadership position within the judiciary. Should I, should I not attach significant weight to it, because it's quite a, a significant period of your career as a lawyer generally?

Judge BM. Pakati: I think, to be fair, significance should be attached to it.

Minister: Yes, why?

Judge BM. Pakati: Because I started in very low levels and I grew in the department and I worked throughout and even when I am here, the experience that I had then is not irrelevant, that irrelevant, at this stage, because the qualities of leadership that I had then wouldn't be much of a difference now.

Minister: Okay, the concept of separation of powers has been the subject of much public discourse, especially in recent years. Included in that discourse is the issue of perceptions of judicial overage. Do you want to comment on that?

Judge BM. Pakati: Judicial independence because there are three legs: the executive, the legislature and the judiciary. Each one of them should be independent. The judiciary are also independent and each one of them should not encroach on the other, at the same time. So a judge cannot be seen to be giving a decision that was supposed to be given by the executive or the legislature.

Minister: Okay, and in terms of bias, again these perceptions that sometimes people's inherent Biases, be it of a religious, political, cultural or other nature, subconsciously or consciously influenced their worldview and equally encroach into their ability to adjudicate objectively. Do you agree or do you disagree with that perception?

Judge BM. Pakati: I'm sorry, Minister, your question was too long. Can you just...

Minister: Your background as a person, there is a perception that can influence your judgement. Do you agree or disagree with that perception and that sometimes it can cloud your judgement to deliver a fair judgement?

Judge BM. Pakati: I don't ...

Minister: Whether it's your religious background, whether it's your cultural background, whether it's your, your convictions in life, of some form or another, that sometimes, this sitting at the back of your mind can influence the fairness or otherwise of your judgement?

Judge BM. Pakati: No it shouldn't.

Minister: Do you agree or disagree?

Judge BM. Pakati: No it shouldn't, a judge should be impartial.

Minister: It shouldn't, but does it, in your experience, actually happen or never happens?

Judge BM. Pakati: With me or with other with other judges?

Minister: Well within the judiciary generally, you other judges. what has been your Observation? You've been on the bench for many years, both as a magistrate and as a judge.

Judge BM. Pakati: I think sometimes it happens that's why when someone does that and then a, there's an appeal court.

Minister: And their pure system, it's a way of cleansing the system of those impurities if you like.

Judge BM. Pakati: But when someone is not happy with that, with the judge's decision, at least they have an option to appeal or to review the judgement.

Minister: And lastly from me, the position you're applying for is a position of leadership, it's not just a position of judgeship. In other words, the ability to be a good judge is not adequate, but you in addition needs to have leadership qualities to effectively discharge your responsibilities in that higher position. Would you agree with that?

Judge BM. Pakati: I agree with that.

Minister: What do you think are the essential ingredients that make up that leadership quality that is needed for somebody in that position and, and do you believe you are possessed of those qualities?

Judge BM. Pakati: It is patience with your subordinates, to be able to give guidance, to see to it that your subordinates, okay, let me not speak about subordinates, let me speak about fellow judges. You ... because the only way that there would be harmony is when you're transparent, you are able to command respect, you also respect them as colleagues, you maintain collegiality and see to it that justice is dispensed fairly and effectively.

Minister: Thank you Chief Justice.

Chief Justice CJ M. Mogoeng: Thank You Minister. Chairperson?

Chairperson: Thank You CJ. Good afternoon Judge Pakati.

Judge BM. Pakati: Good afternoon Commissioner.

Chairperson: You, you finished filling in your questionnaire on the, the 28th of June. At that point you also indicated that you had three, no you had four matters, which were partly heard. What is the progress in this regard?

Judge BM. Pakati: I just want to get to those. Is it paragraph 17?

Chairperson: I think so ma'am.

Judge BM. Pakati: Okay, the first one, State versus Brooks, is still running. State versus Gloucester was finalised.

Chairperson: Can I correct you?

Judge BM. Pakati: Yes.

Chairperson: The, the matters which you said were okay. Please continue.

Judge BM. Pakati: The state versus Mona Paula has been finalised and Fritz versus Balang is still running. So two of those matters are still running.

Chairperson: You also had four reserve judgments?

Judge BM. Pakati: Can I, what paragraph is that?

Chairperson: You had, one of the cases was a MEC Department of Sports and Culture and Niihau. You had Johnson and the Sheriff. You had Jack's Fannas and Nicolas Johannes. Do they ring any bell?

Judge BM. Pakati: Yes, those matters have been finished all of them.

Chairperson: Thank you, you're responding to the Judge. Here you said when women need to be empowered they need to be empowered. Is this empowerment at, at all cost, because women need to be empowered?

Judge BM. Pakati: It is, isn't it that we're talking about gender imbalance. If you want to balance then we can also empower women to balance the position.

Chairperson: Yes Judge, is it at all cost?

Judge BM. Pakati: Not at all cost.

Chairperson: So in fact there must be a value attached.

Judge BM. Pakati: Yes.

Chairperson: So, in fact, we must worry about the type of women we bring in into the judiciary?

Judge BM. Pakati: Yes.

Chairperson: Because we shouldn't just be bringing in women because ... we are bringing in women, because we have to empower women, it is also surely about the quality of the justice we want to dispense to other women out of their [INAUDIBLE 01.27.32], so it is not at all cost, do you agree?

Judge BM. Pakati: Yes, I agree.

Chairperson: We really know it's not at all cost. What are your weaknesses and what are your strengths?

Judge BM. Pakati: My, my strengths are that I do my work diligently and I pressurise myself if I have to, and my weakness would be that in that process I expect others to work like I do, and expect them to, in the, in the process of building them, to be able to be better people later on.

Chairperson: Judge Pakati, you said that Judge Kgomo mentored you.

Judge BM. Pakati: Yes.

Chairperson: That he was the positive influence, that you are where you are today because of him.

Judge BM. Pakati: Yes.

Chairperson: You also said that you do not think the comments he made were fair.

Judge BM. Pakati: Yes.

Chairperson: But would you, do you not see any coincidence or similarity between the comments made by the, the legal bodies, reflecting on your readiness to that of Judge Kgomo?

Judge BM. Pakati: Can you just repeat the question?

Chairperson: He, amongst many things, he says, he said, he indicated that you were not ready. The bodies say that, one says we don't want to comment, because we're not even sure we know her, meaning, that you are still coming up, the other one says they don't think you've got, you've got enough experience. Aren't there similarities between the three sentiments expressed?

Judge B M Pakati: There might be, but that is their opinion.

Chairperson: You said one of your strengths is hard work, and earlier on you said you actually left your chambers at 3:00 a.m., and you had to attend a function under Kgomo the next day. That's how diligent you, you are.

Judge BM. Pakati: Yes.

Chairperson: Hasn't then three months, which you earlier on told us, was what puts you're Division and your Province above others on caseload. Haven't you gone a little bit over the three months, when you filled in your, your questionnaire on your judgments.

Judge BM. Pakati: No, not with these that I submitted. The one, no, the ones that I said they were still pending.

Chairperson: You said of the four matters, which we have had two were pending, and then all these four are done, the ones where you had reserved judgments.

Judge BM. Pakati: Yes.

Chairperson: Okay, what do you think are the challenges if you look back at your track records that you have met, and are there any matter which, if you look back, you would think, you yourself would want to disqualify yourself on?

Judge BM. Pakati: Sometimes you, you, you feel like worried after you have given a judgement, and say, I wonder if I did right. You get worried and because, at least there's a method or there's a recourse for someone, if they're are not happy with your judgement that they can take it on appeal.

Chairperson: I thought you would repeat that, Judge, because I have a problem with, in a Presiding Officer who, who takes comfort in that people have a recourse to go on appeal. Because the fact of the matter, we know, is that we know that most of the South Africans are indigent. Cannot afford appeals and therefore actually suffer because of bad Judgment. So shouldn't Presiding Officers actually try to be as, we can't be accurate, you can't be perfect, but should we take comfort in the fact that there is an appeal mechanism, which we know most South Africans can't access?

Judge BM. Pakati: No we can't take comfort in that. That's why, when one lives with their judgements, they do research and make sure that at least the judgement is a proper judgement.

Chairperson: Isn't it, why then, Judge, when people who have mentored you, say to you, you

are not ready. Isn't it a good, good advice?

Judge BM. Pakati: I think I have stated the reason why.

Chairperson: No, no I didn't want to get into the, she said and I said. I didn't want to get into that.

I am specifically saying, if somebody who has mentored you, and you believe that this person has mentored you, says to you, I do not think you are ready and because we are interested in dispensing justice that is accessible, that is quick, that is as less full of mistakes as possible, because we, the indigent people, can't afford. Isn't it a good advice if we are advised we are not ready to take stock, and to really just look into ourselves at our own readiness?

Judge BM. Pakati: I thought that if there's a, a report I needed to respond, and I understand what you are, we are saying, but this is not a fair report as far as I'm concerned. It is not a fair report. If it was fair I would be saying to you, yes, you would listen to that.

Chairperson: CJ thank you. Thank you Ma'am.

Chief Justice CJ M. Mogoeng: Thank you. Commissioner Norman?

COMM. Norman: Thank you CJ. I have no questions.

Chief Justice CJ M. Mogoeng: Thank you so much. Commissioner Singh?

COMM. Singh: Thank you Chief Justice. Very quickly, Judge Pakati. Do you think Judge Kgomo would have done any of this writing to us out of malice, and just following on what Commissioner Medesa said, he's not doing it for your own personal growth and development?

Judge BM. Pakati: I like, I'm saying it's not a fair report. It is not a fair report. I don't think

it's a coincidence that when every, when every other judge applies, there is a negative report.

COMM. Singh: All right. That's, that, that's your view, Chief Justice, and, and you can stand with your view. I mean I've worked with Judge Kgomo for quite a few years now and I have a different impression of Judge Kgomo and that's, that's my view. You said early on that because you didn't have an acting stint, you are at a disadvantage. Now should the Commission consider somebody who has had an acting stint, who's had some experience in the position that is vacant now? Against somebody who may not have, for whatever reason, may not have acted. How do you as an individual propose to ameliorate the fact that you were disadvantaged?

Judge BM. Pakati: It is not my fault that I was not given an opportunity. I get a, if I was not given an opportunity. In fact, it's not myself only was not given, none of us in the Northern Cape were given any opportunity, except their one candidate, meaning which, if that did not have an intention of eliminating other competitors, I'm, I'm not very sure.

COMM. Singh: Chief Justice, I think my question is, this disadvantage, we understand you were not given an acting position and, and the reasons why, you know. But do you think this should be held against you, the fact that you are not given an acting position, when we consider the successful person for this.

Judge BM. Pakati: It can't be, it can't be.

COMM. Singh: Why not?

Judge BM. Pakati: Because I do not give myself an opportunity. I was never invited to do that, in

actual fact the one administrative duty that I was given by JP. I did it successfully until he stopped me by an SMS. He never complained that I did not do it.

COMM. Singh: Chief Justice, that's exactly what I, we're wanting to hear from you in part, that even even though you may not have acted, but you think you have the qualities to fill this position because of things that you've been watching over a period of time. That's what I'm trying to get to.

Judge BM. Pakati: Yes, I have interacted with the original Court President together with the Chief Magistrate and the Regional Head, in actual fact, and when I was, at that stage we were busy with a problem that was in Hope Town. There's a challenge there of accommodation and we had set up a meeting to talk about it to see how best we can solve the problem, and when I spoke to JP about it, because the original contestant had wrote, written me a report. He said I should stop it immediately. I should call it off and he will give it to Judge Phatshoane to do it.

Chief Justice CJ M. Mogoeng: Thank you Commissioner Singh. Commissioner Stark?

COMM. Stark: Thank you very much Chief Justice. Good afternoon Judge Pakati.

Judge BM. Pakati: Afternoon Commissioner.

COMM. Stark: Yes, the position that we're interviewing you for currently. I'm sure you are aware that it was previously advertised, and then the interviews were held. Am I correct to assume that?

Judge BM. Pakati: Yes.

COMM. Stark: Okay, now the, the only thing that I wanted to find out from you: When

the position was previously vacant and then the interviews were held, is there any specific reason why you did not avail yourself at that time. Can you take us into confidence?

Judge BM. Pakati: It is because, I indicated earlier the reason why I did not apply at that stage, and the reason why I applied this time around was because I felt that it was not fair – to give me an opportunity. That was preventing my constitutional right of applying for a post that has been advertised.

COMM. Stark: Ok no, thank you Judge Pakati. My next question to you is regarding you, you have actually indicated earlier on, anyway giving us a, an understanding of your view around what do you attempt as a leader. Because this is a leadership position you are being interviewed for. Now part of the characteristics that you have actually shared with us, you said a leader is somebody that must actually take responsibility. Now I want to know, because part of the issues that you reflected on, you spoke about the divisions that are in the Division. So I want to know from your side as a potential candidate, what is it that you have done to ensure that the divisions that are, they are actually being dealt with, so that there can be collegiality amongst the colleagues, that there are judges that are there, and then the issues that are, they're actually adequately dealt with?

Judge BM. Pakati: Like I say, we, what we do is we go together in the tea room, we would sit as colleagues, and I would also, you know if one needs to bounce a matter with a colleague, you would go to a colleague despite the effect, for instance in the case of the two colleagues who did not approve of my appointment in the Northern Cape, I used to go to them still and seek advice. If I had to seek advice, and we would go out as judges, all of us either with families, or without families, just to build that kind of relationship, and at

this point if the tension is still there, it needs to be taken away, because, for instance, communicating with the colleagues on a regular basis, bouncing our challenges and our strengths or weaknesses, we need to do it together.

COMM. Stark: Okay, lastly Chief Justice, what's your understanding of judicial independence?

Judge BM. Pakati: Judicial independence is that when a judge does matters, judicial matters, you don't, you cannot be influenced by outside forces, you need to exercise your independence, which is entrenched in the Constitution.

COMM. Stark: Thank you Chief Justice.

Chief Justice CJ M. Mogoeng: Thank You Commissioner Stark. Commission Nkosi Thomas?

COMM. Nkosi Thomas: Thank you Chief Justice, and good afternoon Judge Pakati.

Judge BM. Pakati: Afternoon Commissioner.

COMM. Nkosi Thomas: I just have only one question for you please. What is your vision, and how would you go about realising it in the event of you being appointed to this position?

Judge BM. Pakati: My vision is that justice be accessible to everyone in the Northern Cape, taking into account the far-flung areas in the Division, and to cap the backlogs that we have in the Division Magistracy, especially in the Regional Court, because the Magistracy is

now at about 400 and something cases that are causing backlogs. So, that is the, the other challenge is the court personnel and space, because in some of the courts the original magistrate will sit with a magistrate in one office. Those need to be attended to.

Chief Justice CJ M. Mogoeng: Thank you Commissioner, the two to three months turnaround you alluded to, did I understand you to mean that their reserve judgments delivered within two to three months?

Judge BM. Pakati: No Chief Justice, I was referring to Case Flow. The, if, even if a file has been brought to a judge, then they see to it that it's effectively dealt with within that period.

Chief Justice CJ M. Mogoeng: Are you aware of any judgements that have been reserved for more than eight months in your division?

Judge BM. Pakati: There are.

Chief Justice CJ M. Mogoeng: As part of your preparation for the interview, did you check whether there are judgements that have been reserved for more than eight months, so that you can advise what you intend to assist the JP to do if appointed?

Judge BM. Pakati: I, I did ask Chief Justice, but I was told that I was not given that part of the Statistics. The statistics that I was given was about Case Flow Management.

Chief Justice CJ M. Mogoeng: So you don't know whether there are judgments that have been referred beyond the period that the code of judicial, judicial code of ethics requires, that a person be referred to the JCC if they exist, if they exceed.

Judge BM. Pakati: I do not have that record, Chief Justice.

Chief Justice CJ M. Mogoeng: I was going to engage you because, I've got six reserve judgments here, one for eleven months, and the other five for ten months reserved. I was going to find out if you what, what your comment is, but that's fine, you're not aware. Now I am concerned that in applications in motion, proceedings where evidence is not to be tendered you'll find the matter over a period of the whole day, two days or even three days. I don't understand it, because sitting in the Constitutional Court we hear an application for one day, even if it means we must stop at six or eight, what can be done, especially in view of the delays in, in our courts to shorten these long delays, listening to one person speaking for three five hours, saying the same thing at times, what can be done?

Judge BM. Pakati: Chief Justice, what can be done is that, because as a Judicial Officer you are in control of the proceedings. If Council tend to ask one and the same question, you just indicate to them that, that, that has been dealt with, so that and in actual fact you have, you have read the papers, you are prepared, but at the same time you need to give them an opportunity to be heard.

Chief Justice CJ M. Mogoeng: Well let me put it this way, what in your experience explains these long periods for dealing with applications? What is the reason, and what can be the, what in your Division or observing, what happens generally in, in other Divisions? What explains these long periods for hearing applications, and what can be done?

Judge BM. Pakati: I think Chief Justice, there the Case Flow, in that case would help, so that before

they go to court some of the issues have been dealt with.

Chief Justice CJ M. Mogoeng: I have listened to or watched judgements delivered, for as long as five hours the whole day, at times even two days, number for instance the Pistorius case, is that the way to go or can it be changed. If so, how?

Judge BM. Pakati: Chief Justice it, it depends how peak the matter is. I want to believe because if it's a big matter and then a judgement needs to be read over and, and you know in court I don't see how it must not be delivered, because the parties need to know why the judge finds this way or that way, but yes, but I think that sometimes we can be long-winded in our judgements. If we attend to the real issues, we should know they're real issues and attend to the real issues.

Chief Justice CJ M. Mogoeng: What is the solution? To completely doing away with judgements, that are read out, for as long as three hours the whole day, or two days, or one and a half days, considering the backlog. As a leader, what would you suggest should be done?

Judge B M Pakati: I would suggest, Chief Justice that we, we, if we can utilise that court time that is allocated in a day, so that we do that, because sometimes this delay of giving a long judgement is because the matter needs to be translated.

Chief Justice CJ M. Mogoeng: Why can't the judgement be delivered in 45 days, 45 minutes?

Judge BM. Pakati: Like I said, Chief Justice, some ...

Chief Justice CJ M. Mogoeng: However long, why can't you summarise it who wants to

hear that long story, why can't you summarise it, so that people understand the gist of your reasons for arriving at your decision, rather than telling them what they said. They heard themselves when they were saying they heard other witnesses, when they were saying it why, why can't you summarise and capture the essence of what your decision is and ...?

Judge BM. Pakati: This is a...

Chief Justice CJ M. Mogoeng: Save court time, I'm sorry.

Judge BM. Pakati: That's, this is what I was saying Chief Justice, that other charges are long-winded, and if they are long-winded that is going to happen but if you understand the issues and attend to the issues that can be kept.

Chief Justice CJ M. Mogoeng: Is it not a misplaced, their understanding, that in criminal matters you must say everything that was said read out the whole judgement from the beginning to the end.

Judge BM. Pakati: No Justice, is that I don't think there's a need to regurgitate what was said.

Chief Justice CJ M. Mogoeng: Yes.

Judge BM. Pakati: In, in in during the trial, because everyone was, they know what they said; they know what the, the witness was saying.

Chief Justice CJ M. Mogoeng: Thank you Ma'am you're excused.

Judge BM. Pakati: Thank you Chief Justice.

