



JUDGES MATTER

Judicial Service Commission interviews

03 October 2017

Eastern Cape Division of the High Court (Mthatha)

Interview of Ms. N Conjwa

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CJ M. Mogoeng: Good day Ms Conjwa.

Ms N Conjwa: Good day Chief Justice.

CJ M. Mogoeng: Are you well?

Ms N Conjwa: Except for flu, otherwise I can say I'm coping.

CJ M. Mogoeng: Alright. If you exclude the period when you were at head office for how many years have you been a Regional Court Magistrate?

Ms N Conjwa: I've been a Regional Court Magistrate since 2004.

CJ M. Mogoeng: Yes, I'm aware but just working it out.

Ms N Conjwa: Okay.

CJ M. Mogoeng: More or less how many years? I forgot to add up.

Ms N Conjwa: Actually I'm not very good with numbers. I think that will be 13 years.

CJ M. Mogoeng: 13? But excluding the head office --

Ms N Conjwa: 2004. No, but if you're asking about the regional court --

CJ M. Mogoeng: Yes.

Ms N Conjwa: -- I became a Regional Court Magistrate in 2004.

CJ M. Mogoeng: Yes.

Ms N Conjwa: I've been a head of office -- head of office before that.

CJ M. Mogoeng: Okay, okay, alright. Very well now, how -- and you've acted as a judge for about 25 months isn't it --

Ms N Conjwa: I will --

CJ M. Mogoeng: -- if you add up all the acting stints?

Ms N Conjwa: I will accept that Chief Justice. I say I will accept that I did not count.

CJ M. Mogoeng: Yes. How was your experience? How did you find acting in high court; was it difficult, was it overwhelming --

Ms N Conjwa: Well, what I can say is --

CJ M. Mogoeng: -- or was it a smooth transition so to speak?

Ms N Conjwa: What I can say is with the acting vis-à-vis presiding in the regional court, what I noticed was you need to hit the ground running in the high court because the work there is, if I can for a lack of a better word, to use very fast paced. So, you need to be able to acclimatise or work your way within the system so that you can be able to adjust.

CJ M. Mogoeng: Well --

Ms N Conjwa: I can say without fear of contradiction that there's a difference between the regional court and the high court.

CJ M. Mogoeng: And how did you find motion court and civil trials; were they quite a mountain to climb or was it familiar territory so to speak?

Ms N Conjwa: Well, I wouldn't say that civil trials were a mountain to climb but I can say that with motion court at first it was quite challenging. But then again there are senior judges that one always can turn to when one see some challenges.

CJ M. Mogoeng: And what is the longest period you've kept judgement reserved for?

Ms N Conjwa: Well, to the extent that there has been this judgement that was submitted then I would say that would have been for two years.

CJ M. Mogoeng: I beg your pardon?

Ms N Conjwa: I would say Chief Justice that was two years.

CJ M. Mogoeng: Two months or two years?

Ms N Conjwa: Two years.

CJ M. Mogoeng: A judgement?

Ms N Conjwa: Yes, Chief Justice.

CJ M. Mogoeng: What happened; why did that happen; how did it happen?

Ms N Conjwa: Well, I -- without --

CJ M. Mogoeng: Or maybe let's just move. I'm sorry, I'm sorry let me not confuse you. In which of the four courts was it?

Ms N Conjwa: In the Mthatha court.

CJ M. Mogoeng: Has it been delivered now?

Ms N Conjwa: It was delivered.

CJ M. Mogoeng: Okay. Were you reported to the Judicial Service Commission?

Ms N Conjwa: No sir -- no, Chief Justice.

CJ M. Mogoeng: Do you know why not?

Ms N Conjwa: I don't know.

CJ M. Mogoeng: Okay.

Ms N Conjwa: Perhaps that was before the norms and standards.

CJ M. Mogoeng: Yes. No, no, no, no. Have you familiarised yourself with the code of judicial conduct?

Ms N Conjwa: Well, I can say so Chief Justice and I know that there is a code of conduct.

CJ M. Mogoeng: Now in terms of that code of conduct what is the longest period you are permitted to reserve judgment for without consequences?

Ms N Conywa: That is -- the maximum would be three months.

CJ M. Mogoeng: No, not the norms and standards, the code of judicial conduct. Three months is norms and standards. I'm talking about the code of judicial conduct. What is the longest you are permitted to keep a judgement reserved for without stipulated consequences or a threat of consequences?

Ms N Conywa: Well, then I must say --

CJ M. Mogoeng: Okay, alright. Okay no that's fine, after all that's for judges. But how was it possible for a reserved judgement to remain undelivered for that long?

Ms N Conywa: I think that with a benefit of hindsight I should have perhaps asked for time off from the Regional Court President so that I could attend to that case because when you've been acting in the high court and you go back to your workstation, you don't have access to the resources that you have in the high court. Like you don't have access to the research officers, secretary, all that support staff; you are on your own and on top of that you still have to do what you have to do; what you have been employed to do. Perhaps if I had asked for time off from the Regional Court President, so that I could attend to that judgement, I would have been able to do it within the time that was expected of me.

CJ M. Mogoeng: It is my understanding that magistrates take leave or are entitled to leave every year. Am I -- is my understanding correct?

Ms N Conywa: You are entitled to take leave.

CJ M. Mogoeng: Yes.

Ms N Conywa: But it's at the discretion of the Regional Court President.

CJ M. Mogoeng: Now, concerned by this reserve judgement did you take leave during this two year period to -- well, let me put it this way did you take advantage of your leave because if you don't I'm told you forfeit it isn't it?

Ms N Conjwa: Nope. No, Chief Justice.

CJ M. Mogoeng: Oh, you don't forfeit it?

Ms N Conjwa: Not with the magistrates.

CJ M. Mogoeng: Oh, not. Yes, okay. Now did you take leave during this period to be away with the family or something or did you never take leave during that period?

Ms N Conjwa: I'm not exactly sure. I would have to think. I am not sure --

CJ M. Mogoeng: Alright. Let me --

Ms N Conjwa: -- because there are certain instances where we don't take leave.

CJ M. Mogoeng: Alright.

Ms N Conjwa: As I say it's at the discretion of the Regional Court President.

CJ M. Mogoeng: Now there are holidays, public holidays Christmas and New Year and Heritage Day, Reconciliation Day; you were not working during those holidays were you?

Ms N Conjwa: No. No, Chief Justice.

CJ M. Mogoeng: And there are weekends you -- I'm sure it's not every weekend that you are required to be presiding in the regional court am I right?

Ms N Conjwa: Yes, Chief Justice.

CJ M. Mogoeng: Couldn't you arrange with the Judge President or the head of the court that you go and do your research or you go to some university, arrange that you have access to do research so that you can deal with this matter?

Ms N Conjwa: As I say with the benefit of hindsight I should have done that.

CJ M. Mogoeng: No, no, no. I'm just -- with your experience --

Ms N Conjwa: Yes, Chief Justice?

CJ M. Mogoeng: -- as both a magistrate at the district court level who was even the head of court supervising other magistrate and as Regional Court Magistrate, an experienced lawyer, didn't it strike you that hey, one year is too long to keep a judgement reserved, one year, I must do something for the sake of the people who appeared before me; didn't it just occur to you just out of a sense of responsibility, you know, this justice delay, this justice denied thing?

Ms N Conjwa: Yes, Chief Justice.

CJ M. Mogoeng: Didn't it occur to you?

Ms N Conjwa: It did. It did Chief Justice.

CJ M. Mogoeng: What then did it prompt you to do in response?

Ms N Conjwa: Well, I think that the mistake that I was doing back then, which I've since realised, is that I would start on a judgement, stop midway, try and do another judgement within because I have got these criminal matters that I've also got to attend to; I've got also other civil matters. I should have put that one on top of all the other matters that I had. I concede it was wrong of me.

CJ M. Mogoeng: You mean while this one was reserved you were writing other judgements of the regional court now?

Ms N Conjwa: Yes, Chief Justice.

CJ M. Mogoeng: This one you kept aside but the other judgements of matters that even came subsequent you were writing?

Ms N Conjwa: I would as I say package; start, go, start which was wrong. Now I accept that.

CJ M. Mogoeng: Alright. Okay, Acting Judge President?

AJP Nhlangulela: Thank you CJ. Just two questions if not three. I see from --

CJ M. Mogoeng: AJP, you are not quite -- you are not as audible as you should be.

AJP Nhlangulela: I see from your application documents that you have had numerous stints of acting in the high court starting in 2006, correct?

Ms N Conjwa: Then I'll have to have reference to the application if you could just bear with me.

CJ M. Mogoeng: AJP, we have confirmed with her that it could be about 25 months.

AJP Nhlangulela: Thank you very much.

CJ M. Mogoeng: That's the question you were asking her?

AJP Nhlangulela: Yes, yes.

CJ M. Mogoeng: Yes.

AJP Nhlangulela: May I proceed?

CJ M. Mogoeng: No, that one is covered.

AJP Nhlangulela: May I proceed?

CJ M. Mogoeng: You may proceed, yes.

AJP Nhlangulela: Ma'am, I'll just proceed. I know from both the documents and the answers that you have just proffered that you had some difficulties which if aided would have been removed on your behalf concerning the judgement or judgements outstanding that you could not deliver on time; is that right?

Ms N Conjwa: I did not get the first part of the question.

AJP Nhlangulela: You would have been aided if you did ask the JP or the DJP to assist you with a strategy on which to deal with the outstanding matters?

Ms N Conjwa: The JP?

AJP Nhlangulela: Or the DJP.

Ms N Conjwa: The DJP?

AJP Nhlangulela: I'm talking about the Eastern Cape division from which the outstanding matters emanated.

Ms N Conjwa: I'm sorry but I need clarity on this if I can just so that I understand you well. You say if I had asked for help from the Judge President or the Acting Judge President I would have obtained help in regard to ...

AJP Nhlangulela: Yes.

Ms N Conjwa: Was it in regard to the writing of the judgement or --

AJP Nhlangulela: The time that you --

Ms N Conjwa: I don't --

AJP Nhlangulela: The time --

Ms N Conjwa: I'm sorry.

AJP Nhlangulela: -- the time that you required in which to write the judgement.

Ms N Conjwa: Well, in the event that I've understood you well, I thought that for me it would have been the question of the Regional Court President that I would have to ask for time so that I could be removed from the courtroom so that I can then attend because by then I was already out of the high court.

AJP Nhlangulela: Okay, right.

Ms N Conjwa: Not unless I did not understand your question well.

AJP Nhlangulela: We may drop that. There is a letter which was sent to me dated 28 September 2017. I think it's a letter from Acting Regional Court President Eastern Cape. Have you seen this letter?

Ms N Conjwa: Letter dated?

AJP Nhlangulela: It's addressed to the Minister of Justice in Correctional Services 28 September 2017.

Ms N Conjwa: No, I haven't seen it.

AJP Nhlangulela: CJ, I'm not sure if this letter was distributed but what it says is that the number of outstanding matters which -- that is part-heard matters for which -- or about which the court that is the Eastern Cape division should or ought to have been advised that because I've got this type of work outstanding on my record I may not be able for an example to write -- to attend to my judgements as the case may be. I did not get this letter from you but I received it from another person am I right? Yes,

just what I wanted to indicate. And I raise this because I did not have knowledge of this information but that's all. That's -- those are my questions. Thank you.

CJ M. Mogoeng: Thank you Acting Judge President. Premier?

Premier: CJ, I will -- I'll pass. I think the questions you asked earlier did cover my concerns but I think they've been attended to. Thank you.

CJ M. Mogoeng: Thank you very much Premier. Deputy Minister?

DM J Jeffrey: Thanks Chief Justice. Good afternoon Mrs Conjwa.

Ms N Conjwa: Good afternoon Deputy Minister.

DM J Jeffrey: Maybe just following that -- the issue that the Acting Judge President raised and just to explain the letter. As you know you were -- you did agree to act again in the high court. I think --

Ms N Conjwa: Come again sir?

DM J Jeffrey: You did agree or -- okay, put it -- let me put it this way. The minister received an application for you to act in the high court from I think it was about the 6th of October to December. I presume that that was received from the Acting Judge President. I assume you know about that application.

Ms N Conjwa: I did receive a call from the Acting Judge President and if you -- we can remember when we spoke I had said to him I need first to talk to my Regional Court President because of the fact that I was aware that I had been away for two terms.

DM J Jeffrey: And did you speak to your Regional Court President?

Ms N Conjwa: Yes, I did.

DM J Jeffrey: And then what was the outcome?

Ms N Conjwa: I haven't heard anything. What he did was to say he's going to call the Acting Judge President. I haven't heard anything from him since.

DM J Jeffrey: Okay. I'm a bit surprised with that because I spoke to your Judge -- to your Regional Court President because an application for your appointment was submitted last week for you to act in that period. I then called your Regional Court President to ask him if he'd been consulted. He said he had been. His -- the impression I got from him was that he didn't want to delay your progress but he did have some concerns about your part-heards and I then asked for the number of part-heards you had that was set down for hearing during that period you were going to act in the high court. I'm sorry in the -- no, during the period you -- the part-heards from the regional court that was set down during which -- for the period you were going to act in the high court and from the Acting Regional Court President a list of 16 cases came so that's where that letter has come from. But maybe just let me -- you told the Chief Justice that the longest judgement was for two years.

Ms N Conjwa: Yes.

DM J Jeffrey: Now when I Googled you, you appeared here in April 2012.

Ms N Conjwa: Yes. Yes, Deputy --

DM J Jeffrey: And there you told -- it says here that during the Judicial Service Commission second round of interviews in Cape Town yesterday Noluthando Conjwa was questioned about her taking 14 months to deliver a judgement. Is that the same judgement or is it another judgement?

Ms N Conjwa: It's another judgement Deputy Minister.

DM J Jeffrey: Okay. Was that -- the two year one, did that happen after 2012?

Ms N Conjwa: Yes, Deputy Minister.

DM J Jeffrey: Okay. So, in spite of the fact that you had a hard time when you came here over 14 months you then proceeded to wait another two years for another judgement?

Ms N Conjwa: Well, I can't challenge that Deputy Minister.

DM J Jeffrey: Okay, alright. No, I think that's -- oh, yes maybe one last question. The issue of leave, just for the benefit of the Commission, currently magistrates don't have to take their leave and they don't lose it. That situation is changing with regulations that were approved by the Magistrates Commission a few weeks ago which will cap leaves on a three -- cap leave on a three year cycle. Mrs Conjwa, do you know how much leave you've accumulated?

Ms N Conjwa: I cannot say off-hand how many days I've accumulated. I don't know.

DM J Jeffrey: But have you got any idea; I mean is it a hundred days, 200 days, 300?

Ms N Conjwa: It might be 200. I don't -- I'm not sure.

DM J Jeffrey: Okay. So, you haven't been taking leave then?

Ms N Conjwa: I will take leave perhaps a week at a time.

DM J Jeffrey: Okay. But you think it's about 200 --

Ms N Conjwa: I would say so --

DM J Jeffrey: -- basically.

Ms N Conjwa: -- I'm not sure.

DM J Jeffrey: Okay.

Ms N Conjwa: I'm not sure.

DM J Jeffrey: Thank you.

CJ M. Mogoeng: Judge President Hlope?

JP Hlope: Thank you Chief Justice. In a sense I've been covered but I would like to put this to be consistent because I've done it in respect of other candidates. I just want to say to you Ms Conjwa, as a head of court my experience is this: Acting Judges who takes so long to deliver judgements, even when they are still acting, even while they are still acting, the moment they're appointed they become complacent and they never deliver their judgements. In other words it gets worse right. Do you have any comments in relation thereto? And secondly, have you sought any kind of assistance from your senior colleagues because clearly you have a problem ma'am; have you sought any kind of assistance in terms of working smart; like you read in advance before you go to court; you prepare; you read relevant authorities; you go through the law so that you are on top of issues even to a point of drafting the judgement before you go to court; have you sought some kind of intervention? Thank you.

Ms N Conjwa: Thank you Judge President. When I was at the Grahamstown court just a few months ago I had sought some advice from the senior judges there. There were some appeals that we're supposed to preside over so the judge that I spoke to, that is the senior judge, showed me what she does so that she's on top of things when it comes to her judgements. Like if I may make an example it's not difficult for her to have, for the lack of a better word, to use two judgements running at a time. She will write two judgements simultaneously so that she doesn't have many outstanding judgements. And also when -- with regards to appeals she said as you are reading through your record take some notes so that they can help you; don't just read through the record. As you are reading through your record take your notes so that they can help you and I've taken that into consideration because what I would do I would read the record and then start writing. But now I read the record simultaneously, I summarise. These are the tips that I've found from senior judges.

JP Hlope: I so wish through you Chief Justice, I so wish you master these skills or these tips much earlier you would not be where you are in terms of reserving judgements but I'm just glad you are doing something about it. Thank you.

Ms N Conjwa: Thank you Chief -- thank you JP.

CJ M. Mogoeng: Commissioner Nyambi?

Commissioner Nyambi: Thank you CJ. Afternoon Ms Conjwa.

CJ M. Mogoeng: Afternoon Commissioner.

Commissioner Nyambi: If you can share with us your understanding of judicial accountability?

Ms N Conjwa: Well, my understanding of judicial accountability is for -- is that as judicial officers we are accountable for the work that we do. We're accountable not only to our heads of courts, as well as to the members of the public so that they can know if they -- if you find against them why you have found against them; why this and this has happened. When they leave your court they know why this and this and this has happened. That's my understanding of how accountable -- how we can be accountable for the job that we do.

Commissioner Nyambi: My last question. What might you regard as your weakness?

Ms N Conjwa: I think I take to -- I tend to take too much and then in the end I'm unable to manage. I need to be able to say no sometimes.

Commissioner Nyambi: Thank you CJ.

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

Commissioner Norman: Thank you Chief Justice. Good afternoon Ms -- Mrs Conjwa.

Ms N Conjwa: Good afternoon Commissioner.

Commissioner Norman: Could you just take a look at paragraph 10.4 of your application please? That's page 11. Are you there?

Ms N Conjwa: You said paragraph?

Commissioner Norman: Paragraph 10.4.

Ms N Conjwa: 10.4, yes.

Commissioner Norman: Have you found it? Okay. You've listed reserved judgements there am I correct?

Ms N Conjwa: Yes, yes.

Commissioner Norman: Could you just tell me first of all you don't list the case numbers --

Ms N Conjwa: Oh.

Commissioner Norman: -- you just give me --

Ms N Conjwa: Sorry, that was in omission.

Commissioner Norman: No, no, no, no. Let's not get there just yet. And you list these cases but let's look at the last two cases; how does one read those cases that you've listed there? Could you just read them out for the Commission?

Ms N Conjwa: Sure. You say 10.4?

Commissioner Norman: Yes, yes. You are asked in 10.4 please list any reserve judgements still outstanding and the dates on which judgement was reserved. And then you've got Thabiso Mahamba versus Business Partners. Can't you find it?

Ms N Conjwa: I've got it but --

Commissioner Norman: Yes.

Ms N Conjwa: I don't -- I've got it.

Commissioner Norman: Okay, thank you. Thank you Commissioner Singh, thank you.

Ms N Conjwa: Okay.

Commissioner Norman: Can you see there?

Ms N Conjwa: Yes.

Commissioner Norman: Yes, thank you.

Ms N Conjwa: I've got it.

Commissioner Norman: Could you just read for the Commission the last two cases?

Ms N Conjwa: A W (inaudible 00:26:46) Safaris.

Commissioner Norman: Yes. When was that reserved?

Ms N Conjwa: 11/05.

Commissioner Norman: And then the next one?

Ms N Conjwa: MEC Education versus Andrea Moodley.

Commissioner Norman: Okay. When was that reserved?

Ms N Conjwa: 19/05.

Commissioner Norman: Have you delivered those judgements?

Ms N Conjwa: Yes, ma'am.

Commissioner Norman: All of them?

Ms N Conjwa: Yes. Yes, Commissioner.

Commissioner Norman: When?

Ms N Conjwa: This ... was it beginning of the term? Let me think carefully. I don't know the actual dates but it was beginning of this term that has just ended.

Commissioner Norman: Okay. Now the fives that you see is that May or 2005 or 11 is it 2011; what --

Ms N Conjwa: That's the date and the month.

Commissioner Norman: Okay. So, that would be what 15 May?

Ms N Conjwa: 15 May 2017.

Commissioner Norman: Oh okay. Where do we see 2017 there?

Ms N Conjwa: It's not there.

Commissioner Norman: Alright. Okay. So, -- but you say all of them have been delivered now?

Ms N Conjwa: Yes, yes Commissioner.

Commissioner Norman: Okay, thank you. How would you -- when you are given -- you know that the country needs more women as judges am I right?

Ms N Conjwa: Yes, Commissioner. Yes, Commissioner.

Commissioner Norman: And now when you are offered an opportunity as an African woman to contribute towards our jurisprudence how do you view that? When you get a call from the Judge President saying that I would like you to come and assist me how do you look at that as a person?

Ms N Conjwa: Well, I look at it as an opportunity for you who has been -- whoever has been approached to make a difference that is -- make your mark so that even the others that are coming after you can be able to see that it is doable.

Commissioner Norman: So, would you agree with me that you haven't made that mark that you would make in order for you to make it to the bench am I right? From what you've heard now this afternoon, would you agree with us that you haven't lived up to that expectation?

Ms N Conjwa: Well, with the fact that I have had those reserved judgements, that I will concede.

Commissioner Norman: Thank you very much. Thank you Chief Justice.

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

Commissioner Modise: Good afternoon ma'am.

Ms N Conjwa: Good afternoon Commissioner.

Commissioner Modise: Ma'am why do you want to be a judge?

Ms N Conjwa: I want to be a judge because I want to believe that I have a role that I can play to make a difference to the members of the society with my role as a presiding officer. As people know, as everyone would know, when people feel aggrieved by the actions of another person they approach the court to have those disputes resolved. I want to believe that I have a contribution that I can make towards society and also of course it's an honour to be a judge. It's an honour that you are serving your country.

Commissioner Modise: Ma'am flowing from the discussion between you and the Deputy Minister of Justice him relating to you about the conversations he has had with the judiciary and the magistracy in your province, you didn't seem to quite follow. You said you received a call.

Ms N Conjwa: Yes Commissioner.

Commissioner Modise: You seemed very distant from the conversation which was largely to help capacitate you or to actually increase what you refer to as an opportunity to serve the nation.

Ms N Conjwa: Yes.

Commissioner Modise: Do you agree that it seems very strange that for somebody who thinks it is an opportunity, you were very distant, you are really not involved?

Ms N Conjwa: As I indicated earlier on Commissioner, the reason why I said to the JP that I wanted to talk to my judge -- to my Regional Court President was because I was concerned of the fact that I had been away for two terms and I knew for a fact that I had some partly-heard matters so I wanted to discuss this with him first and see whether he would be fine with me having informed him of this. And then he indicated to me that he would talk to the JP.

Commissioner Modise: Ma'am, are you struggling at the magistrate's court? Is it going very well there?

Ms N Conjwa: In terms of ma'am?

Commissioner Modise: In terms of your work, in terms of presiding, in terms of writing judgements is it going well there?

Ms N Conjwa: As far as I know it is going well. There are some hiccups with regards to the civil work that are being attended to.

Commissioner Modise: If there are some hiccups at the point where you actually are full-time, why must South Africa be exposed to a judge who has no compaction but to tell us that it has taken her 14 months and then two years to deliver a judgement? A judgement comes from a rural province where people really need to get justice served as soon as possible.

Ms N Conjwa: As I said, I have learned the wrongness of my ways. I'm prepared to accept that, I have heard in this regard and I'm prepared to change.

Commissioner Modise: Ma'am I'm one of the people in this country who have fought very hard to kick every door open in access to women. I do not think that you are doing what you think is a service to the people. And I think you need to really take a good look and perhaps advise your Acting JP or your JP that you do need some time to concentrate on being a good magistrate. Because I think that if we cannot be candid as people around this table representing the people about the quality of people who preside over the matters which affect the lives of ordinary South Africans, then we will not be doing our job as public representatives, especially when those people happen to be women, and black women. Thank you CJ.

CJ M. Mogoeng: Thank you Chairperson. President Maya?

President Maya: Thank you Chief Justice. I must first disclose that I know the candidate. We were at university together then we became colleagues in the judiciary office. I have just one question for you. I did not want to ask you any question because I know you all too well and you are one of the colleagues I had an occasion to mentor but I have to ask this question because I'm worried about the fate

of the litigants in this matter. It's one of the matters which are listed by the Transkei Attorneys Association where you are alleged not to have delivered judgement in a matter that was held in November 2012. Now in your explanation that was just given to us is the matter of Thembisa Nkomazi. You give an explanation which I don't quite follow. You say I am almost certain that this judgement was delivered although I cannot say specifically when due to the fact that my laptop crashed and you carry on. But what does not -- what remains unclear is what -- well, you say that the matter cannot be traced in the high court; that there's no record at all of the matter and you don't say categorically whether it was delivered or not. Now what is to happen to this case now?

Ms N Conjwa: I had requested them that they must get a transcription of this record because in my humble view that judgement was delivered. What normally happens and I must in fact state this: it's not the first occasion that I've had something of this nature happening and then when I followed up, because the reason why I had to ask for this file is because I have had something of this nature happening. And then when I asked for the file from the registrar's office they indeed saw that the judgement was delivered but there must have been some hiccups with the registrar's office so that is the reason why I said please get a file for this matter so that I can see. Get the judgement for me because I prepared three judgements; two for the parties and one for the file but they said the file that was there related to a completely different matter, and when I said get another record because what normally happens is there will be a transcribed record, they will also cut a CD. They said they can't even find that CD. It is something that had occurred to me previously that they said I did not deliver judgement. I got a letter but I told them I did deliver the judgement. The file was found, the judgement was there. That is why I said please registrar get this file because I'm almost certain but for the fact that it's 2012 and I don't have my records now, please get this file for me. I don't know what could have happened that the file that they have does not release -- I'm sorry, does not relate to these parties but to a completely different case. And they even say the CD that was cut for this case it's not there.

Commissioner Modise: Was the judgement not delivered in open court because that is the --

Ms N Conjwa: This is what --

Commissioner Modise: -- compulsory procedure so --

Ms N Conjwa: Yes. This is what --

Commissioner Modise: -- there should be a record somewhere.

Ms N Conjwa: This is what happens.

Commissioner Modise: And over and above that did you not have a bench book because when a judge sits in court and hears a matter they have to make notes in their bench book and more often than not when a file go -- a matter goes missing that bench book will, you know, will be used to --

Ms N Conjwa: I do have.

Commissioner Modise: -- make a transcription?

Ms N Conjwa: I do have a bench book but what happens is, if you prepare a judgement after you have already left, after your stint has already ended you take the judgement together with the file and you give it to the registrar and then it's delivered in open court.

Commissioner Modise: Lastly, there was a failsafe measure in the Mthatha High Court where I used to be before I went to the SCA, it was a long time ago, things may have changed but directly after a matter -- a judgement was delivered a hard copy of that judgement would be sent, immediately sent to the library for the courts' record --

[Crosstalk]

Ms N Conjwa: I have never seen that. I have never seen that there.

Commissioner Modise: Alright. So, there is no trace of the case bottom line?

Ms N Conywa: There is no trace of the case but I've requested them that they must perhaps get a record from the server because the file is not there and they don't know what has happened to the file. And perhaps that the parties indicated earlier on, because I had heard nothing about this matter until I put up this application and it's only then that I got to know that they say they did not get the judgement. I also had another case where they said they did not get judgement. Fortunately, for me, the other party apparently did go to court but the one that had complained did not go to court that is why he was saying the judgement was never delivered. These are the things that happened. This is -- I'm also trying to understand how -- what could have happened in that matter. How they could not have known that judgement was delivered and for them to have said and not indicate because I heard nothing from the JP about this matter until I put up this application.

JP Hlope: Chief Justice, I'm sorry I would like to follow this up with your leave please. I don't know what the procedure is in other divisions but my understanding is this: before a judgement is delivered your registrar or secretary would have notified the parties --

Ms N Conywa: Yes.

JP Hlope: -- they would be present in court; the stenographer would mechanically record the proceedings. There would be at least three copies. One is given, one is kept in the file, a hard copy; the other one is given to the plaintiff side or the defendant sides or applicant sides or the respondent side as the case may be. Is that the procedure in the Eastern Cape?

Ms N Conywa: Definitely JP.

JP Hlope: Then it doesn't -- what you are saying with respect flies in the face of the procedure.

Ms N Conywa: As I say, you prepare the judgement; you take it together with the file to the registrar's office. Then because I've already left the registrar will (inaudible 00:41:55) to call the parties to come and note judgement. I've had experience where I've been in the motion court and I've been asked to deliver a judgement for a colleague but there would be no one appearing whereas I've been advised that the parties were advised that judgement is going to be delivered.

CJ M. Mogoeng: Well, acting in a higher court being such an honour, didn't you keep the copy of the judgement for yourself, you know, you treasure these things? I was acting in the high court; I gave them their judgements but here is my copy in case I apply and I'm interviewed I'll be able to produce it readily. Really, don't you take pride in these things enough to --

Ms N Conywa: I do.

CJ M. Mogoeng: -- keep them for yourself?

Ms N Conywa: I do Chief Justice. I --

CJ M. Mogoeng: Where is that one?

Ms N Conywa: I kept this in my computer as well as in my memory stick.

CJ M. Mogoeng: Is it there?

Ms N Conywa: The memory stick that I had had virus.

CJ M. Mogoeng: So, the --

Ms N Conywa: I tried to get --

CJ M. Mogoeng: -- the court as well doesn't have?

Ms N Conywa: They say they do not have. They don't have the file.

CJ M. Mogoeng: The stenographer?

Ms N Conjwa: They do not have the file.

CJ M. Mogoeng: Okay, alright. Okay. Thank you so much. Commissioner Mpofu?

Commissioner Mpofu: No, thank you Chief Justice. I've been -- I was going to ask about this case but -- and most of the questions have been asked but I just want to understand one thing. When you say I'm almost certain that this judgement was delivered, almost certain, should they accept that you -- there might be a small chance, 20%, that it was never given?

Ms N Conjwa: No.

Commissioner Mpofu: So, why you only almost certain?

Ms N Conjwa: It's because I don't know the date that's why I put it that way.

Commissioner Mpofu: But -- okay, so there's no possibility that it was not given?

Ms N Conjwa: No.

Commissioner Mpofu: Alright. And then since -- in the other case where this had happened, you did the right thing by contacting one of the parties, the one that was in court?

Ms N Conjwa: I did not contact any parties.

Commissioner Mpofu: Okay. But somebody contacted one of the parties?

Ms N Conjwa: No. The registrars -- registrar indicated that the legal representative for the respondent, when he called him he indicated that he had received --

Commissioner Mpofu: Yes.

Ms N Conjwa: -- the judgement.

Commissioner Mpofu: Fine. So, I'm just -- so, in this case then why was there no effort to contact the attorneys, the attorneys on both sides? Let's assume all these things had happened, the virus and all that but at least one of the attorneys or both would have remembered if they received a judgement. Did you think of that?

Ms N Conjwa: Well, I did not think of communicating with them directly. Perhaps if I had looked at my judges' notebook to get who the parties were but as I say I do -- I did not communicate with them directly. I was communicating via the registrar's office.

Commissioner Mpofu: Thank you, thank you. Thank you President.

JP Hlope: Pardon me to be a nuisance. I must follow this up. I also think with respect for the benefit of the Commissioners who are not judges, judgements are delivered by judges.

Ms N Conjwa: Yes.

JP Hlope: Not by registrars am I right?

Ms N Conjwa: Yes, Judge President.

JP Hlope: How did it come about that this judgement was delivered by registrar?

Ms N Conjwa: It was not delivered by registrar. I am saying because I was not -- I was already out of the high court so when I'm -- or when I'm away from the high court what I do is after I've prepared the judgement I take a copy -- I'm sorry, I take the file together with three judgements, bring it to the registrar's office so that the registrar can then get the clerk to call the parties. This is exactly what I've also done

yesterday. I took the file together with the three judgements, took it to the registrar and got --

JP Hlope: Normally you would arrange with a judge who is in court either doing urgent applications or calling the roll to say my colleague, here is my judgement please deliver it after the parties have been notified. I'm hearing this for the first time in more than 23 years on the bench that judgements are delivered by registrars.

Ms N Conjwa: I did not say the registrar. I say I take the file to the registrar and then the registrar will make all the necessary arrangements.

President Maya: Commissioner Didi?

Commissioner Didiza: Thank you very much President. Afternoon ma'am.

Ms N Conjwa: Afternoon.

Commissioner Didiza: It's more a clarity on page six of your application, 6.2. Have you found it?

Ms N Conjwa: Yes, yes Commissioner.

Commissioner Didiza: It ask about the proportion of your litigation work in the different fields.

Ms N Conjwa: Yes.

Commissioner Didiza: Your answer on the first one you say: as I've indicated I've been involved in the legal field in a presiding capacity; that is on criminal law. On administrative law you say see above. On constitutional law, see above. Labour law, see above. And then on 6.2.5 other areas of civil law in brackets specify the general areas involved and then -- but on all these different categories of law you've not said what is the proportion of the work, of the litigation work you have done on all of them.

Ms N Conjwa: When I say I have been involved in a presiding capacity I mean I did not appear before court as a litigant.

Commissioner Didiza: Yes. It's not asking you that as a litigant but it's asking you in terms of your work as a practitioner what amount of work have you done in these categories of law?

Ms N Conjwa: As a practitioner and I've not been a practitioner, I've been a presiding judicial officer. I don't ...

Commissioner Didiza: You never were an attorney before?

Ms N Conjwa: No ma'am.

Commissioner Didiza: So, from your presiding work how much of the constitutional law have you done if any or any of the different categories of law? Because even as a presiding officer obviously there would be criminal cases that you have to preside over; there would be labour law matters that maybe would come over because we want to get a sense of your experience in these different categories of law that's why the questionnaire ask.

Ms N Conjwa: Perhaps it was because I took the operative word in that question to be your litigation work hence I made reference to presiding. I might have add in that regard.

Commissioner Didiza: But may -- okay, maybe you've add in the way you answered the question there but if you can just share with us now that you are here how much of work you have done in these different categories of law?

Ms N Conjwa: Well, I can say with regards to criminal law, I'm sorry that I'm not very good with numbers, but 80% of the work that I've done would be criminal law. I've done administrative law in the high court and labour law I have not, as well as civil

law in the high court, as well as in the district court, I've done it. I would say almost also 70% because I do both criminal and the civil law.

Commissioner Didiza: Thank you very much CJ.

CJ M. Mogoeng: Commissioners may -- you want to follow up because I thought we took too long on her.

Unknown Male: No, no. I just wanted to correct something.

CJ M. Mogoeng: Okay.

Unknown Male: May well be an unfair question to her because 6.2 she's answered correctly because what proportion of your litigation work has been in the field of criminal law and she says as I indicated I've been involved in the legal field in a criminal capacity. So, she's telling you that she's never actually done criminal law, she's only been involved in it. So, I'm -- I can see that she's struggling to get the answer correct. I understand that but that's the confusion that -- yes.

CJ M. Mogoeng: Thank you very much ma'am, you're excused.

Ms N Conjwa: Thank you Chief Justice for the opportunity.

CJ M. Mogoeng: Thank you ma'am.