



# JUDGES MATTER

**Judicial Service Commission interviews**

**05 October 2017**

**Western Cape Division of the High Court**

**Interview of Adv. L L Burger**

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CJ M. Mogoeng: In total, for how many years have you been in practice?

Adv. L. Burger: 30-odd years, first started practising in 1987.

CM J. Mogoeng: Now for how many years have you been senior counsel?

Adv. L. Burger: Six years.

CM J. Mogoeng: Six years.

CM J. Mogoeng: And how long have you acted as a judge?

Adv. L. Burger: I've acted two and a half terms.

CM J. Mogoeng: That translates to about how many months?

Adv. L. Burger: About six months in total.

CM J. Mogoeng: How long does it ordinarily take you to finalise a judgement?

Adv. L. Burger: Most of my judgements I give orally at the end of argument. If I do not, then normally within two weeks. The longest I've had is the Teptel [inaudible 01:02] judgement, which was a very difficult one that's in the papers here, which took me five weeks. That's the longest one I've had.

CM J. Mogoeng: Judge President Hlophe?

JP J. Hlophe: Thank you, Chief Justice. Good morning, Advocate Burger. I'm just going to ask, I confirm that you have acted in the division. You heard one or two criminal trials and you also had opposed motion. I can confirm that for the record. I just want to ask you one or two questions. The first one is this. Is there anything that you have done in your life to address the issue of skewed briefing patterns in the legal profession with specific reference to empowering black women and African women in particular? That's the first question.

Adv. L. Burger: Yes. I have gone back and counted who – what juniors I've had in the past. It's not a high number because of the nature of my practice. But 50% of the people that have acted as a junior with me, have been women and some of them have black women too. I have not done as much as I can but I have done and made an effort to get women and also blacks to act as my juniors.

JP J. Hlophe: Secondly, it is common cause that there is racism on the bench. There is racism in the profession and in South Africa in general. Were this – were you to be recommended for a permanent appointment by this Commission, what steps would you take to assist the leadership of the Judiciary in addressing the issue of racism on the Bench and the profession in general? Thank you.

Adv. L. Burger: Judge President, racism is in South Africa and it will be with us for a long time. It is for all of us to speak up whenever it comes and say, "That is not right" and do that.

CM J. Mogoeng: Is it to speak or to look for how to combat it more effectively?

Adv. L. Burger: Chief Justice, it is both but I'm not sure that I have a plan and I think it is very good to have a discussion. I've really enjoyed my interaction with other judges on the Bench, black judges on the Bench and how do we approach things and so on. I think the first step is speaking and two – if there are further steps to take, yes, one should do that.

CM J. Mogoeng: Yes. Anyway, Ms Stewart?

Ms F. Stewart: Advocate Burger, would it be fair to say that your practice as a silk has been predominantly maritime and Maritime, Mercantile Law?

Adv. L. Burger: Probably less than 50% at this stage is Maritime Law. It's a fair amount of commercial work. The maritime work in the last few years has really gone down, if you just look at the case numbers in the Cape Division. It's gone down. So I would say less than 50% of my work at this stage is probably maritime work.

Ms F. Stewart: And as far as I know there are no black or female silks that specialise in Maritime Law at the Cape Bar. Is that correct?

Adv. L. Burger: That is correct.

Ms F. Stewart: Do you know why that is?

Adv. L. Burger: Historical briefing patterns. It is – there are actually very few, I think there may be four silks, four or five silks that I would count on my hand who do maritime work at the Cape Bar.

Ms F. Stewart: I understand. One more question, Chief Justice. I understand that there is a Master's in Maritime Law, which UCT is running and at the moment,

producing probably 20 to 30 Master's students every year. If the work is going down to the level that you think it is, do you think that UCT should be encouraged to produce more Maritime Lawyers for the Cape Bar?

Adv. L Burger: I lecture at that programme and I've just been asked to act as an external examiner in that programme. So I've got a stake in that. I have a concern that people are doing this course and investing a lot of resources in the course, with the hope of getting maritime work, where there just is not that much maritime work there. But it is a good course. It empowers people to learn and educate them. But how they run their academics and how they market their academic programme I don't have a view on that.

Ms F. Stewart: Thank you, Chief Justice.

CM J. Mogoeng: Thank you, Ms Stewart. Minister?

JM M. Masutha: Thank you, Chief Justice, and good morning, Advocate Burger.

Adv. L Burger: Morning, Minister.

JM M. Masutha: Just on the Maritime Law question. The current president has decided to prioritize taking full advantage of us being what you could call a maritime nation, given the longevity of our coastal line compared to any other country in the world to explore all potential economic gains from that geographical advantage. Don't you think that in the medium to longer term, it would still be necessary to sustain capacity in the legal field in that area, given the fact that as local firms move out of the some of the specialised areas, were opening us up to international law firms coming in and basically taking over the work of local firms in the medium to longer term?

Adv. L Burger: I agree that you need to keep the capacity and to train people. There might well be a change in the amount of work. I mean it's a cyclical world-wide and world-wide and the maritime work is down, I am told. A large percentage of the students at that Master's programme are foreign students. A lot of people from

Africa, particularly Nigeria, Europe and other places. But coming back to your question. Yes, you do need skills and it's good to teach people. Even if people are not necessarily going to use their academic degree, it's often a very good training and I think it's a good thing. My concern is just, it is very, very hard for a young lawyer to start out in practice and I'm concerned, people incurring debt to study, where it might not be as useful as they might have thought. But it's a good programme and it's a good thing to have that programme.

JM M. Masutha: Maybe just clarify that question. I'm more looking at potential with government policy moving in the direction of harnessing that – well, that opportunity to say isn't there space for a possible opening up of more opportunities even in the public sector given the policy direction?

Adv. L Burger: Minister, I don't know whether that will create significant more posts for Maritime Lawyers. I think it would but it depends on which way the policy is implemented. Yes, I can see there would be more of a demand but I cannot see that it would be that significant an increase in the demand for Maritime Lawyers.

JM M. Masutha: And just the last thing relating to transformation of the profession specifically the Cape Bar, which has become a pet subject. The woeful under representation of black people in general, women and especially Africans continues to plague the image of the Cape Bar. Do you believe and given yourself as one of the obviously, senior members of that Bar and I suspect, therefore having some influence on practises there. Do you believe that as a collective, members of that Bar, over 400 of you, white males especially, are doing enough to drive transformation collectively and ensuring that you bring back – or bring credibility to that Bar in so far as its gender and racial composition is concerned?

Adv. L Burger: Minister, let me first make it clear. I'm not a member of the Cape Bar Council. I've never been. Yes, I am a senior person there. I've only served on a sub-committees, taxing and fee ombudsman. But can they do more? Yes, they can and they are doing more. They've implemented policy that's compulsory to involve [inaudible 11:15] with payment women and black women in work and they, in effect,

force people to do that. There is some resistance to it. I think it's a good thing and I think it will carry on and they will build on. Can they do more? Yes, they can. Yes.

JM M. Masutha: Sorry, Chief Justice, I think my question was more about the candidate telling us about his role in influencing that direction more than just observing from the distance. But if you say you are not a member of the member of the Bar –

Adv. L Burger: I'm not a –

JM M. Masutha: You have no influence whatsoever.

Adv. L Burger: I have –

JM M. Masutha: I just wanted to clarify.

Adv. L Burger: I have no influence other than speaking to my colleagues and expressing views on certain policies. I don't have any input in the Cape Bar Council's decisions.

JM M. Masutha: Okay, thank you, Chief Justice.

CM J. Mogoeng: Thank you, Minister. Commissioner Nyambi?

COMM. A. Nyambi: Thank you, CJ. Afternoon, Mr Burger.

Adv. L Burger: Afternoon.

COMM. A. Nyambi: Any personal contribution in deepening transformation of the Judiciary in South Africa?

Adv. L Burger: In a transformation of the Judiciary? I'm not quite understanding. I -

COMM. A. Nyambi: If you can share with us your personal contribution to – or advance transformation of Judiciary in South Africa?

Adv. L Burger: I don't have any influence on who gets appointed as judges. I don't quite understand the question.

CM J. Mogoeng: Let me -

COMM. A. Nyambi: Have you worked with –

CM J. Mogoeng: Okay.

COMM. A. Nyambi: Have you worked with black attorneys or advocates?

Adv. L Burger: Yes, a number of times.

COMM. A. Nyambi: Are you able to speak any of the African languages?

Adv. L Burger: No. I grew up in the Western Cape and when I grew up in the Western Cape, there was no Xhosa being spoken. I left overseas immediately after or shortly after my university career. I came back to South Africa in 1995. There's very little Xhosa spoken in an area where I am. Having said that, I'm busy trying to build a practice putting up children. Having said that, some years ago I sat in a criminal trial, presiding as a judge in a criminal trial where Xhosa was a predominantly language and I really regretted not being able to speak that language. I really regret it and I wish I could. Unfortunately, at this stage of my life, I've tried to start learning Xhosa. I find it very, very difficult. I'm not a linguist.

COMM. A. Nyambi: Why are you saying you are not a linguist?

Adv. L Burger: I'm saying I'm not a linguist in the sense of I don't learn languages easily. I struggled to learn to speak English. I had a hard time speaking English.

COMM. A. Nyambi: Thanks, CJ.

CM J. Mogoeng: Thank you.

COMM. J. Malema: Follow up.

CM J. Mogoeng: Yes, Commissioner Malema?

COMM. J. Malema: I don't ask questions, CJ. I'm just – follow up. Which year did you leave the country when, where there was no Xhosa in the Western Cape? Because when Jan van Riebeeck arrived here in 1652, there was Xhosa in the Eastern Cape, in the Western Cape or wherever you were?

Adv. L Burger: No. What I'm saying, it's not predominantly. There's very little because of the apartheid policies, there were very few Xhosa-speaking people where I lived in Cape Town. It has changed since then. That's what I'm saying. I'm not saying there were no people speaking Xhosa. I did not have the opportunity to interact with Xhosa-speaking people at that time.

CM J. Mogoeng: You didn't have any domestic helper, no gardener, never went to a filling station and came across a petrol attendant who speaks the language; goes to Checkers or supermarket and there are employees you need to ask a thing or two who are Xhosa-speaking and just out of interest? Let me not be hard on you. I don't know Venda [inaudible 16:11] but there are security people in my, where I work and I try. [Language] and so on. Out of interest I ask them. Nothing of that sort available to you?

Adv. L Burger: Yes, Chief Justice, we've had a domestic worker when I was married and I really tried to get her especially to teach my children – speak Xhosa to my children. And for me, to learn a few words and unfortunately, she switched to Afrikaans, even though she was Xhosa-speaking and she spoke often Afrikaans to my children. But yes, there have been opportunities and I've tried to learn a few words but to be proficient at it, I'm sorry, I found that very difficult.

CM J. Mogoeng: Minister, follow up?

JM M. Masutha: My apologies but you're saying to us that you struggled with English. I must say my observation this morning is that actually you are quite

proficient in English and that's possibly because you made it your business even though you are Afrikaans-speaking to become proficient in English and so it can happen with any other language. Wouldn't you agree with me that it's not just a question of being a linguist? But it's also you know, how compelling is it for you to learn any language?

Adv. L Burger: Yes, Minister, I agree with you. When I said I struggled with English, when I went to university, the first time, I purposefully went to the University of Cape Town, to learn to speak English properly. I was concerned about that. But you're quite correct. It is how much of a will and how much of a compelling reason there is. Over the years there have been other more compelling things in my life. But you're quite correct. I could have made more of an effort. I – when I came back to this country, there were other demands on my time. But I take the point. I could have done more and I have tried to learn a few words and I've struggled with it. I've struggled with the pronunciation.

JM M. Masutha: No. I was just trying to say, Chief Justice, that it helps us for candidates to be candid with us in terms of giving us the proper context under which they have failed or have done certain things. Thank you.

CM J. Mogoeng: Thank you, Minister. Commissioner Msomi?

COMM. S. Msomi: Thanks, CJ. Good afternoon Advocate Burger?

Adv. L Burger: Good afternoon, Commissioner.

COMM. S. Msomi: Just two questions from me. Obviously, when interviews of this nature arise, people are allowed to make comments. The Law Teachers Association makes a very interesting conversation or observation and I would like your comment on it. They say, "The candidate does not explain how lecturing Master's students in Law at University of Cape Town and lawyers at the Black Lawyers Association is significant as a contribution to the pursuit of justice in South Africa." They say, "This is vague." Are you able to comment and perhaps, enlighten the Law Teachers

Association as to what you meant when you answered this question in the manner you did?

Adv. L Burger: The question is this. What have I done that's the most? In my mind, giving my time as a volunteer to teach both at the University of Cape Town, to educate them, to helping them become better lawyers and to the Black Lawyers Association that is helpful. That is the best I did and that is why I put the answer down the way I did.

COMM. S. Msomi: Thank you. One other comment and it's a comment that is made by a Mohamed Salie SC, who is a member of AFTERNOON, Western Cape. He makes a contribution in respect of various candidates but when it comes to you and one Derrick [inaudible 21:09] Wille, I hope I'm pronouncing the surname correctly. He says, "I have no" or rather, "We have no – we express no opinion on Burger SC" and they go on to say, "Because we haven't had an interaction with him basically in a professional capacity." How do you respond to this? Is it not strange that a senior member of the profession would not be known towards another senior member of the profession in that province?

Adv. L Burger: He is known to me. I'm known to him. I've had a conversation with him. I think what he's saying is that he hasn't litigated against me or dealt with me in a professional capacity where he can evaluate me for the purpose for judicial [inaudible 22:02]. I simply read it as basically, "No comment" as opposed to a negative comment because he is not able to comment.

COMM. S. Msomi: Thank you so much. In recent times, Advocate Burger, the Constitutional Courts in our country has handed down interesting judgements. Which judgement for you, stands out, why does it stand out and how does that judgement in your view, contribute to the development of our jurisprudence? And lastly, what do you think is the role of the Judiciary in a developmental state like ours? Thank you.

Adv. L Burger: Dealing with the first question, the question of significant judgements and it's not that recent. But the judgement abolishing the death penalty, in my mind,

is the most significant. And for me personally, it is the most important judgement. And I'll say that it is. When I first started my career as an advocate, I did pro Deos. I did lots of them. I defended people on capital charges and it is, you know, the brashness of youth, I just did it. But over the years, I've really given thought to that process and my thoughts have changed. I don't want a death penalty ever again. That wasn't my views some years ago and I think it's the most significant contribution in spite of not being the popular view that judgement of a Constitutional Court, I think is the most important. The second question, sorry, I'm –

COMM. S. Msomi: The second question was the role of the Judiciary in a developmental state. But in respect of the first question that I asked, I was hoping that you will reflect because the abolition of the death penalty has been part of our lives now for a long, long time.

Adv. L Burger: Ja.

COMM. S. Msomi: I was hoping that you will reflect on the recent judgements perhaps handed down six, seven months or even a year or so ago and how do you see those having contributed to the development of our jurisprudence particularly under the leadership of the current Chief Justice? Thank you.

Adv. L Burger: The cases dealing with the separation of powers, I find that very interesting, the extent to which they affirm that the Constitution is supreme. That I find significant. As for the role of the Judiciary, it's related to that is that ultimately the Constitution is supreme and it's for Judiciary to decide where the bounds are, to what extent they can interfere with the Executive and the Constitution determines to what extent the courts can do that. Now, I've heard criticisms recently that possibly they've been over stepping it, the bounds of taking over administrative actions. I think there's more litigation to come on those issues, to what extent should they make decisions and substitute their decision for the Executive.

CM J. Mogoeng: Colleagues, time, time, time. One has posed four questions. Another preamble after preamble. Please, colleagues. Commissioner Schmidt?

Comm. H. Schmidt: Thank you, Chief Justice. Just a matter of interest, on the issue of your CV which – you know, on the electronic copy, comes after your nomination form. But I'm trying to understand how your CV runs because you indicate there from 1995 to present, you were practising as an Advocate at the Cape Bar since 1 April, 2011 as senior counsel. Then, but further down you say 1987 to 1998, practiced as an Advocate at the Cape Bar. There seems to be an overlap, which I don't understand and there seems to be a distinction, which I don't understand. So could you just put that into perspective?

Adv. L Burger: I studied, I did a Master's overseas. I came back. I did articles for two years and plus a bit. Then I was admitted as an attorney. I was moved removed as attorney, became an advocate. I did pupillage at that stage. I think it was three months or four months. Then I practised in 1987/88, at the Cape Bar as an advocate and then my immigration visa to the United States came through and I left in May 1988 that I went to the States. Then in March 1995, I returned and I've been practising as an Advocate at the Cape Bar since March 1995.

COMM. H. Schmidt: Well, now I understand it because that should then read 1987 to 1988 – not 1998. So if –

Adv. L Burger: Mine reads May 1988.

COMM. H. Schmidt: There is a separate page; I'm not going to make a big issue about it. But there's a separate page where, right on top it says, Lance Burger, SC. Professional and other work experience, followed by academic qualification, academic and I'm talking, speaking from that particular document.

Adv. L Burger: I think you're looking at one of the comments. I saw some mistakes in some of the comments as opposed to looking at my own questionnaire and CV. I noticed there were some typographic mistakes in one of the comments that was made on me.

COMM. H. Schmidt: It may be but it follows or it's just before your Alaskan Bar Association Certificate with a Cape Bar Certificate and [inaudible 28.41]. So it forms

part of your pack of documents, which on the face of it, has been submitted with your nomination. But I'll leave it there. Can I just – on one other issue, Chief Justice? There is also interestingly, on that same document, an indication that you practised as an Attorney at Law, in Seattle, Washington USA from 1988 to 1995. Well that would, that would make sense in the light of your –

Adv. L Burger: Yes.

COMM. H. Schmidt: Yeah, thank you [inaudible 29.00], I've got not further questions, Chief Justice.

CM J. Mogoeng: Thank you, Commissioner Schmidt. Commissioner Norman?

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

Adv. L Burger: Good morning, Commissioner.

COMM. T. Norman: Yes, good morning.

CM J. Mogoeng: I don't know why you all say morning, when it's past one. The Minister said it as well.

COMM. T. Norman: Thank you, good afternoon. I understand that you would have learnt – you would have made an effort to make sure that you're proficient in English because you needed it for your maritime practice. Am I correct?

Adv. L Burger: I learnt English because that was the – because I had to learn it to become a lawyer. At that stage you'd needed Afrikaans, English and Latin and I learnt it and because I was in an English environment, I became proficient, so I did.

COMM. T. Norman: And you would have made a great effort to make sure that you understand it because it was necessary because of the nature of Maritime Law being an English law, basically? So you would have wanted it and you wanted to master that so that you would be able to deal with your maritime practice effectively?

Adv. L Burger: It wasn't restricted to maritime. I made an effort to learn the language of English for the sake of my practice, not necessarily Maritime. But yes, you are correct. I made an effort to learn to speak English.

COMM. T. Norman: Yes, thank you and then lastly, now, then you've mentioned that you've worked with two juniors from Cape Town that you work with, from time to time, black juniors. Am I correct? Did you mention two or am I wrong?

Adv. L Burger: I think there were more than two.

COMM. T. Norman: Okay. Now in the maritime practice, your shipping practice, how many juniors do you use, black juniors?

Adv. L Burger: The Maritime Shipping Practice do not use juniors that often. Certainly, the practice I have, we don't use juniors that often. In fact, last two years, there's very been little maritime work where ours [inaudible 31:25] appeared. In other matters, I've used black juniors. There was another transport law. I don't recall that I have used a black junior myself with working with me in a maritime thing. I've recommended a black junior to a firm of shipping law people to suggest that they use her.

COMM. T. Norman: Yes. And then lastly, do you do any shipping work from Transnet?

Adv. L Burger: I used to do a lot of shipping work from Transnet when there was a black attorney, Mr Matikinko [inaudible 32:02] that used to get a lot of shipping work from them and that was years ago. I have not had shipping work from Transnet for – I think, for ten years.

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

CM J. Mogoeng: Thank you, Commissioner Norman. Commissioner Nyambi?

COMM. A. Nyambi: No, it was an error.

CM J. Mogoeng: Oh okay. I'm sorry. [Cross talk]. Do I have the wrong thing? No. Commissioner Mpofu?

COMM. D. Mpofu: Thank you, Chief Justice. Okay, in the interest of time, I won't ask you my – the question on language because I think you've been asked a lot on it. Just simply to say that in my first year I had to do three foreign languages; English, Afrikaans and Latin and I wish I had the choice to have said, "I'm not a linguist" and I just want to study Law. But anyway, the question I really wanted to ask you is I find it quite difficult, if you've been a member of the profession, of the Bar in particular, for let's say 22 years. Let's forget that 1988 stint – that you've never served on the Bar Council. The Bar only functions through the Bar Council. I'm sure you will agree and it would just disintegrate without it. So how have you managed? It's a difficult feat I'm sure to achieve? So there must be a way in which one can do it? How did you manage to just be so passive for so many years and not play any role in the affairs of the profession?

Adv. L Burger: I have not been passive. I've worked for many, many years as Taxing Secretary of the Bar. That involved a lot of work. It's probably one of the sub-committees that do the most work and I did that. The fact that I haven't been at the top body doesn't mean to say I haven't done my fair share of work for the Cape Bar. I worked as a Taxing Secretary. In the end, I became the chief of the Tax Secretary. When that fell away I became one of the Fee Ombudsman, where you sit on fee disputes between attorneys and counsel. Some two years ago, the Chairman of the Bar Council came to me to say, "Please, won't you come and run for the Bar Council?" And I said, "If you ask me because I had a very high regard for, "Yes, I'll put my name forward." And he said, "Oh, we're un-elected." And then there was some problems with that and then there were more candidates and I didn't remove my name in spite of [inaudible 34:56] unopposed and I was not elected. But it's not a case that I was shirking my duty. I've done more than my fair share, not just in terms of fee disputes but I've also been appointed as disciplinary, to do disciplinary hearings over [inaudible 35:17] council. I've also spent a lot of time defending some of the – you know, before the Bar in a disciplinary hearing. I do my fair share.

COMM. D. Mpofo: Okay. Thank you, Chief Justice.

CM J. Mogoeng: Thank you, Commissioner, Mpofo. Commissioner Didiza?

Comm. T. Didiza: Thank you, CJ. Good afternoon, Mr Burger.

Adv. L Burger: Good afternoon.

Comm. T. Didiza: I notice in your form on page 3.8 on the name of organisations and membership of any political organisations, you said you applied for student membership of the Progressive Party in approximately 1979. You do not recall that you became the member?

Adv. L Burger: Yes.

Comm. T. Didiza: That is not my interest. My interest is what was the motivating factor for you at the time to want to join the Progressive Party instead of the National Party, Conservative Party, particularly at that period in our country? What would have been the motivation?

Adv. L Burger: The motivation was that I wanted – I did not agree but I was still young and forming my views and I thought, well, I must do more and the Progressive Party was the only party against apartheid in that regime/parliament. And that is why I thought I wanted to join and it's many years ago. As I recall, I sent it off, the application form or something and I didn't hear anything further about it. But the motivation was that one needs to, when you live in a society, you need to be involved in politics and the Progressive Party who was against apartheid, was the one that my views were most aligned with.

Comm. T. Didiza: Did those views remain or change at some stage as you grew up?

Adv. L Burger: No, it strengthened in the sense of apartheid is completely, completely, utterly wrong.

Comm. T. Didiza: So you didn't do anything in terms of either after your student activism, to working organisations such as the Legal Resources Centre and others that were supportive of those who were fighting against apartheid?

Adv. L Burger: No, I did not, as a student. The only thing that I do, do as a student, I was one of the students that ran a Legal Aid Clinic on the Cape Flats to give advice. That is what I did as a student. After I finished university, I had two years of Military Service and I wanted to get out of the country and yes, you've seen my CV and then, when I could, I got out of the country.

COMM. T. Didiza: Okay, CJ, the last one is related to your contribution the law and the pursuit of justice. There's a case you mentioned there. Maybe, if you can share with us, what's the significance of that case? In your view, what is it that it contributed to law and pursuit of justice in our country?

Adv. L Burger: Sorry, which one are you referring to?

COMM. T. Didiza: It's on point 10 on the questionnaire. You're mentioning your representation which you made on behalf of indigenous sufferers in the MT Argon case. What is significant about that case? Did it change the current Maritime Law or did it bring in international perspective, which you thought was important? What was so significant about it?

Adv. L Burger: Okay. I have represented all my professional career from my days as article clerk, I've represented seafarers. They're really oppressed people and as an article clerk, I went and brought the claim for wages for Xhosa fishermen, who – where the owner just refused to pay. And the firm allowed me to do that and I've really enjoyed it and I've done those kind of things all my year – all my career. Now, the MT Argon is a very significant case for a jurisdiction point of view but to me, anybody who is oppressed should get legal representation. Now, the crew of the MT Argon had not been paid. An attorney was concerned about bringing this case and getting counsel and my view is, I'll represent them. Don't worry about the fees we can – if there's money later on, we can sort it out. It is significant from a legal point

of view and it is significant because it helped the seafarers who were not paid and wouldn't have been paid.

COMM. T. Didiza: Maybe just the last one as a follow up to that one. Did you, given the category of seafarers, you say, have you considered after representing them for so long that they should actually form part of our Labour Relations Act, particularly, categories like your farm workers, where you have to do determination of wages? So that it's not dependant on a company, whether they wish to pay them today or they don't use [inaudible 40:41] to pay them tomorrow?

Adv. L Burger: The – I've not given that consideration. In Maritime Law, seafarers are very well protected in law. The practicalities are a bit different. If an owner doesn't pay, he doesn't pay. But there are people who will represent seafarers to get their wages. The International Transport Workers Federation is quite active and in fact, in that MT Argon, some of my fees were paid by the International Transport Workers Federation. I don't see the solution as being a change in law. I see the solution in making sure that people get legal representation and to a large extent they do get it because there are people like me, if they come to me and say, "We don't have money, there are seafarers that need to be represented", I'll be there every time.

Comm. T. Didiza: Thank you, President.

Female: Thank you, Commissioner Didiza. Commissioner Masuku [inaudible].

COMM. T Masuku: Thank you, President. Morning, Mr Burger.

Adv. L Burger: Good morning.

COMM. T. Masuku: – I must disclose that Mr Burger is a colleague of mine at the Cape Bar. For what it's worth we acted together as well in the High Court. Just want – I just have one question to ask you and it relates to how you think the courts can be effective institution of combatting racism, unfair discrimination, you know, socio-economic rights. And I have in mind here the improvements that can be made to the

effective functioning of the Equality Court because it's one of the – as you know, it's one of the courts that are specifically established to deal with these aspects, which aspects of them could be improved?

Adv. L Burger: I don't have all the solutions. I think there is a place for the Equality Court and they're developing their own jurisprudence and it's fairly new jurisprudence. But there is a role to play in the daily work of the courts, I can't think of situations right now, how to improve that.

COMM. T. Masuku: Just a follow up on that. Have you been able to assess whether the Equality Court is sufficiently being used for the purpose of ensuring that disputes involving discrimination are dealt with effectively?

Adv. L Burger: I have not assessed that or formed a view on that.

COMM. T Masuku: Thank you, Mr Burger.

CM J. Mogoeng: Thank you, Commissioner Masuku. Mr Burger, you are excused. Thank you so much for coming.

Adv. L Burger: Thank you for your time.