



JUDGES MATTER

Judicial Service Commission interviews

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KwaZulu-Natal Division of the High Court

Interview of Mr S B Mngadi

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CJ M. Mogoeng: Good morning Mr Mngadi.

Mr S. B. Mngadi: Good morning, Chief Justice.

CJ M. Mogoeng: Are you well?

Mr S. B. Mngadi: I am well, thank you for asking. And good morning everybody.

CJ M. Mogoeng: Thank you. You first obtained Diploma Juris (cum laude) and subsequently Diploma Legum

Mr S. B. Mngadi: That is correct, Chief Justice.

CJ M. Mogoeng: Was it at an institution that was loosely referred to as Garras or was it elsewhere?

Mr S. B. Mngadi: It is the same institution which was known as Garras.

CJ M. Mogoeng: At Kwadlangezwa?

Mr S. B. Mngadi: That is correct, Chief Justice.

CJ M. Mogoeng: Yes, and where did you obtain your BProc degree?

Mr S. B. Mngadi: I obtained it also the same University of Zululand, in fact, I did the additional courses through UNISA –

CJ M. Mogoeng: Yes.

Mr S. B. Mngadi: -- And then they accredited me and converted my diplomas into a Degree, the people.

CJ M. Mogoeng: Oh, I see.

Mr S. B. Mngadi: Yes.

CJ M. Mogoeng: And your LLB, where did you do it?

Mr S. B. Mngadi: I also did it at the University of Zululand.

CJ M. Mogoeng: When did you complete it?

Mr S. B. Mngadi: In 1986.

CJ M. Mogoeng: '86, and MBA?

Mr S. B. Mngadi: The MBA I did at the University of Potchefstroom.

CJ M. Mogoeng: Potchefstroom?

Mr S. B. Mngadi: Yes, they had a satellite office at Richards Bay.

CJ M. Mogoeng: Is that so?

Mr S. B. Mngadi: That is correct, yes. And I did it in '98 to 2001.

CJ M. Mogoeng: Okay. Do you do a bit of tax?

Mr S. B. Mngadi: That is correct. I also did a post-graduate diploma in taxation.

CJ M. Mogoeng: Yes. For how long have you been practising as an Attorney?

Mr S. B. Mngadi: Chief Justice, I practised for fifteen years.

CJ M. Mogoeng: Yes.

Mr S. B. Mngadi: Yes.

CJ M. Mogoeng: And you still practising?

Mr S. B. Mngadi: I am still practising. In fact, I left the Legal Aid last year in April.

CJ M. Mogoeng: Yes.

Mr S. B. Mngadi: But after that date most of the time I have been acting so I have not actually reactivated my practice.

CJ M. Mogoeng: And have you left it with someone else your practice?

Mr S. B. Mngadi: No, I resigned from the Legal Aid in April 2017.

CJ M. Mogoeng: Yes, and then what happened?

Mr S. B. Mngadi: Then after that, I was acting as a Judge.

CJ M. Mogoeng: Oh, with no other fixed employment?

Mr S. B. Mngadi: That is correct. That is correct, Chief Justice.

CJ M. Mogoeng: Okay, all right. And how did you find your acting experience there? How did you find the environment? Did you acclimatise easily? Was it particularly challenging? What have you to say about your acting stint?

Mr S. B. Mngadi: Initially Chief Justice it was a new environment. That is the relationship with the colleagues, the other judges, relationship with counsel but as far as the work is concerned I think my experience and of course as a High Court Unit Manager I had litigated, I would say, extensively in the High Court doing criminal appeals mainly. Of course in the Provincial Division and also at the SCA so it was not a new environment in that sense.

CJ M. Mogoeng: Yes. What is the longest period you have kept a judgment reserved for?

Mr S. B. Mngadi: There is one judgement, Chief Justice, which I will say I kept it for three months.

CJ M. Mogoeng: Yes.

Mr S. B. Mngadi: But again I am hesitant to say I kept it for three months because I prepared the judgement three weeks after the hearing but of course it was an appeal, a civil appeal, so what I had prepared I had to give it to the other judge. Then it was with the other judge which delayed it and it was delivered after three months.

CJ M. Mogoeng: It did not relate to an urgent matter did it?

Mr S. B. Mngadi: No, it was simply a Civil Appeal from the Magistrates Court.

CJ M. Mogoeng: Yes, and you say that was the longest?

Mr S. B. Mngadi: That was the longest, Chief Justice.

CJ M. Mogoeng: What is it about you, your suitability for this position that you would not want us to inadvertently pay insufficient attention to or give insufficient weight to?

Mr S. B. Mngadi: Chief Justice, without maybe boasting about it but I –

CJ M. Mogoeng: Please boast. There is – yes.

Mr S. B. Mngadi: Well I think I am perfectly suited for the position. Firstly, if one looks at my academic qualifications I have covered all the areas of the Law. Then secondly, if you look at my experience I have been involved in the practice of the Law for forty years. Then thirdly, if you look at my judgements because I have acted Chief Justice now for nine months and during that brief period I have prepared about twenty-five reading judgements excluding Ex tempore judgements. About fifteen or sixteen of those judgements are reported in SAFLII so I think I am equipped and I am able to do the job, and of course, I have also got a passion for justice. So I think even my personality because apart from simply my technical competence I believe I have got strong personal values. I believe in integrity which is honesty. I believe in fairness and I also believe in accountability and lastly, I also believe in respect. It is not only just a belief, that is what I have been practising for the last fifteen years. Even those who work with me whilst I was with the Legal Aid as my subordinates I set an example with those beliefs. And of course, if you look at how I approach my work, you know I always do my work on time. In fact, from my study days, I was always of the view that I must prepare at an early stage not to be the one who prepares at the last stage. So that is how I approach my work. That is why I do not take time in delivering reserve judgements. So generally I believe that I will be able to add value to the judiciary and of course my colleagues I believe in the Division because it is important if you are a judge that you work with your colleagues and that

you carry out the duties allocated to you effectively and that the colleagues especially when you do appeals, petitions; the colleagues must be able to rely on your judgement. They must have trust in you. So I believe that colleagues have trust in me. Not simply because I am guiding but because of the know me from the time when I was arguing appeals before them and then of course over the period when I was acting they have worked with me.

CJ M. Mogoeng: DJP.

DJP M.I. Madondo: Thank you, Chief Justice. Mr Mngadi, I have known you since 1978 when we were employed as clerks at Magistrate Court in Escort.

Mr S. B. Mngadi: That is correct DJP.

DJP M.I. Madondo: At that time you were still a youngster.

Mr S. B. Mngadi: Yes, in fact, I think that time I was twenty years old.

DJP M.I. Madondo: Yes. Mr Mngadi you have acted in KwaZulu Natal, South Gauteng and North Gauteng. Is that so?

Mr S. B. Mngadi: That is correct, DJP.

DJP M.I. Madondo: As compared to KwaZulu Natal Division how did you find South and North Gauteng Division respectively?

Mr S. B. Mngadi: Well DJP they do things differently in South Gauteng and in North Gauteng. I think in particular in South Gauteng as far as their Motion Court is concerned it is managed differently. I do not know whether it is because of volumes. And of course, even in North Gauteng, Pretoria, because I was also doing civil there and they organised things differently. So the same applies as far as KZN, Durban and Pietermaritzburg; they have got their own way of doing things. So my view is that if you are placed in a particular Division the first thing you have to be familiar with their practice directives. Fortunately, you will find in each Division usually the

Senior Judges will have produced a manual which will assist you in carrying out your duties. Therefore if you are familiar with this manual if you are faced with, let us say with a large volume of matters in Motion Court then you have to, when you are reading, you will sort of have a checklist in each and every matter you try and find out what is an area of concern. When you are in Court you simply invite counsel to address area of concern and then you can make a ruling. That is how you can manage the volume of matters.

DJP M.I. Madondo: So can you tell us how you acquitted yourself in these three divisions? There is KwaZulu Natal, South Gauteng and North Gauteng.

Mr S. B. Mngadi: Well as I have said Deputy Judge President, in South Gauteng, I acquit myself in that I was able to deal with the large volume that is in the motion court as I was doing civil. Within the hours which the other judges normally do and finish the Motion Court. Because if you are stuck in the Motion Court and then it will be known that you are finding it difficult to cope. So I did not have any difficulty to cope. I was not in any way assisted and I did not pick up any issues either with counsel or with other colleagues. The same applies in Pretoria, that is in the North Gauteng Division. But as I have indicated the key to it, if you are doing Motion Court Unopposed Matters be familiar with the practise directives. Prepare your checklist and then when you prepare matters to Court note in each matter what will be the area of concern and invite counsel to deal with that issue and then make a ruling.

DJP M.I. Madondo: So during your acting stints has there been any complaint lodged or criticism levelled against you about the way you perform your judicial functions?

Mr S. B. Mngadi: DJP I am not aware of any criticism either from colleagues then even before we – you know after I made myself available. I am not aware of any comments either by the Law Bodies which was in anyway critical of the way I carried out my judicial functions as an Acting Judge.

DJP M.I. Madondo: Did you receive any compliments?

Mr S. B. Mngadi: If I say there were not negative, so I will say they were positive and particular I attach more importance to that of the GCB because when you are carrying out the Duties of an Acting Judge you work with counsel who are member of the various Bars. So I am not aware. Their comment in my view is a positive comment.

DJP M.I. Madondo: I take it that you are conversant with the traditional legal system? Is that so?

Mr S. B. Mngadi: That is correct DJP.

DJP M.I. Madondo: If you come across a scenario where there is a problem in the traditional legal system would it be appropriate to substitute Common Law for Customary Law in that instance in resolving the problem?

Mr S. B. Mngadi: DJP my first port of call will be to see whether that problem can be accommodated in Customary Law and if it cannot be accommodated in Customary Law the next attempt will be to try to see whether the principles of Customary Law can be developed to be in accordance with the spirit, the purpose and the object of the Bill of Rights, if that is a problem. Rather than to completely substitute what should be dealt with and be adjudicated according to Customary Law and adjudicated according to Common Law.

DJP M.I. Madondo: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you DJP. MEC?

MEC W Thusi: Thank you CJ. Good day Mr Mngadi.

Mr S. B. Mngadi: Good day Commissioner.

MEC W Thusi: What has been your direct contribution in assisting to transform the Judiciary over the years in your long service at the legal profession, taking into consideration Section 174 subsection 2 of the Constitution and looking at the

demographics of the KZN High Court Bench? And the second part of my question which I think is relevant to transformation. What do you think needs to be done to ensure access to the justice system for the poor people of rural KwaZulu Natal from financial and location point of view?

Mr S. B. Mngadi: Thank you MEC, as far as transformation is concerned as the DJP pointed out amongst my colleagues who were clerks I am the first one who looked for and made use of an opportunity to improve myself in study and I am pleased that immediately after I have done that and then a number of other colleagues – because we were in a homeland structure of course where our own parent were from poor backgrounds, they could not take us through the university. But having opened that door and then a number of my colleagues they, in fact, followed suit and they qualified and the obtained tertiary education. But again in my entire working career, even whilst I was in private practice apart from that the fact that I was serving mainly the poor communities and giving them the best service that they could get, I also took students from the university and some of them served articles with me, both female and male. And of course, when I joined the Legal Aid my main reason for joining the Legal Aids, I said: I have worked on my own in my private practice but now let me use my own expertise to empower the poorest of the poor. And then I joined the Legal Aid. And then most people were very pleased that a person of my profile joined the Legal Aid and I empowered the practitioners who were working under the Legal Aid environment. Which in my view I regarded as empowerment? But again when I worked with them, when I managed the centre, that is from 2005 to 2009 all those who worked with me when I recruited staff – because I was in charge of recruiting – when I recruited candidate attorneys I looked and supported African females which were part of the transformation. And then again when I was training them all as my staff members I insisted on transforming them to be good efficient practitioners and to empower them. So I think in my entire career I have supported transformation. And even now, as I have made myself avail I can say without a doubt that in particular my colleagues from the KZN Division those who are from the disadvantaged background they support my making myself available because they believe it will enhance and be part of the transformation process. As far as access to justice is concerned. Firstly, I think the justice system – most people who are on the receiving end of the justice system are from the poor rural background. And I am

from that background. So if I am one of them to a certain extent I understand their problems, I understand how they view issues. Even if I decide a matter where there are other witnesses or there were litigants my understanding will have an input into that. So to a certain extent to me, that is promoting access to justice. And of course within my limited authority if I can simplify procedures and make the entire system to be user-friendly that will promote access to justice because clearly, the courts of litigation, in particular, the High Court is prohibitive. It is too expensive. But I think if the judicial officers will understand the environment, the background of the litigants somehow that can address the situation. I have if one looks at my judgement, I have taken that into account. For instance, where you find that in a litigation when a matter is litigated the other side which is financially able they will be properly represented by counsel. Then maybe the other side they do not have the financial resources, but I will not simply say because for instance I decided the matter in favour of the other side with financial resources and therefore the cost follow suit. I have looked at the matter and see whether the issues justify giving costs to the successful party. Or the issues are of such a nature that you can order each party to pay his own cost. That is not to discourage the losing party if, for some reason, he has to lose, but not maybe on the merits to mark him or penalise him with costs. So all those issues, if you are sensitive to the background of the litigants you take it into account. And in my view, it promotes to a certain extent access to justice.

MEC W Thusi: Thank you CJ.

CJ M. Mogoeng: Thank you MEC. Commissioner Nyambi? This time I got you right.

COMM A.J. Nyambi: Thank you CJ. Morning Mr Mngadi.

Mr S. B. Mngadi: Morning Commissioner.

COMM A.J. Nyambi: You answered some of my questions when you were boasting. So I will just limit to two. The first one it is in relation to the political affiliation. The law bodies has raised that issue. What is the current status? How do you intend dealing with it?

Mr S. B. Mngadi: Well the current status is that I am not active in the political party. I am just a member, a card-carrying member and then when the time comes to vote and then I vote. I think it is the Constitutional right of each citizen of South Africa to decide if he wants to belong to a political party. But, I owe allegiance to the country as a whole. Not to a particular political party. So they should really have no concern. Because I do not look at persons or litigants as coming from different political parties to me I apply my mind to the best of my ability honestly and continuously to do justice in the matter. Irrespective of the political affiliation,s of the litigants.

COMM A.J. Nyambi: Thank you. The last one you said you believe in accountability when you were still boasting so if you can share with us your understanding of judicial accountability.

Mr S. B. Mngadi: Firstly, in particular, the position of a Judge is a very, very responsible position. We say the constitution grants authority to the judiciary but in fact, it grants authority to each individual judge. So clearly a person who occupies the position of a judge it must be a person of high integrity and that is a person who is accountable. So you are accountable in bearing in mind that, in fact, understanding the authority of your own office and using that power or that authority with responsibility and with restraint. And the way you carry yourself and then of course also the way you conduct the proceedings which are before you. You conduct them in an accountable manner. For instance, you bear in mind that there are a cost involved so you cannot allow the matter to drag. You have to guide the parties and you have to make sure that the matter is dealt with efficiently. And of course, you also bear in mind that there are public funds involved in the litigation. So you cannot simply let the parties drag the matter on because that is the time for the Court is mainly born by the public funds so again, you have to bear in mind that. Then again in your judgements when you deliver judgments, firstly, by avoiding delays. Because the parties might have been waiting to be given a hearing for some time and then to let them wait further for the judgement in the matter it shows that you are not accountable. Then of course in your own judgements as I have indicated to the best of your ability you try and you make sure that you give the best. You apply your mind to all the relevant issues and then you give the best decision that you can give in the circumstances. Of course, bearing in mind that in particular, I have got mainly a

criminal background you are accountable in the sense that in criminal matters it is a sensitive matter it involves the life of a person, especially in High Court matters. So even if you are wrong and then your decision is reversed on Appeal but the person would have spent time in jail he would have suffered prejudice. So to bear that in mind and be accountable that you try and get it right the first time. Again I think that is important. So to me holistically that accountability must indeed be born by the judicial office.

COMM A.J. Nyambi: Thank you CJ.

CJ M. Mogoeng: Thank you, Commissioner Nyambi. Commissioner Fourie?

COMM C.P. Fourie: Thank you, Chief Justice. Morning Mr Mngadi. Are you well?

Mr S. B. Mngadi: Morning, I am well thank you. Thank you, Commissioner.

COMM C.P. Fourie: Mr Mngadi I just need to clarify some confusion that I have as to your current status and your career path and that flows from an answer that you gave to a question -

Mr S. B. Mngadi: Yes.

COMM C.P. Fourie: -- When Chief Justice posed to you.

Mr S. B. Mngadi: Yes.

COMM C.P. Fourie: If I look at your questionnaire and your CV -

Mr S. B. Mngadi: Yes.

COMM C.P. Fourie: -- You say I am not going to repeat everything. You say that you were a practising attorney until September 2005?

Mr S. B. Mngadi: That is correct yes.

COMM C.P. Fourie: Then you joined Legal Aid South Africa from 2005 -

Mr S. B. Mngadi: Just a correction Commissioner Fourie. I was a practising attorney running my own practice until 2005.

COMM C.P. Fourie: Yes.

Mr S. B. Mngadi: But I remained an attorney even after joining the Legal Aid.

COMM C.P. Fourie: Yes, but you were practising as an attorney until 2005?

Mr S. B. Mngadi: No, even when I was with Legal Aid I was practising as an attorney, but it is only that I was not practising in the -

COMM C.P. Fourie: No, I am talking about your own firm. Practising in that sense.

Mr S. B. Mngadi: That is correct yes.

COMM C.P. Fourie: But that is not my question really. Then you joined Legal Aid from 2005 to 2017, April 2017? And then you say in both your questionnaire and your CV that you since 2017 you are a practising attorney with Mngadi and Partners.

Mr S. B. Mngadi: Yes.

COMM C.P. Fourie: What confuses me is that flowing from a question that the Chief Justice put to you, you said that because you have been acting so much you haven't really activated your firm – or words to that effect. What does -

Mr S. B. Mngadi: That is correct.

COMM C.P. Fourie: -- What does that mean?

Mr S. B. Mngadi: Well it simply means that in private practice if you are running a practice you have to dedicate yourself to the running of the practice. So if you are acting Judge as you will see the period that I have been acting as a Judge you cannot during the same period be effectively running a practice.

COMM C.P. Fourie: Yes, but my question then is; is there an existing firm Mngadi and Partners registered with the KZN Law Society?

Mr S. B. Mngadi: No you do not register a firm, I mean you advise the Law Society that you have opened a practice and then you open a trust account.

COMM C.P. Fourie: Yes, sir and they register it in their system.

Mr S. B. Mngadi: And then you open a trust account.

COMM C.P. Fourie: Yes.

Mr S. B. Mngadi: And you can be able to take instructions.

COMM C.P. Fourie: And you need a -

Mr S. B. Mngadi: In my case, I am a fully -

COMM C.P. Fourie: -- Let me just complete. And you also need a fidelity fund certificate.

Mr S. B. Mngadi: That is correct, yes.

COMM C.P. Fourie: Just tell me, is the firm operating? Has it got a trust account? Have you got a fidelity fund certificate? I am not cross-examining you I just need to understand.

Mr S. B. Mngadi: No, no I understand, sir. No that is why I said to the Chief Justice I have not reactivated the firm. Because deliberately I am not taking instructions from

the members of the public. I have not opened a trust account. But I remained a fully paid-up member of the Law Society as an attorney.

COMM C.P. Fourie: Okay, so since you left Legal Aid South Africa in April of 2017 you have not practised as an Attorney?

Mr S. B. Mngadi: Well that is correct, yes. I have not practised as an attorney but if you look at my – when I completed the questionnaire you will notice that in fact in April 2017 when I resigned the Legal Aid I was acting as a Judge in the North Gauteng and then from that date I have been acting continuously, in fact, even last month in March 2018 I was acting based in Durban. So clearly that is why I have not activated the practice to run the practice.

COMM C.P. Fourie: Okay, so this reference that you are a practising Attorney since 2017 on your questionnaire is then not correct? The last time that you practised in your own practice for your own account as an attorney was in 2005?

Mr S. B. Mngadi: I, I – well I do not understand it because as I have said, I am a practising member of the Law Society. Or let me say I am a paid-up member of the Law Society. And in fact even for me to act as a Judge I must be a practising or an Attorney. So I regard myself as a practising attorney because I can even now appear in Court and conduct litigation in Court as an attorney.

COMM C.P. Fourie: Let's sort to the questionnaire and I think I now understand that you have not been a practising attorney since 2017.

Mr S. B. Mngadi: Yes that is right since April 2017.

COMM C.P. Fourie: So this is incorrect. And the last time you practised -

Mr S. B. Mngadi: No, I would not say, Commissioner, that is incorrect. In my view, I am an attorney and I am an active attorney.

COMM C.P. Fourie: If time permitted I just want to explain to you. You are either on the practising roll of the Law Society or you are on the non-practising roll. If you are on the practising roll you have to have a fidelity fund certificate. Do you have that at the moment?

Mr S. B. Mngadi: No, I do not have a fidelity fund certificate.

COMM C.P. Fourie: Okay, thank you. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Fourie. Advocate Mpofu SC?

COMM J. Mpofu: Thank you very much. Good morning Mr Mngadi.

Mr S. B. Mngadi: Good morning Mr Mpofu.

COMM J. Mpofu: Thank you very much. Yes, I think just a follow-up CJ. I was going to ask you one question but follow-up on Mr Fourie's question.

Mr S.B. Mngadi: Yes.

COMM J. Mpofu: Surely what you have said in your questionnaire cannot be correct. It might be an oversight because you have filled in under name of employers Mngadi and Partners. And then practising Attorney 2017 to date. To date means until now. So one of those things is wrong whichever one it is. Either the 2017 to date or the Mngadi and Partners because according to you Mngadi and Partners no longer exists or is not registered. So and it might be something you want to clarify so that it not held against you. Maybe you filled the form without applying your mind to the specifics of the questions that are being put to you now.

Mr S. B. Mngadi: Commissioner Mpofu I do understand the issue –

COMM J. Mpofu: Have you got it in front of you? The form?

Mr S. B. Mngadi: Yes, okay page 2.

COMM J. Mpofu: Yes, the bottom of page 2.

Mr S. B. Mngadi: Yes. Well as I have explained Commissioner Mpofu I still regard myself as a practising attorney.

COMM J. Mpofu: That is fine. So let's tick that one. And then are you a practising attorney under Mngadi and Partners?

Mr S. B. Mngadi: Well – clearly even if you – my problem is that currently I have not activated Mngadi and Partners to have a fidelity fund certificate and take instructions.

COMM J. Mpofu: Sure, so, therefore, you are not a practising attorney under Mngadi and Partners. Correct?

CJ M. Mogoeng: So you are not practising? Why is this a problem? You are not practising. To practice means receiving clients, taking instructions, going to court or doing some work on their behalf. You have not been doing that since 2017. Are we mistaken?

Mr S. B. Mngadi: No that is correct Chief Justice.

CJ M. Mogoeng: Yes, so I do not understand how do you practice then? If you are not doing anything practical as an attorney?

Mr S. B. Mngadi: Thank you, Chief Justice, I understand. Yes, I have not been practising as an attorney.

COMM J. Mpofu: Thank you, okay that is fine. Thanks that is clear that now. Then the next question has to do with the political affiliation question.

Mr S. B. Mngadi: Yes.

COMM J. Mpofu: I would like you to please clarify that it is something that I have for obvious reasons had to grapple with for a long time. Firstly, you say that you have been a member of the ANC since 1976 to date.

Mr S. B. Mngadi: That is correct yes.

COMM J. Mpofu: Does that mean that you are in the underground between 76 and 1990, like some of us?

Mr S. B. Mngadi: Well in 1976 I was doing matric and maybe I was not a card-carrying man of the ANC but-

COMM J. Mpofu: Nobody was a card-carrying member. I am saying are you, between 1976 and 1990 were you active in the underground structures of the ANC or not? Since you were in the country. How did you become -

Mr S. B. Mngadi: Yes.

COMM J. Mpofu: -- Or what kind of member where you maybe I should put it openly and -

Mr S. B. Mngadi: What I meant is that I regard it even as that time the African National Congress as –

COMM J. Mpofu: As your home?

Mr S. B. Mngadi: -- As my political party.

COMM J. Mpofu: All right fine. The reason I am asking that is because I wanted to find out what did you do with that membership whatever its form was when you were a Magistrate in 1985?

Mr S. B. Mngadi: What do mean if you say want did I do with my membership? -

COMM J. Mpofu: No, can you -

Mr S. B. Mngadi: -- Because when you become a Magistrate you are not asked about your membership.

COMM J. Mpofu: No, no, okay. Let me explain something to you. The question alludes to this maybe I will give you an example.

Mr S. B. Mngadi: Yes.

COMM J. Mpofu: You in 1999 I was asked to act as a Judge, and now at that time I was serving in the executive structures of the ANC and my comrades did not understand the idea that I refused to go to meetings. Because they said; you are a Judge during the day you can come to the meeting in the evening.

Mr S. B. Mngadi: Yes.

COMM J. Mpofu: And I explained that you could not do that.

Mr S. B. Mngadi: Yes.

COMM J. Mpofu: I did not give up my membership, so I understand what you are saying. But what I am saying it could you be a judicial officer and still be a member of a political party? Forget the 80's now? I am talking now.

Mr S. B. Mngadi: Well as far as I know, even know, you can be a member of a political party and be Judge or a Judicial Officer. As long as you are not active in the political activities of your political party.

COMM J. Mpofu: Okay. Thank Chief Justice.

CJ M. Mogoeng: So if you were to be appointed you still be a member of the ANC? Or some other political party is that what you are saying? We are no talking about voting we are talking about owing loyalty to a particular political party? Taking

instructions from a political party being capable of being deployed one way or the other by a particular political party. Whatever it's named. You would still do that? You will remain a member of a political party whatever its name as a Judge?

Mr S. B. Mngadi: To be honest, Chief Justice, I have not thought about that and, I think, maybe on proper reflection, I can still vote for my political party but maybe terminate my membership of that political party if I am appointed as a Judge.

CJ M. Mogoeng: No you need clarity. You see I can still for my political party and – it is a question of principle here. Is it reconcilable with the impartiality required of a Judge for a Judge to maintain loyalty or allegiance to any political party during an active service and after retirement? That is the question.

Mr S. B. Mngadi: No, Chief Justice, clearly a Judge owe his or her allegiance to the Constitution only. So he cannot owe allegiance to any other organisation?

CJ M. Mogoeng: Why is that so? What is the problem? Why should a Judge – it is important to understand that you understand your answer. Why is it not appropriate in your view for a Judge to be a member of a political party?

Mr S. B. Mngadi: Well the Judge has to take his authority only from the Constitution and he must be seen to be applying the Constitution or he must apply the Constitution impartially without fear, favour or prejudice. And, in fact, the independence of the judiciary means that the Judges who are serving in the judiciary as individuals themselves they are independent, and they are only subject to the Constitution.

CJ M. Mogoeng: How would membership of a political party interfere with that independence or undermine that independence?

Mr S. B. Mngadi: Well if you are a member of a political party and then it will be seen that you are owing allegiance to that political party. Therefore you are not acting impartially, and you are not subject only to the Constitution and the Law.

CJ M. Mogoeng: Is it a question of being seen as if or are their practical challenges in relation to maintaining that status? Practical challenges, challenges that touch on principle? And if so what are they?

Mr S. B. Mngadi: Well Chief Justice the judiciary in my view, is defined by its independence so anything which affects the independence of a judge must be removed. So in this case membership of a political party in my view affects the independence of a judge and therefore it has to be removed.

CJ M. Mogoeng: You see, I am taking longer than I should deliberately because I do not want you to disadvantage you.

Mr S. B. Mngadi: Yes.

CJ M. Mogoeng: How? In simple language does it impact negatively or independence? How?

Mr S. B. Mngadi: Well if you are a member of a particular political party and then you're associated with that particular party and therefore it affects your independence as a Judge because you are only subject to the Constitution of the Law.

CJ M. Mogoeng: But how does being a member of a political party interfere with your impartiality or independence as a judge?

Mr S. B. Mngadi: Well if you are a member of -

CJ M. Mogoeng: In practical terms.

Mr S. B. Mngadi: Yes, yes.

CJ M. Mogoeng: Give us examples, maybe one or two.

Mr S. B. Mngadi: Well clearly if you are a member of a political party and then political party can give instructions to you because you are a member of that political party. And as I have indicated the Judge applies the Constitution and the Law impartially without fear, favour or prejudice.

CJ M. Mogoeng: Yes.

Mr S. B. Mngadi: So, if you are taking instructions. Or in fact, even if you can take instructions from your political party and then that interferes with your duty, the primary duty of a judge.

CJ M. Mogoeng: Why are you realising that only now? Upon such an extended probing? Why did you not realise it while you were a Magistrate? Why are you realising it even only now? And why does it take so long to get to the answer?

Mr S. B. Mngadi: Chief Justice, at the time when I was a Magistrate, it was in 1985, I was not a card-carrying member of a political party.

CJ M. Mogoeng: Oh, it was during the apartheid era?

Mr S. B. Mngadi: That is right, it is only that you yourself you regarded yourself as, you know, your political party is the African National Congress.

CJ M. Mogoeng: Yes, okay.

Mr S. B. Mngadi: I was not a card-carrying member.

CJ M. Mogoeng: Now, why did you not realise that could be a problem? Is there any reason?

Mr S. B. Mngadi: I think, Chief Justice, I associated it with simply the right to vote and -

CJ M. Mogoeng: Okay, okay.

Mr S. B. Mngadi: -- Yes, I generally looked at it in that terms. In fact, my view is that initially, I took it that you might be a member of that political party but if there is a dispute involving even your own political party, if they are on the wrong simply rule against them.

CJ M. Mogoeng: What -

Mr S. B. Mngadi: But I understand now the implications.

CJ M. Mogoeng: Was that membership in your heart or did you practicalise it by taking a card? Where you a member in your mind or in your heart? Or did you actually register as a member?

Mr S. B. Mngadi: At a particular stage, Chief Justice, I actually registered as a member of the African National Congress in my own branch in Escort.

CJ M. Mogoeng: Okay, and you are still a member? The membership has not lapsed?

Mr S. B. Mngadi: The membership has not lapsed. If I am appointed I will have to terminate it.

CJ M. Mogoeng: Okay. All right. Thank you very much Mr Mngadi. You are excused – I no no I am sorry. Commissioner Singh? I am sorry.

COMM N. Singh: Thank you very much, Chief Justice. No, I was out for a while I am sorry about that. Good day Mr Mngadi.

Mr S. B. Mngadi: Good day Commissioner.

COMM N. Singh: No, I just want to follow-up on this political affiliation. And we all know that KwaZulu Natal, and I think DJP Madondo knows more than anybody else,

that KwaZulu Natal was a theatre of violence. Black on black violence in the 80's and 90's.

Mr S. B. Mngadi: Yes.

COMM N. Singh: Have you ever presided over any matter which dealt with politics and violence between political parties during that period?

Mr S. B. Mngadi: Commissioner Singh in my area which is around Escort violence, the violent conflict, started after the 1994 election. So at that time, I was a practising attorney, I was not a Magistrate. So I could not preside on any matters relating to the political conflict.

COMM N. Singh: So you were defending that were accused of violence? Fine I accept that. In your letters of support, and there are many and you know very good ones as well from Amakozi and all sorts of people.

Mr S. B. Mngadi: Yes.

COMM N. Singh: In the one from a Mr Mbongeni Hector Mngadi who amongst, it is written in isiZulu, and amongst other things he says he grew up with you and you are a very nice person and you help for funerals etcetera, etcetera.

Mr S. B. Mngadi: Yes.

COMM N. Singh: But attached to that is a debt counselling application pact.

Mr S. B. Mngadi: Yes.

COMM N. Singh: I am just trying to see why that was included as part of the letter of support.

Mr S. B. Mngadi: Well Commissioner Singh when the comments were made available to me then I noticed that there was that debt counselling application which

had been completed, but I noticed that in fact, the person was applying for debt counselling was that person Hector who was making a comment about me. Then after that, I happen to meet him, and I ask him how did it happen that his debt counselling form accompanied the comment. And then he said when he was asking the assistant at the internet cafe to send the comment he had instructed that the debt counselling form be sent somewhere else. But the assistant erroneously send it to the Judicial Service Commission. That is how it happened to be part of the comment.

COMM N. Singh: I accept that. For a moment I thought it was yours, and then I saw no it was another Mngadi, but not you. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Singh. Commissioner Mampuru?

COMM Mampuru: Thank you, Chief Justice. How are you?

Mr S. B. Mngadi: Hello Commissioner. In his state of the nation address, His Excellency Father Cyril Matamela Ramaphosa spoke about the new dawn and stated something from one of the songs by our late musician Hugh Masekela, now it is time to lend a hand. Without the two primary schools that you have adopted and the motivational talks that you give to learners and staff do you regard yourself as one of the best deeds via the community you living and living with might regard you as a selfless person? What other contributions are you giving to the society that you living with? Thank you.

Mr S. B. Mngadi: Thank you, Commissioner, as I have referred to in my questionnaire relating to my involvement in community affairs I refer to the Peace and Development Committee and I also refer to my involvement with the Traditional Authorities. I also regard Commissioner, my involvement with Legal Aid as a deed and my limited sphere as my commitment to helping the poorest of the poor. So I think that right through my life, if not in my career, I have always been part of and ready to contribute to the challenges faced by the communities.

COMM Mampuru: Thank you.

CJ M. Mogoeng: Thank you very much. Mr Mngadi you are excused.

Mr S. B. Mngadi: Thank you, Chief Justice. Thank you, Commissioners.

CJ M. Mogoeng: Thank you so much.