



JUDGES MATTER

Judicial Service Commission interviews

12 April 2018.

KwaZulu-Natal Division of the High Court

Interview of Adv I L Topping

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CJ M. Mogoeng: Good afternoon, Advocate Topping.

Adv I.L. Topping: Good afternoon.

CJ M. Mogoeng: Are you well?

Adv I.L. Topping: I would like to say I am calm, but I would be lying if I said that. Otherwise, I am well, thank you very much.

CJ M. Mogoeng: Okay, all right. For how long have you been an advocate?

Adv I.L. Topping: Advocate since 1992, that is when I did my pupillage and qualified. I applied for silk in 2012 but I got silk in 2014. You recollect there was that challenge to the President being able to sign the honours. So I have been a silk since 2014.

CJ M. Mogoeng: Yes, and that was after how many years as a junior? Is it twenty?

Adv I.L. Topping: Twenty-years. As I have said before I had this thing, that I would not apply for silk until I have done twenty-years as a junior.

CJ M. Mogoeng: Yes.

Adv I.L. Topping: And I just followed that. I always want to be confident that I can do something –

CJ M. Mogoeng: Sure.

Adv I.L. Topping: Before I am prepared to put myself forward to do it.

CJ M. Mogoeng: Yes. How did your silk practice shape up?

Adv I.L. Topping: Very well. I would like to say I am busy. I have got a busy practice. It is going well. I have a very satisfactory practice, if you want to call it like that, I am in court very often and as you see I am a court practitioner as such. My junior days as well, always in Court. Yes, touch wood, it is going well.

CJ M. Mogoeng: What are your major areas of interest or practice?

Adv I.L. Topping: Initially as you can see from my CV I prosecuted for a while and then obviously one does criminal matters at the beginning when you are at the Bar, but it had developed more into a civil practice. I have done a lot of commercial work. Working for Banks; your liquidation and leases, that type of thing and then mainly going into personal injury. Also into medical negligence, that type of thing. Acting for plaintiffs.

CJ M. Mogoeng: Yes.

Adv I.L. Topping: That is, if I can say, that is the main part of my practice. -

CJ M. Mogoeng: Yes.

Adv I.L. Topping: -- Which I find very rewarding.

CJ M. Mogoeng: Is it just to help you calm down first. Let's talk a bit about this medical malpractice.

Adv I.L. Topping: Yes.

CJ M. Mogoeng: Is it born out of ignorance to say that there has been a proliferation of medical malpractice cases recently?

Adv I.L. Topping: Yes. Well, I would not say recently. I can say over the last five, maybe six years.

CJ M. Mogoeng: Yes.

Adv I.L. Topping: I think maybe it is because of possible more information being disseminated amongst claimants.

CJ M. Mogoeng: Yes.

Adv I.L. Topping: Knowing their rights. I think that is what it is. I do not know if it was always there because there was also medical negligence in the past but more prolific now.

CJ M. Mogoeng: Yes.

Adv I.L. Topping: And unfortunately a lot against the State Hospitals and that type of thing.

CJ M. Mogoeng: Yes.

Adv I.L. Topping: And I think of it dealing with birth defects because of birthing –

CJ M. Mogoeng: Sure.

Adv I.L. Topping: -- And that is the main part of it from what I see.

CJ M. Mogoeng: Would you say that what is been paid out by the State for medical malpractice is generally speaking reasonable or without knowing the finer details much more than ought to had been paid?

Adv I.L. Topping: Look I am talking about my practice now and what I do and what the people I am associated with at the Bar that do these claims. One works out very carefully via a number of expert witnesses, one tries to predict what the child will need in the future by way of therapies and physiotherapy and this type of thing. And one should get the numbers, one can work it out actuarially so the cases I did, I say the payment if fair because it is very well worked out. It is a once and for all rule, one cannot come back again as it were.

CJ M. Mogoeng: Yes.

Adv I.L. Topping: And I think on the last occasion I was here I think I said the same thing; a flaw in the system if one wants to call it that where I said, it is at the bottom line it is State money. A lot of these claims go into millions and multi-millions –

CJ M. Mogoeng: Serious millions.

Adv I.L. Topping: --Serious millions, yes.

CJ M. Mogoeng: You know, I do not know if I raised this with you last time you were here but since it bothers me, and I am trying to have you get to that state of calmness. You see part of my concern has been this: where contingency fees are to be paid.

Adv I.L. Topping: Yes.

CJ M. Mogoeng: There is a demand for immediate payment of the totality of what is the claim -

Adv I.L. Topping: Yes.

CJ M. Mogoeng: What is supposed to be paid for the claim. Even if some of the money will be needed several years down the line -

Adv I.L. Topping: Yes.

CJ M. Mogoeng: -- But say it is 50 million it is out of the 50 million part of which ought to benefit the victim, for want of a better expression, -

Adv I.L. Topping: Yes.

CJ M. Mogoeng: -- Several years down the line that the contingency fee seems to be determined.

Adv I.L. Topping: It is the total amount of the ward, -

CJ M. Mogoeng: Yes, yes. Now here lies my worry. The percentage for the contingency fee seems to be a bit on the high side, isn't it?

Adv I.L. Topping: There is the Contingency Fee Act that regulates it and what states is that it is a fixed percentage, and I have never worked on a contingency, so I do not know the percentage -

CJ M. Mogoeng: Yes sure. So the Act has fixed the percentage?

Adv I.L. Topping: Call it 20 or 25 or double the amount of what the hourly rate would be of that attorney. Whichever is the lesser?

CJ M. Mogoeng: Yes.

Adv I.L. Topping: So in other words, 20-million-rand claim -

CJ M. Mogoeng: Yes.

Adv I.L. Topping: -- I don't know if the attorney could --

CJ M. Mogoeng: Now a 20 million rands claim would if you were to apply the act, how much would that give you?

Adv I.L. Topping: It would end up look I do not know because I do not know the attorney's bills and stuff like that but what would happen in a 20 million rand claim I cannot see how you can justify 20% of that payment as a fee. It would have to be worked out on the lesser amount, being the double amount of what that attorney would normally charge for the work done.

CJ M. Mogoeng: Yes.

Adv I.L. Topping: So it is limited at that level.

CJ M. Mogoeng: Well, I have seen it run into serious millions.

Adv I.L. Topping: Yes.

CJ M. Mogoeng: That is why I am asking.

Adv I.L. Topping: Look I have never been personally involved. Like I say I have never worked on a contingency basis, I charge my normal fee and --

CJ M. Mogoeng: Yes.

Adv I.L. Topping: -- That is how far I go.

CJ M. Mogoeng: I was looking more for your guidance.

Adv I.L. Topping: Yes.

CJ M. Mogoeng: Generally speaking considering the fact that -

Adv I.L. Topping: Generally speaking -

CJ M. Mogoeng: - Considering the fact that, you know those who would have to settle for these contingency fee arrangements are the thoroughly, thoroughly financially under-resourced. So -

Adv I.L. Topping: Most –

CJ M. Mogoeng: -- If they then enter into these arrangement and sign documents they end up being at a serious disadvantage, is it not?

Adv I.L. Topping: At the level, there might be two sides to a coin. Because your normal litigant has not got the money to fund the litigation.

CJ M. Mogoeng: Sure.

Adv I.L. Topping: So the attorneys usually put up the money upfront to engage the experts as these cases go into five, ten, fifteen experts sometimes to get all the experts so the attorney carries that money waiting for obviously the –

CJ M. Mogoeng: Sure.

Adv I.L. Topping: - Recoup at the end of the day.

CJ M. Mogoeng: Yes.

Adv I.L. Topping: So that system, the benefit is of it is that a lot of people would not be able to come to court –

CJ M. Mogoeng: Yes.

Adv I.L. Topping: -- If it was not for that fact.

CJ M. Mogoeng: No that appreciate. I am trying to check whether society can sit down back comfortably assured that the system is not being over milked -

Adv I.L. Topping: Yes.

CJ M. Mogoeng: -- To the detriment of the already disadvantaged.

Adv I.L. Topping: Yes. I do not think so, I think -

CJ M. Mogoeng: Whether it is RAF or whatever else.

Adv I.L. Topping: Whatever - the point being is that that system allows litigants to get paid at the end of the day where if it was not there those persons would not get paid and would not get – the child would not get the proper care and so forth.

CJ M. Mogoeng: No, no I understand that. I understand that, and it is actually to be commended.

Adv I.L. Topping: Yes.

CJ M. Mogoeng: I am looking at the morality of deriving benefit, the extent to which that benefit that practitioners who do this kind of work, benefit. They must be paid but the extent to which -

Adv I.L. Topping: That, that –

CJ M. Mogoeng: -- One gets a sense that at times they go way overboard.

Adv I.L. Topping: Yes, I have heard tales. But if it is applied properly –

CJ M. Mogoeng: And what could be done to arrest it? That is where I am coming from.

Adv I.L. Topping: Yes, to make sure the practice in KZN is that the contingency affidavit is placed before the court before you can a consent or take an order as such. But if it is a regulation that the attorney, the attorney only charges double his normal fee, he is carrying the risk if anything goes wrong where he will get nothing.

CJ M. Mogoeng: Sure.

Adv I.L. Topping: So maybe that is a proper reward. But if, in fact, it is not regulated properly where the checks and balances at the level of that 25% of the 20-million-rand claim is now taken there I think there is abuse.

CJ M. Mogoeng: What about these experts now? Are you able to give us an assurance that experts charge within reason all the time or most of the time at least?

Adv I.L. Topping: I would hope so. Look again I have not been involved in the bills because I am at the other end of the spectrum. But they do quite lengthy reports. At the level of working out what actually needs a cerebral palsy child needs –

CJ M. Mogoeng: Yes.

Adv I.L. Topping: -- it goes into quite a lengthy calculations but again I do not know whether they are overcharging or not. But possibly what I was going to say, and it is a thing that I have is that it is State money that gets paid out in a lot of these claims.

CJ M. Mogoeng: No, it is true. It is just that I got to know somehow that -

Adv I.L. Topping: Yes.

CJ M. Mogoeng: A huge chunk of the budget of the Department of Health -

Adv I.L. Topping: Yes.

CJ M. Mogoeng: Actually goes to these medical malpractice things.

Adv I.L. Topping: It comes out the hospitals budget as I can understand. But if I can just make the point –

CJ M. Mogoeng: With the result that - I am sorry I have interrupted you – with the result that at times you will not find medication when you to these medical facilities.

Adv I.L. Topping: Yes.

CJ M. Mogoeng: Because the money has gone elsewhere.

Adv I.L. Topping: Yes. I would much rather there not be a cerebral palsy child and a proper birth than having a cerebral palsy child. But the point I make is that the money, for example, 20 million, is paid. One tries to work out the life expectancy of the child or whoever. The life expectancy and these cases are usually reduced, and it is very much a bit of a guesswork. But if one takes 20 million and these matters the money is always invested in a Trust because it is for the benefit of a child. Now if that calculation is wrong and that child dies earlier that money then goes into the child's estate and then is given to the parents or whosoever. The point that I have, and I really do not know the answer how to come to it is that possible there needs to be something in place that the State becomes the capital beneficiary of those Trusts. So in other words, if the money is utilised correctly throughout the life of the child – because the point being you try and calculate it at the beginning of a case that this child will have enough money until it unfortunate passes away. But if it passes early that child does not need that money and then there is this big chunk of money that is not utilised for the purpose for which it ought to be intended, and there I think that there is a problem.

CJ M. Mogoeng: Well I was looking more at much more than just the child, but I think you have made your point.

Adv I.L. Topping: No, I think it is big chunks that -

CJ M. Mogoeng: Yes, yes.

Adv I.L. Topping: That just devolve the parents.

CJ M. Mogoeng: It runs into billions I am told.

Adv I.L. Topping: Yes.

CJ M. Mogoeng: About?

Adv I.L. Topping: I do not know, but there is lots, lots of money involved in these matters.

CJ M. Mogoeng: Yes, anyway are you okay now?

Adv I.L. Topping: Much calmer, thank you very much.

CJ M. Mogoeng: DJP?

DJP M.I. Madondo: Thank you, CJ. Good afternoon Mr Topping.

Adv I.L. Topping: Good afternoon, DJP.

DJP M.I. Madondo: I see that in your questionnaire you indicated that you can speak isiZulu.

Adv I.L. Topping: DJP yes, I can. I wouldn't say am proficient I can communicate in Zulu. But I cannot read and write Zulu. I learned Zulu when I was a little child, I was born on a farm until the age of twelve I played with my friends who spoke isiZulu. So to that extent yes, I can communicate isiZulu, but I would not say I am proficient in it. Far from proficient.

DJP M.I. Madondo: But you cannot read nor write it?

Adv I.L. Topping: No I cannot. Look I can read it, but it takes me a very, very long time because I have to work it. What I think sometimes is two words is actually one word and vice-versa. Because I was never formally taught it at school. It is from my childhood just playing with people.

DJP M.I. Madondo: Yes, I take it that, you know, nowadays the Customary Law enjoys equal status to Common Law.

Adv I.L. Topping: Yes Judge.

DJP M.I. Madondo: And it now forms part of our law?

Adv I.L. Topping: Yes.

DJP M.I. Madondo: So if you are called upon to develop it so to be in line with Constitutional values -

Adv I.L. Topping: Yes.

DJP M.I. Madondo: -- Would you be able to do so?

Adv I.L. Topping: JDP on previous occasion I was very embarrassed cause I was a bit lacking on Customary Law and I did a little bit of research last time I came here and learned a lot of things and found that I knew quite a lot about it. At the level of, I cannot say I am proficient to say; yes, I am an expert in the field but obviously, if I heard a matter based on the customary law I would research it before I wrote a judgement and make sure it is right. At the level of knowing the basics, I think I know the basics.

DJP M.I. Madondo: Okay.

Adv I.L. Topping: I would not say I could just write a judgement on Customary Law just off the top of my head, no I would not go that far.

DJP M.I. Madondo: So what would be your nature and unique contribution to the Bench should you be appointed?

Adv I.L. Topping: Judge, I think I would hope to be an effective Judge. At the level, I am a hard worker as you well know from what you have seen of me in our Division. I am not confrontational by nature. I am always prepared to listen to both sides of the story and I am very tolerant of various cultures and traits that people have in the courtroom so to that extent I think possibly a trait of tolerance might be my contribution. As I have said before as well I am of the view that the most important person in the courtroom is the litigant. Although litigants might not always be happy with the results, cause one of them is going to lose. They must both be happy that they had a fair hearing. What they want to say has been heard.

DJP M.I. Madondo: In total how long have you been acting as a judge?

Adv I.L. Topping: I have had three stints Judge, at various stages; 2015 and two in 2016 and then there was obviously when I had part-heards. I have come back there.

DJP M.I. Madondo: So would you regard yourself as having adequate exposure and experience to understand it can now be said that you are ready for permanent appointment?

Adv I.L. Topping: Judge, at the level if you look back through my CV I have always wanted to be satisfied in myself that I can do something before I do it. If you see I was an attorney before I came to the Bar. I did not have confidence that I was sufficiently proficient in criminal law and also standing on my feet in court. So I went prosecuting beforehand. As you see what I said earlier on I wanted to be twenty years as a junior before I took silk. Where I am now I am confident that I have got sufficient knowledge and background and experience to be able to say yes, I am ready for the Bench.

DJP M.I. Madondo: Well lastly the BLA in its comment is of the view that you still need more time for acting stints.

Adv I.L. Topping: Yes, I saw that Judge and that all I can answer is I feel I am ready, from what you have seen of me on the Bench and the judgements I have written and the reports I had of people, advocates appearing before me, I had no adverse complaints and if anything people have said to me in private you are good on the Bench. So I am confident, yes, I can deal with it without any further acting stints.

DJP M.I. Madondo: Thank you CJ.

CJ M Mogoeng: Thank you DJP. For what it is worth, you know I used to think that the Bill on my medical malpractice was 40 Billion I am told that is has since risen to 60 Billion per annum, just on claims.

Adv I.L. Topping: I am sad to say I am not surprised.

CJ M. Mogoeng: Yes. MEC?

MEC W. Thusi: Thank you CJ, I am okay.

CJ M. Mogoeng: Thank you MEC. Minister?

MIN M. Masutha: No thank you CJ. Just a follow-up on this medical malpractice. In fact, I was with the Minister of Health yesterday after the memorial and we talked about a possible option we might want to put forward through legislation. I do not know, I was telling the CJ I do not know if they will rule us constitutional or unconstitutional. But that is a matter for another day.

Adv I.L. Topping: Yes.

MIN M. Masutha: And of course we both concede me and the Minister that the State's case on the evidence was not a good case at the CONCORD.

Adv I.L. Topping: Yes.

MIN M. Masutha: So, CJ we do not blame you for ruling against us at least this time.

CJ M. Mogoeng: Even if you did, I would not mind.

MIN M. Masutha: But hopefully we will be better prepared next time we come back to you. But the point I want to put to you in medical malpractice is this: I accept that the Common Law as it stands dictates that once the claim for future, what do you call them -

Adv I.L. Topping: Medical expenses?

MIN M. Masutha: -- Future medical expenses have been established you must pay in full and what – full and final settlement or something to that effects.

Adv I.L. Topping: Yes. It is a once for all, in other words, once you worked it out you cannot come back.

MIN M. Masutha: Whatever the lingo is.

Adv I.L. Topping: Yes.

MIN M. Masutha: Now, the difficulty I have with that principle is this; it is based on speculation because that person let alone the issue of the actuarial evidence that might be there -

Adv I.L. Topping: Yes.

MIN M. Masutha: -- That gives a projection of life expectancy of the person concerned. Somebody might be knocked down by a car tomorrow.

Adv I.L. Topping: Yes.

MIN M. Masutha: And not even get to the point of requiring a single sent for that future medical expenses. I can understand all the other categories of the claim but specifically this one. Now the second point about it is this, I mean if the State gives an assurance that as and when occasion arises for any such expenses and care being provided by whoever, public or private. For that matter even undertake to say, even if it meant obtaining such care oversee at a much Higher Court – whatever it might be. We guarantee as a State and of course, as a State, we are going nowhere. I mean the State will be there forever. We are guaranteeing that we will actually at that point satisfy the claim so that there is no need to prove the claim to send the sheriff or anything. It is automatic you have a certificate it guarantees you there is a system. Whenever you incur the cost you do not negotiate with anybody you go anywhere, and they submit the claim. Like medical aid works. Basically a form of a medical –

CJ M Mogoeng: Your mic is off advocate, just keep it on.

Adv I.L. Topping: Sorry, I do apologise.

MIN M. Masutha: So the State gives full undertaking.

Adv I.L. Topping: Yes.

MIN M. Masutha: All right and it does not matter whether that person lives even beyond the projected period. Would you have any difficulty with the law providing in that manner and if so where would the difficulty be? Obviously, that would be a departure from the Common Law -

Adv I.L. Topping: Yes it would.

MIN M. Masutha: Obviously that would require statute which is not in place, I accept.

Adv I.L. Topping: Yes.

MIN M. Masutha: But in principle, where would you have difficulty with such a law providing to that effect?

Adv I.L. Topping: The comment I make is that it might be a very cumbersome system and that the cost of running that system and the time because it will build over time and one will get more and more and more claims. That is why I suggest; the shorter version is what –

MIN M. Masutha: -- Pardon I do not understand the logic of what you have just said. More and more claims on what basis?

Adv I.L. Topping: At the level of say, for example, you have got one child now. Now there is an undertaking given that that child will receive various medical claims and these children need about ten therapists and medical practitioners and case managers to make sure that they are okay. Now you have got that running. Now that is just one child, Now you get two claims, you get three claims, you get four claims. That is just in one month.

MIN M. Masutha: And the state we will pay all of that, we have the resources.

Adv I.L. Topping: But you might be creating a mechanism where the administration of all those claims eventually outweighs –

MIN M. Masutha: No but you simply use the Medical Aid scheme.

Adv I.L. Topping: Yes.

MIN M. Masutha: Which is already an existing system.

Adv I.L. Topping: Okay that is the only -

MIN M. Masutha: You do not even have to invent a new scheme. You just appoint a medical aid and say you the medical aid, you know through a procurement system in government with a competitive system. You award it and that particular medical aid scheme is awarded or more than one medical schemes. Or all the medical schemes in South Africa for instance and administer it on behalf of the State.

Adv I.L. Topping: In principle, I cannot say anything against I because what you are doing with it at the end of the day with this trial is that you ensuring that this child is cared for medically until it passes on. And that what one tries to work out, Common Law says you have got to do that once and for all and work it out in the beginning of the claim so at that level as long as the system is in place and paramount as the child and the care, the need of the child. If the system is put in place will that system work sufficiently that that child will be cared for the rest of its life, I cannot see anything against that?

MIN M. Masutha: You have answered me., thank for that. Can I ask you a last question?

Adv I.L. Topping: Yes.

MIN M. Masutha: Now I believe that the sufficient evidence that when it comes to medical malpractice claims there has been along history of MVA as well there has been rampant abuse not only in the form of fraud even, not only against the state but actually against the claimants in that there have been practitioners who barring the point that the Chief Justice alluded to, where you have a legitimate 25 % or whatever in terms of law where people literally take a significant bulk of the claim that is due to the claimant in full contravention of the law.

Adv I.L. Topping: Yes. I cannot say this does not happen because I have also heard stories, but I do not want to -

MIN M. Masutha: Yes, no, no then the question is what is it that the profession itself in your opinion should be doing to quarantine itself of this, not only perception but reality?

Adv I.L. Topping: Yes.

MIN M. Masutha: Or is it in your opinion purely the responsibility of the state to police the profession in ensuring that this abuse is stamped out? In order words, you as the

Bar counsel, the Law Societies, do you believe that you have a responsibility and that you do not have to wait for the state?

Adv I.L. Topping: Yes.

MIN M. Masutha: Including educating claimants of their rights and taking steps to protect them actively.

Adv I.L. Topping: I think it is a question of ethics at the end of the day, if anything again just thinking of the top of my head is that if a system can be put in place that once a trial has finished and the monies had been paid that the taxing of that bill is part of what procedure that has to take place before the attorney can get paid. In other words, he has to show that he has complied with the law at the level of not taking more than 20% or not taking more than double his fee if, in fact, it was -

MIN M. Masutha: Do you support – if I may -

Adv I.L. Topping: Yes.

MIN M. Masutha: Do you support the resistance that as I understand has been mounted by the profession to say that the payment must go directly to the practitioner and leave it to the practitioner to pay whatever is due to the claimant or would you support an idea that a system be established where payment is given directly to the claimant or the trust or whatever established to support the claimant and that the attorney is paid directly for the fees that are due to them in terms of whatever arrangement.

Adv I.L. Topping: I have nothing wrong in principle, but I would not support that the vast amount of money be given to the claimant. They must go into a Trust and be protected at some level.

MIN M. Masutha: Hence I included the trust.

Adv I.L. Topping: Yes, in other words the money has to go, in other words, what normally happens is the order is the money goes to the attorney then the attorney direct it to pay to the trust, so it is all part of a Court order. But I see nothing wrong with the direction of the formation of a trust, monies are paid into the trust and then the attorneys be paid up or whatever and then the policing on those fees if there is abuse.

MIN M. Masutha: So it should more be a question of establishing a system of monitoring and ensuring that corruption is stamped out of professional malpractice in this area.

Adv I.L. Topping: 'Cause bottom line if the case is running and calculated correctly that amount of money has been calculated that that child needs to sustain it for the rest of their life. The more you take out of that fund the more calculation is wrong and the more that child is at risk.

MIN M. Masutha: Thank you, Chief Justice, my apologies for –

CJ M Mogoeng: Yes, it was particularly long –

Adv I.L. Topping: And I apologise for interrupting you.

CJ M. Mogoeng: Commissioner Nyambi?

COMM A.J. Nyambi: Thanks CJ. Afternoon Advocate.

Adv I.L. Topping: Good afternoon.

COMM A.J. Nyambi: You have been interviewed for this position in the past?

Adv I.L. Topping: Yes, I have. Twice.

COMM A.J. Nyambi: Any particular thing that is significant that you will want the panel to consider so that we can arrive at a different conclusion?

Adv I.L. Topping: I think I have put everything out in front of everybody on the previous occasions and like I say I think I am competent enough to take up a position as a judge and will do a very good job. I have said in the past I am very hard working. I am dedicated, and I am committed to doing and being elevated to the Bench. And please view me on me, that is all I ask.

COMM A.J. Nyambi: But in a nutshell, nothing significant happened between then and now?

Adv I.L. Topping: At the level, I am more mature. I have done more cases in court. I have, I am just trying to think. What is possible difference between the time was I cannot remember it was the pupil mentor on the previous occasion or not. That is what has changed in my practice. I am the pupil mentor at the Durban Bar. I deal with all the pupils and stuff like that. I think that has been added on. I have done more land claim matters since the last hearing. One is the big trial has been taking two years. We have been getting for doing heads of argument and finalising the argument now. But nothing material has changed in my life, I have always been me and I am still here.

COMM A.J. Nyambi: Thank you CJ.

Adv I.L. Topping: Thank you.

CJ M. Mogoeng: Thank you Commissioner Nyambi. Colleagues can we agree now that at the end of the race we are losen up can we agree again. Thank you.
Commissioner Norman.

COMM T. Norman: Thank you, Chief Justice. Good afternoon Mr Topping.

Adv I.L. Topping: Good afternoon, Commissioner.

COMM T. Norman: You are my colleague.

Adv I.L. Topping: Yes.

COMM T. Norman: I just want to know from you, you had dealt with the Mandeni Municipality versus Ingonyama Trust, do you remember the matter? And you dealt with an exception in that matter?

Adv I.L. Topping: Yes. I – it is a judgement I wrote. Yes, yes sorry. I am following you.

COMM T. Norman: As an Acting Judge. But my interest is did you subsequently deal with the trial of that matter of the particulars of claim were amended?

Adv I.L. Topping: No, I have not. After the – I upheld the exception and I have not heard anything further. It was not taken on appeal or anything. Or it was not taken any further.

COMM T. Norman: Yes, all right.

Adv I.L. Topping: And I do not know what the outcome of the trial is or was.

COMM T. Norman: All right, thank you.

Adv I.L. Topping: But I assume they accepted what I said in the judgment yes.

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

CJ M. Mogoeng: Thank you so much Commissioner Norman. Commissioner Nkosi-Thomas?

COMM Nkosi-Thomas: Thank you, Chief Justice. Good afternoon Mr Topping.

Adv I.L. Topping: Good afternoon.

COMM Nkosi-Thomas: A brief question and then it goes to transformation.

Adv I.L. Topping: Yes.

COMM Nkosi-Thomas: What role if any have you played in transformation at the Bar and in terms of bringing in black juniors into your matters.

Adv I.L. Topping: At the Bar, I have always been involved in pupil training and having pupil advocates. Of the juniors I have had since I have taken silk, I am just trying to think through, they have always been a – sorry I have had one white junior allocated to me a couple of weeks ago, but it has always been of a different race, females, Africans, Indians, Coloureds. I have tried, my door is always open at the Bar and everybody that is at the Bar knows it. I have always tried to help Juniors whatever advise and help I can impart to anybody. It has always been my thing. I would put my pen down and help you at any time. And in my role as the pupil convener as such and I must say through the help of a very competent committee of which Commissioner Norman is one of the parties I think we have done, and I hope I am a party to it, to the extent of my input I have been able to set a set of criteria for acceptance of pupils within the Durban Bar that has addressed the previous racial and gender inequalities that had been there. And we put that in place last year, and I notice this year as well that there appears to be an effect already. And I was a party to that. I am proud to say.

COMM Nkosi-Thomas: Now we are interviewing for two positions in this Division and there is an issue around demographics and so on.

Adv I.L. Topping: Yes.

COMM Nkosi-Thomas: If you feel the question is unfair, please say so -

Adv I.L. Topping: No please -

COMM Nkosi-Thomas: -- I am sure the Chief Justice will also mention but would you be prepared to step back and allow for a person of a different racial to be appointed?

Adv I.L. Topping: Yes, I have always said that I support transformation. We have got to cure the ills of the past and if it is a situation that I need to step back I accept that lot. There is nothing I can do about it.

COMM Nkosi-Thomas: Thank you, Mr Topping.

Adv I.L. Topping: Thank you very much.

CJ M. Mogoeng: Commissioner Magadzi?

COMM Magadzi: Thank you CJ. Good afternoon, Mr Topping.

Adv I.L. Topping: Good afternoon, Commissioner.

COMM Magadzi: You are a Maritime Law expert and I just want to establish with yourself as to whether do you have sufficient legislation which can be able to regulate our shores and our water in that regard? And also at the same time do we have sufficient legal expertise to be able to look into this, Thanks CJ.

Adv I.L. Topping: Commissioner if I can just put my experience in Maritime Law into context when I was an attorney I worked in the Maritime Department of the firms. When I left the attorneys practice and joined the Bar I have not been briefed in Maritime matters if anything I do the odd urgent arrest for nothing if the other practitioners are not around. That is why I smiled when you said Maritime expert, I had that experience in Maritime Law, I do know my way around in it, but I do not have current experience in it because I am not one of the advocates that are briefed regularly on Maritime matters. I do not think I, sorry I cannot answer the second part of your question because I just do not know.

CJ M. Mogoeng: Thank you, Commissioner J Cane?

COMM J Cane: Thank you CJ, I have been covered.

CJ M. Mogoeng: Thank you so much. You are excused, Mr Topping.

Adv I.L. Topping: Thank you so much. Thank you, Commission. Thank you for your time.

CJ M. Mogoeng: Thank you.