



JUDGES MATTER

Judicial Service Commission interviews

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Gauteng Division of the High Court

Interview of Adv T S Madima

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Mr T.S. Madima: I re-joined the bar in Cape Town and I also maintained chambers in Johannesburg since 2005.

CJ M. Mogoeng: And for how many years have you been silk?

Mr T.S. Madima: This is the sixth, I'm on to my seventh year.

CJ M. Mogoeng: And do you attract the quality of work that you are happy with, or there still some concerns?

Mr T.S. Madima: It's fifty-fifty CJ. I know for a fact that I am not getting the work that I should be getting. But on the other hand, I think the work that I do, in the past – since I took silk it's qualitative work.

CJ M. Mogoeng: Yes. Briefly what can be done to ensure that it moves from fifty-fifty to seventy-five, one hundred or so?

Mr T.S. Madima: I think as counsel, you do work that your attorneys give you.

CJ M. Mogoeng: What could be done to have attorneys give you, work that befits senior counsel at all times or most of the time. In other words what is the problem. Why is it that you are not getting that quality work? Are you to blame, or does the answer lie elsewhere?

Mr T.S. Madima: I would think that the answer lies elsewhere because you are never given feedback. Nobody tells you why you are not getting the work you should be getting. It would be understandable if you'd be given a huge brief and you mess it up. I could understand that why they shouldn't come back to you. But it never happens that way. You get the work you do it, you win the case and sometimes, most times that is the end you see of that attorney.

CJ M. Mogoeng: Yes. I don't remember seeing you at the Constitutional Court. Did you appear during my – ever since I became Chief Justice? Some six years ago?

Mr T.S. Madima: Never appeared in the Constitutional Court.

CJ M. Mogoeng: Why is that? Not in your line or don't you know?

Mr T.S. Madima: I'll blame the attorneys for that.

CJ M. Mogoeng: All right. Why do you believe you are ready? For judicial appointment? –

Mr T.S. Madima: - CJ -

CJ M. Mogoeng: - Just briefly.

Mr T.S. Madima: Ja, I have acted for close to ten months. I've been silk for six and a half years. I have been a judge, if you want to call it, at the Competition Tribunal for five years. And I think I'm ready CJ.

CJ M. Mogoeng: Why don't you do competition work before the Constitutional Court? I see most of the same faces over and over again. Or are you at the initial stages of your involvement at the Competition Tribunal?

Mr T.S. Madima: No, I was appointed in 2009 and I – for a term of five years. And I thought that by not getting competition law work I was in some sort of cooling off period, but this now is the third year and I haven't had any type of work. And I would think that maybe it's because there isn't enough of that type of work.

CJ M. Mogoeng: Isn't the commission state funded?

Mr T.S. Madima: It is.

CJ M. Mogoeng: Okay. What is the longest period you've kept a judgement reserved for?

Mr T.S. Madima: Twelve months.

CJ M. Mogoeng: Twelve months.

Mr T.S. Madima: Ja, this is -

CJ M. Mogoeng: - Why? –

Mr T.S. Madima: - This is the same judgement was reported last year, in Cape Town when I was sitting – where I am sitting now, and I did explain. It is on the transcript here CJ.

CJ M. Mogoeng: Yes.

Mr T.S. Madima: Yes. That is going to be a perpetual source of embarrassment for me. It is something that is going to follow me forever. It has put a blot on my otherwise commendable record of judgement writing and it has not recurred. It will not recur. If you look at what the other judgements I have written post that, they are all within forty days.

CJ M. Mogoeng: So you would say you have redeemed yourself?

Mr T.S. Madima: I hope I have redeemed myself. I've learned my lesson. It's really, really embarrassing because there is no explanation one can give other than just pleading mitigation. There is no justification for that.

CJ M. Mogoeng: Yes, thank you. JP?

JP D. Mlambo: Thank you very much Chief Justice, Mushilo, should I say Mushilo or professor SC?

Mr T.S. Madima: I think judge would top that.

JP D. Mlambo: What I need to focus on with you is your spreadsheet indicated that you did act on three occasions in the High Court in the Cape. But what is does not reflect is that you acted in criminal appeals in 2005, I don't have the number because that was way before I became JP. And in October to December 2008, you acted for eight weeks, also criminal appeals; as well as in January to March 2010 you had a ten-week stint. Right do you confirm those facts? They won't appear in your spreadsheet. Because this is something that I subsequently dug out.

Mr T.S. Madima: Okay. In the spreadsheets that I have the April to June 2005, those were Friday appeals.

JP D. Mlambo: Yes.

Mr T.S. Madima: You are paired with another judge ones a week, every Friday.

JP D. Mlambo: The thing that I want you to confirm is whether I am correct -

Mr T.S. Madima: - You are correct -

JP D. Mlambo: - At what I dug out. Because that is an additional eighteen weeks that I've dug out.

Mr T.S. Madima: Yes, this is correct.

JP D. Mlambo: Okay, now you can blame me if you want to. But in your acting stints, you've done six weeks of opposed motion in a total of twenty-seven weeks. And the others were unopposed and civil trials, that's been the bulk of what you did.

Mr T.S. Madima: That's correct.

JP D. Mlambo: Right. You also are a silk. What I wanted to check is have you led any teams in either the High Court or in the SCA as silk?

Mr T.S. Madima: Yes, I have. Since taking silk, I have appeared in the High Court with a junior.

JP D. Mlambo: Okay. The Supreme Court of Appeal?

Mr T.S. Madima: No, I didn't have a junior, but I did appear in the Supreme Court of Appeal.

JP D. Mlambo: Yes, I think I asked this question last time, forgive me.

Mr T.S. Madima: Yes.

JP D. Mlambo: And this is all because of briefing patterns I suppose?

Mr T.S. Madima: I guess.

JP D. Mlambo: Okay. Now other than that I think that JC asked the question I wanted to ask you, you are ready?

Mr T.S. Madima: I am ready JP.

JP D. Mlambo: You've been a law – a teacher.

Mr T.S. Madima: I still teach.

JP D. Mlambo: You have executive management experience.

Mr T.S. Madima: I do.

JP D. Mlambo: You've sat in adjudicatory positions, like in the tribunal; you've acted as a judge.

Mr T.S. Madima: Indeed.

JP D. Mlambo: You feel you are ready?

Mr T.S. Madima: I think I am ready.

JP D. Mlambo: Thank you CJ.

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

MEC: Thanks CJ. I don't think that I will take time, as well, from our previous engagements with prof. Some of the issues had been clarified. Good morning prof.

Mr T.S. Madima: Morning, morning MEC.

MEC: I just want to indeed accept your explanation in terms of the outstanding judgement that you said, it is indeed a problem that we've acknowledge. Because from the previous engagement with you, it was more of justifications, and now it's

more of mitigation, rather than justification. Which is a very important achievement it allows us to move and go beyond that part. And also, your indication that immediately after that unfortunate incident all the documents that came after were within the acceptable time limits. Which is something that indicate that indeed, there is a form of change that we need to acknowledge and accept. With somebody that has been a former teacher, you automatically win my heart and accept that we need to take in consideration the new changes. So that's the only note that I wanted to bring to your attention Chief Justice. Thanks

Mr T.S. Madima: Thank you, MEC.

CJ M. Mogoeng: Thank you MEC. Commissioner Malema?

COMM J. Malema: Have you done some work for Parliament?

Mr T.S. Madima: Yes. I have.

COMM J. Malema: Is the wife working at Parliament?

Mr T.S. Madima: My wife?

COMM J. Malema: Yes.

Mr T.S. Madima: No, she doesn't.

COMM J. Malema: She is not working in Parliament?

Mr T.S. Madima: No. It could be another Madima there, but not -

COMM J. Malema: - No, no, no -

Mr T.S. Madima: - But, not my Madima.

COMM J. Malema: What happened with the Coldsman TC because it looks like they said you sat on it for quite some time until you are ready to come here.

Mr T.S. Madima: No that is not quite correct. I have emailed communication, where the parties said to me, that when we last adjourned. They said the parties are in settlement discussions. And it took such a long time that until I saw a clip, where I was being blamed for the delay. Where the clip says, that the matter is in the hands of the chairperson, we cannot push him. That's when I said they have to come back. They came back, we finished on the 21st of September, a decision is going to be handed in on Friday. And I -

CJ M. Mogoeng: -Thank you, Commissioner Malema? You still want to add?

Mr T.S. Madima: Yes. And just to add to that Commissioner Mushadi, it turned out that the parties only met on two occasions. And it could not – they could not resolve their differences. And I will be ready on Friday with the outcome.

CJ M. Mogoeng: Just to make sure that I understand everything said was there something about Chubby or something?

Mr T.S. Madima: No Mushadi.

CJ M. Mogoeng: Mushadi.

Mr T.S. Madima: Mushadi.

CJ M. Mogoeng: Mushadi. Okay [foreign language 12:22] A clan name?

Mr T.S. Madima: No the clan name is Seremani for Commissioner Malema and it is Hanisi for me.

CJ M. Mogoeng: Okay it is not something that we must consider for the purpose of deliberation?

COMM J. Malema: Mushadi means black Jews.

CJ M. Mogoeng: Jews?

COMM J. Malema: We are the black Jews. Yes.

CJ M. Mogoeng: All right. Okay. Commissioner Nyambi?

COMM A. J. Nyambi: Thank you CJ. Afternoon.

Mr T.S. Madima: Afternoon sir.

COMM A. J. Nyambi: Mine is only one question I want to take it from what was left by MEC. In relation to the last interview. Any other significant thing that you want to share with us that we must seriously consider with the hindsight after what happened then?

Mr T.S. Madima: Yeah, I think if you go to the last three pages of my list of judgements you will see the promptness with which I delivered all of those judgements. I'm now within – I don't wait until the thirty day, the ninety days but I am within the, between twenty and forty days with my judgements. I've learned the hard way from the [inaudible 13:50] judgement.

COMM A. J. Nyambi: Is that the only issue?

Mr T.S. Madima: Regarding the – yes, it is the only issue that I can think of at this stage. I've gone back to act, again, in the last term. I will be back in the High Court on Monday, again, for four weeks.

COMM A. J. Nyambi: Thank you CJ.

CJ M. Mogoeng: Thank you Commissioner Nyambi. Commissioner Ndlovu?

COMM Ndlovu: Thank you. Good morning SC.

Mr T.S. Madima: Good morning.

COMM Ndlovu: Ja, I just wanted to ask two things, maybe I'll just put the questions together; you can deal with them. The first one relates to something that the CJ touched on with you regarding the competition work and briefing patterns and that kind of thing generally. And the type of work that you attract as a silk versus the kind of work that you should be attracting as a silk. Now, and more particularly in relation to the question of the Competition Commission and it being a State-Owned Enterprise. You have been in a position, like me, where you were at the helm of a State-Owned Enterprise and then – in other words being able to be on the other end of the transformation of the Bar, kind of axes. Did you, at your time at Transnet, when you were the head of legal did you think you did enough; or what did you do to ensure that black practitioners were empowered. And if not, if you were given a second chance how would you improve that. Now that you've experienced the problem from both sides of the scale as it were. And the second question is also related to that. Now when we become leaders of the Bar, Senior Counsel, we should no longer be beneficiaries of transformation. In fact, maybe less so at a particular stage. But we now attract a responsibility ourselves to develop black juniors, particularly black female juniors. What have you done since taking silk in ensuring that you spread – you assist as many black juniors as possible and expose them, so that they don't go through what you and I went through as juniors.

Mr T.S. Madima: Thank you Commissioner Ndlovu. Let me start with the last one. What have I done to ensure that junior, black juniors are empowered. In all my work, in the past two, two and a half, two years I've always roped in a black female junior, always. In that period only ones did the attorney agree to pay for the junior, and in all those occasions both here in Johannesburg and Cape town I've paid from my own pocket. I've spoken to- even when it is a State Attorney I would say that, can you ask client if they can pay the junior? If the answer is no I said it's okay, I will still rope in the junior. The juniors name will appear in the pleadings, with my name and I will pay from my pocket. And I've done that consistently, in Cape Town and Johannesburg. And in coming to what I did at Transnet, there is a Commissioner sitting next to you there; who will tell you what I did when I was at Transnet. Again, my focus was on

females and smaller black law firms. Where I briefed big law firms I briefed the attorneys, the black attorneys in those law firms. What I also did when I was there, I gave – I had a budget for bursaries. And my bursary allocation went to black kids who went – who did not go to - the majority of those were black kids who went to black schools in the townships and in the rural areas. And that is what I did, because I just thought these are the people that need a chance, and you will see from the prize that I sponsor I don't look at marks. They are not the determinant, there are a host of other things that I looked at when I allocated those bursaries at Transnet for example. Competition work, yes, I haven't – I've sat as a judge in the Competition Tribunal for five years. I haven't received one single brief since then. Again, I've passed beyond complaining. It doesn't, it doesn't really help. If attorneys don't give you the work, I've passed beyond thinking it is my fault. So that's. If I could do, could I do things differently if I were at Transnet? Yes, I would. Our company has changed since when I left Transnet in 03 and there are bigger law firms now, black law firms, that should in my view be getting the bulk of parastatal work.

COMM Ndlovu: Thank you Chief Justice.

CJ M. Mogoeng: Thank you very much Commissioner Ndlovu. Minister?

MINISTER T.M. Masutha: [foreign language - 20:27]

Mr T.S. Madima: [foreign language – 20:30]

MINISTER T.M. Masutha: I was just greeting. I was just – [foreign language – 20:34]

Mr T.S. Madima: [foreign language – 20:36]

MINISTER T.M. Masutha: My watch hasn't hit twelve yet, so. Unless Commissioner Malema's has. No, I was just saying good morning. The first opportunity I had in an interview where you were considered, by the JSC was during the 2004, 2009 stint that I served on the JSC and more than a decade later I see you are still tenaciously pursuing your aspirations to becoming a judge. How many time so far, if you can remind me, have you appeared before the JSC?

Mr T.S. Madima: This is the third time.

MINISTER T.M. Masutha: This is the third time.

Mr T.S. Madima: Hopefully, third time lucky.

MINISTER T.M. Masutha: And I must say that already at that time you were an established academic and an experienced lawyer in your own right. What has it taken for you not to be discouraged and to continue to knock at this door of judgeship so many years on? Despite receiving a disappointing, you know, return.

Mr T.S. Madima: Thank you Minister. I think the motivation is, there is nothing beyond silk for a practitioner. -

CJ M. Mogoeng: - There is nothing beyond? -

Mr T.S. Madima: - beyond silk.

CJ M. Mogoeng: Oh, beyond silk. Okay.

Mr T.S. Madima: That, you know. And I believe the time is right and I also believe that it is an honour and privilege and a natural progression for a practitioner to end-up on the Bench. It is the highest calling, if I may borrow – I may plagiarise from one of the answers provided by a now judge. It is the highest calling. It is a job that comes with enormous responsibilities. And I have not waived, at all, from eventually getting a seat on the bench. If I am not recommended this year, I'll be back next year if shortlisted.

MINISTER T.M. Masutha: The last question I want to ask you, is that rightly or wrongly there has been perceptions out there that the JSC, over the past two decades, had not done enough to prevent mediocrity creeping in, to the system; to the judicial system in South Africa. Whether it is manifested in judgements that are not handed down timeously because of various factors etcetera. Do you think that

your appointment and maybe modesty may be a factor in your response, but I would want to give you the opportunity to sell yourself here. Do you think that your appointment would instil confidence out there that the judicial – the JSC is serious about appropriating mediocrity within the system, if that is the way to put it. Would your appointment, in your view, aggravate the perception or actually ameliorate it, so to speak?

Mr T.S. Madima: Thank you again Minister. I think the answer lies in the latter statement you made. I think I am adequately qualified. I bring, I'll be bringing in scholarship on the Bench. I have many years of experience. I have been an adjunct professor at UCT since 2008. I think that my appointment will instil confidence in the judiciary, in a sense that not many of my peers avail themselves for the Bench, for whatever reasons.

CJ M. Mogoeng: Are you done, Minister?

MINISTER T.M. Masutha: No, that was my last question. Thank you, JC.

CJ M. Mogoeng: Thank you so much Minister. Commissioner Ngkositomas?

COMM Ngkositomas: Thank you Chief Justice. Good morning Mr Madima.

Mr T.S. Madima: Morning Commissioner.

COMM Ngkositomas: Have you had an opportunity to go through the comments send by the Commission to the JCB?

Mr T.S. Madima: Yes –

CJ M. Mogoeng: - I get signals that they can't hear you at the back. Maybe if you could just pull the mike closer to you. -

COMM Ngkositomas: I will do so. Thanks Chief Justice. Do you perhaps have that before you?

Mr T.S. Madima: I do.

COMM Ngkositomas: They recommend your appointment. But then they mention certain judgements on page 4, of that report, in respect of which I thought you should be given an opportunity to explain what is being said there. But let me ask you this first, this Chillwane, versus Chillwane when was it handed down? Page number. It occurs on page 4 of the report paragraph 5.4 thereof.

Mr T.S. Madima: Yes, I can see that. I am trying to look at my list. It is in the old list. It was handed in on the 5th, sorry in May, May 2013.

COMM Ngkositomas: Oh yes, 2013?

Mr T.S. Madima: 2013, yes.

COMM Ngkositomas: It is an old judgement.

Mr T.S. Madima: Old.

COMM Ngkositomas: Very well but then they've, the comment there essentially is that it is an eviction matter. So as I understand the complaint is that as a judge that judicial oversight role that is to exercise in matters of this role was not, that role was not played by the Court. But you are saying it is an old matter.

Mr T.S. Madima: It is an old matter.

COMM Ngkositomas: And is there any reason though that the requirements of PIE were not referred to in your judgement as is suggested here?

Mr T.S. Madima: My understanding of the comment, comments by the JBC -

CJ M. Mogoeng: - I think let the mike be in front of you. Yes –

Mr T.S. Madima: My understanding of the comments by the JCB is that I did not refer to Constitutional issues in that judgement relating to children and the elderly?

COMM Ngkositomas: Yes. In other word sir, the requirements of the Constitutional read with those of PIE, that the eviction has to be just and actable. That really is the gust of the complaint. And as I understand it they are saying that the Court proceeded based on the Deed of the Trust, what is it?

Mr T.S. Madima: Ownership.

COMM Ngkositomas: Ja, ja ownership, unlawful occupation therefor eviction. So, but one understands that this is an old judgement. The only reason one is putting this question is to afford you an opportunity to deal with it. After all the JCB recommends that you should be appointed.

Mr T.S. Madima: Yes, thank you. I think, I didn't refer to those issues because there were no children involved there; there were no elderly people involved there and I just thought that maybe it was not necessary. But I do, I do accept the critique.

COMM Ngkositomas: Thank you. Thank you Mr Madima. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you. Commissioner Motshekga?

COMM Motshekga: Mr Madima, would you agree that the disposition of Africans of their land and their national resources is the route of the triple challenge of poverty, unemployment and inequality, and if you do that this triple challenge is the route of crimes, evictions and social ills and if you agree; do you think a brilliant lawyer like yourself would be satisfied just defending criminals and victims of evictions?

Mr T.S. Madima: The short answer is yes, to the questions that you posed. Yes, the disposition of land is to blame for the ills in our society. Regarding the defence of criminals, yes Commissioner it is a lawyer's duty to represent anybody that comes before them. If the practitioner is, has the competency to deal with the issues

involved, yes. Our Bar Rules actually insist that we do that, everybody has the right to legal representation. No, I'm done CJ.

COMM Motshekga: I wanted to know whether you are aware that more than sixty percent of land claimants in Limpopo, if my statistics are correct, are undefended. Is there any reason why you are not dealing with any land claims matters, if so what could be the barrier?

Mr T.S. Madima: Again, the simple answer would be I have not been briefed in those matters. And if I have been briefed in them, I would have, in to the extent that I should be. However, I did represent the Manzibandida Royal House in the Land Claims Court in Randburg, on only one occasion and we did get a positive result.

CJ M. Mogoeng: Your mike is off doc.

COMM Motshekga: Lastly, do you know that in the Venda area, known as Venda there are several communities that are actually in exile, because they have been evicted from their land and they have no access to legal defence. Is there any reason why you couldn't do some *pro bono* work in that area to try and help, if you are a public-spirited lawyer?

Mr T.S. Madima: Yes indeed, it did Commissioner. I would take a case like that on a *pro bono* basis. I have done *pro bono* work across the spectrum. Again, it is a requirement at the Bar that we dedicate certain numbers, certain hours per year on *pro bono* work. Coming from that area I would, I guess I would be well suited because I speak the language and – but unfortunately, I have not been briefed in any of those.

COMM Motshekga: If you get a brief tomorrow, would you be prepared to go and do those cases?

Mr T.S. Madima: If I got the brief tomorrow I would tell them that, I'm back in Court as a judge on Monday if they want to wait, they can wait until the 4th of November, when I am done.

COMM Motshekga: Thank you.

CJ M. Mogoeng: Just President Hlophe?

JP J. Hlope: Thank you Chief Justice. I would like to declare for the record that I've known Dr Madima for many years, even before I became a judge. Good afternoon Dr Madima, I think that is the title you like?

Mr T.S. Madima: Good afternoon Professor, Commissioner Hlope.

CJ M. Mogoeng: Well it looks he would like you to say Professor.

JP J. Hlope: Right, I have one question and it is based on the following assumptions, that racism is still prevalent in the South African society, in our communities. It is still – It still does rear its ugly head in the profession in general and is still there in the judiciary. I am asking, I am proceeding from that assumption. I would like to know where you to be appointed today, as a permanent judge, what steps would you take to assist the leadership of the judiciary in terms of dealing with racism on the Bench and in the profession in general. Thank you.

Mr T.S. Madima: I think there is racism everywhere, everywhere all over the world. Now coming to the legal profession itself, it is easy to say black practitioners don't get briefs from the big white law firms because of racism. It could be true, because there is no explanation for it. There is no explanation why most black practitioners do not get work from white firms. Now how can that be addressed, I'm still talking at the practice, at the law practice level. How can that be addressed? I think the carrot and stick approach should be evoked, where the white firms for them to benefit from Government Work they have to be forced to engage black practitioners at that level. On the Bench, SJ I've acted in Cape Town, as Commissioner, Professor will attest; I have acted in both Pretoria and Johannesburg; I cannot say that I have seen my white colleagues being openly racist. I cannot say that. It would be not – It would not be fare on them for me to sit here and say yes, there is racism in Pretoria. It is more like at the Bar, when you are a judge you've got your own chambers, you've got your

own space. You go in there, you do your work and you leave. Look, at a conceptual level, yes there is racism, but I've not experienced it as an acting judge. Yes, there have been people who had been rude in Court, and I have quickly put them in their place. But I would attribute that to rudeness more than to racism.

CJ M. Mogoeng: Done JP.

JP J. Hlope: Yes.

CJ M. Mogoeng: You want to follow-up Minister?

MINISTER T.M. Masutha: Apologies Chief Justice I am not satisfied, with the response. We have dealt with the situation, for example, of the Cape Bar where the number of African in particular, but blacks in general, members of the Bar is shockingly miniscule and you having worked in Cape Town for many years, as far as I can recall, should have first-hand exposure to what happens in that Bar. We have had candidates here, openly acknowledging it, that there is a culture of racial exclusion. Subtle of that and in some instances explicit. I am not satisfied that you are being, you are being – I wouldn't say honest about it – I'm trying to find the proper English maybe I should find a Venda version of what I am trying to say. Candid, oh there, good English. The black English people have assisted me. So I want to put it to you, Professor Madima that maybe you want to reflect on your answer a little bit more. Give even the experience I have just outlined. The intimate experience you have of that Bar. The Bench may have transformed because we dictate from here how the Bench is constituted or reconstituted, but I want to confine you to the Bar. Given the numbers there, I am not convinced that with the number of Universities that are in the Western Cape, that are turning out black graduates in law. Including your own contribution that at this day and age, we could have such a miniscule representation of blacks and Africans in particular, on the Bench. Can you comment on that?

Mr T.S. Madima: Yes Minister. I did say that there is racism everywhere. That is what I started with, sir. It is everywhere.

MINISTER T.M. Masutha: No, I still don't want you to start there. I want you to start at the Cape Bar and confine yourself there.

Mr T.S. Madima: Yes, right. In Cape Town probable between fifteen and twenty percent of the advocates there are black. Now what could attribute to such small numbers? It's the number of applicants, people who apply to, who want to come and do pupillage; and I can say this now that in the past five years the majority of pupils at the Cape Bar are black. Generically Indians, Colours and Africans. Now the reason there is no transformation there is the attrition rate, again it goes back to the briefing patterns. Junior counsel don't have the work and that's why I said, I personally and some other black out there, practitioners I know, they share their fee with the juniors. So if by racism we mean that, we mean as well that the big white law firms are not briefing us; then how do we then explain the attorneys, the State Attorney not briefing black juniors? And the majority of Assistant State Attorneys in Cape Town, if we have to focus on Cape Town, are black. And we know that the State is the largest litigator. Every other case before the Court involves the State, but the black juniors and black practitioners are not briefed. That is where the contradiction then lies. Minister.

MINISTER T.M. Masutha: Well I accept the criticism against the State, but I am not sure whether I accept that, that is the only factor. -

Mr T.S. Madima: - Ja -

MINISTER T.M. Masutha: - That contributes to the situation there. But I will leave it at that. Thank you. Chief Justice.

JP J. Hlope: Chief Justice, I am asking [inaudible 45:07}

CJ M. Mogoeng: Sure JP.

JP J. Hlope: Dr Madima I must say I am very disappointed with your answer. You recall when you applied for silk in Cape Town a couple of years ago. There was crisis we all us black judges sympathised with you. We felt you were a victim of

racism, because a coloured colleague who was less qualified than you was preferred for silk. That even led to a situation whereby the then chairman of the Bar Council resigned over that. I find it alarming that you deny it today.

Mr T.S. Madima: Commissioner, Professor if I may just make a correction there the people who opposed my silk application were black, they were not white. You see, that is the problem, they were not white. The white members of the silk committee supported my application. That is what complicates things.

CJ M. Mogoeng: Minister what the - Commissioner Masuko is waiting.

MINISTER T.M. Masutha: My apologies CJ. Two years ago, I visited both the Bench and the Bar of Cape Town and what was at issue, was that out of seventeen applications for silk, I think it was, only one was black, black generic that is. And we went through a whole experience.

Mr T.S. Madima: Right.

MINISTER T.M. Masutha: And I can say that the dominant voice in that Bar was white. There is resistance, I am convinced and those that practice in Cape Town, whether as judges or members of the Bar know that. And some have acknowledged it, even in interviews before us. And for somebody who has practiced for as long as you have, who has worked as long as you have in the Western Cape, I just feel that you should have acknowledged the reality there a little bit more. I need to put that to you, because I don't want this to linger in my mind unjustifiable when I make up my mind at a certain stage. Thank you Chief Justice.

CJ M. Mogoeng: Do you want to comment now, or do you just leave it at the level that he was expressing his own view?

Mr T.S. Madima: Maybe very briefly, Minister.

CJ M. Mogoeng: Okay sure.

Mr T.S. Madima: Minister I sit on the Silk Committee now in Cape Town. All of the black people who have applied for silk had succeeded. I'm not saying it is because of me. I am just saying since I started sitting on the Silk Committee. All those who have applied, have been recommended.

CJ M. Mogoeng: Commissioner Masuko?

COMM Masuko: Thank you Chief Justice.

COMM J. Malema: Chief Justice, just before Commissioner Masuko, unless Commissioner Masuko wants to be on the same point.

CJ M. Mogoeng: Are you – are you following, are you following-up. What about you Commissioner Masuko
is it on the same issue or a different one?

COMM Masuko: It is not really the same, but it is related.

COMM J. Malema: I wanted to follow-up.

CJ M. Mogoeng: Okay.

COMM J. Malema: Mashadi, I hear you not to be saying there is no racism in the judiciary.

Mr T.S. Madima: There is racism in the judiciary.

COMM J. Malema: And I hear you not to be saying, there is no racism in – at the Bar.

Mr T.S. Madima: There is.

COMM J. Malema: There is racism at the Bar. And I heard you saying there is a generally phenomenon of racism all over the world, meaning in the clergy, in the economy everywhere else you come across such incidences.

Mr T.S. Madima: Indeed.

COMM J. Malema: So anyone that comes to a conclusion that you are in denial of racism in the Bar and in the judiciary will be misrepresenting you.

Mr T.S. Madima: Indeed.

COMM J. Malema: Thank you.

CJ M. Mogoeng: Commissioner Masuko?

COMM Masuko: Thank you Chief Justice. In a way Commissioner Malema took the sting out of some of the things I was [inaudible 49:54]. But there are two issues that I want to put to Madima. The first one, I must declare he is my brother in Cape Town. We are both practitioners there and I've been his junior in I think about two matters, if I am not wrong. So I have no doubt about his skills as a lawyer and his suitability to be a judge. But there are two things that I would like to ask, relating to the impact of racism. You are, Doctor Madima you have, you've got a PhD, you've got an MBA you've got – you are highly qualified in terms of academic but despite those qualifications both the private and public sector has not briefed you out of your mind.

CJ M. Mogoeng: Out of?

COMM Masuko: Out of - briefed him a lot. That's what I meant Chief Justice.

CJ M. Mogoeng: Yes.

COMM Masuko: Now that is a very serious concern, because with the qualifications you have, I'm just wondering what your thoughts would be for junior practitioners that are coming in, black junior practitioners that are coming into the system. Whether the

effect of racism is not really to undermine the ability of this country to transform institutions that are so important for the proper governance, like the judiciary. Would it be your view that the fact of racism, both at the Bars and at the Bench had this debilitating effect on how we are able to transform these institutions of, strategic institutions like the judiciary?

Mr T.S. Madima: I agree.

COMM Masuko: Of course, I would have like to say a bit more, but I know, I know I -

Mr T.S. Madima: Thank you.

CJ M. Mogoeng: On a lighter note, when you go to West Africa, they insist on calling you my lord, if you are a man and a judge and my lady if you are a woman. So when you say professor, Commissioner, and you are in West Africa it is an insistence that he mustn't address you as doctor but as professor. You are excused Prof.

Mr T.S. Madima: Thank you very much.