



# JUDGES MATTER

## Judicial Service Commission interviews

02 October 2017.

### North-West Division of the High Court (Deputy Judge President)

#### Interview of Judge M V Phatshoane

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CJ M. Mogoeng: Good afternoon, or is it good evening, Judge Phatshoane?

Judge MV. Phatshoane: Its afternoon, good afternoon Chairperson.

CJ M. Mogoeng: Are you relaxed, comfortable or a bit nervous?

Judge MV. Phatshoane: Little bit of butterflies.

CJ M. Mogoeng: Okay, just in your own words tell us why you believe you are ready for this position; in your own words.

Judge MV. Phatshoane: Chairperson, I will start it from a long time ago. I am from a very poor family. But I did not let my poverty dictate what I become in life. There was a time when my mother was a domestic worker. There was a time when my mother

and I attended the same school. My mother is 67 years of age. She retired in 2012. In 1988, and even a year, or two years before that, the adults were allowed in mainstream schools. I attended the same school with my mother. I attended the same University with my mother. I started showing leadership qualities at that very young age of 16 years old. I did well at my school at 16 years. I remember in that year my principal at school saw the qualities in me, and asked me to address the matriculants, of that year, in their farewell function. That shows my commitment. That shows my hard work. Chairperson I took position one in that class, Standard eight, Grade 10 in today's terms. I went into the next level of my study, Standard 9 Grade 11, I took position one. I went into Matric, I took C symbol. It was very difficult at that age, or at that stage, Chairperson, to get for one to obtain a Symbol C. I became the only pupil in that school that obtained a C symbol. That shows that I am committed to working very hard. Now I went to the University, The University of the North. Chairperson I got distinctions right through. I studied very hard. I obtained merit awards and prizes for being the best in a class. I obtained my Degree Cum Laude in Private Law. When I was at the University of the North it didn't stop there. I continued to the University of the Free State. I still performed very well at the University of the Free State. And I went into practice Chairperson. But before I went into practice, I started at the Supreme Court of Appeal under Justice Olivier. Justice Olivier saw the qualities that were in me. I was spontaneous when he gave me work, to do research for him. I did that excellently, and at some point I remember that I was chosen by the Integrated Bar Project through the University of Pretoria, at the Centre for Human Rights, as a participant, to join a particular Law firm in Johannesburg. Judge Olivier said to me, Mateba, you'd be an asset in the Free State remain in the Free State. And as a result of that I saw myself being interviewed by one of the largest firms in the Free State; Naude's Attorneys. I worked very hard at Naude's Attorneys. I was a candidate attorney at that stage. Not long, I was appointed as a professional assistant in that firm. And not long thereafter, the firm saw the jewel in me. They appointed me as a Director. I headed the Labour Law Department Industrial Relations of Naude's attorneys. In 2002 I spearheaded a move to Phatshoane Henney Attorneys, Chairperson. I was a founder member of the Phatshoane Henney Group of Associated Firms. Perhaps maybe let me start off by putting it this way. Phatshoane Henney Incorporated, because we had associated firms later. I started; we started that firm, myself, and two of my other colleagues. The reason why we started that firm, we

wanted a firm that's truly transformed, BEE compliant, that we will be able to plough back into the community, to train other lawyers and contribute in our economy. A law firm that would be efficient in terms of its service delivery, a law firm that will be able to deliver quality service to its client, and we did exactly that. We were successful as a law firm Phatshoane Henney Incorporated. But it didn't stop from there. We started expanding even more. We had an association of legal firms associated to our cause Phatshoane Incorporated. And it became Phatshoane Group of Associated firms. It was the first for South Africa, to have such an association of group of attorneys, together from eight, at least when I left practice we were visible in eight provinces in the country. The Association had about 215 professionals, about 800 employees. The member firms were 23 in numbers. Chairperson I was the face of that, of that group. I was the Chairperson of that group. I led that group, and made that firm to be a successful firm. That firm, it is as we speak a very successful firm. I left the legacy behind Chairperson, and I understand at the moment at least more than 50% of Directors and shareholders in that family are black people. When I delivered my address in 2010, just before I joined the bench, if you will indulge me Chairperson, there are some few pointers that I would like to, to show. In my, my chairman report, or to say, just to quote what I had said back then. 'This year has seen the group develop its strategic relationships with important service providers and financial institution expand on group initiative launched during 2008, replicate the exemplary BEE verification results of our firm continues to expand its National presence and brand and create awareness of the group as the largest National Association of Law firms in South Africa.' That was my overview as a Chairman of the group delivering the speech at our annual event. And I went on to say, I'm just quoting extracts here and there, 'that although group staff appointments and particularly professional appointments have shrunk in comparison to the previous year. A consequence of the conservative approach by firms to the negative economy at that stage, 37 black staff appointments during 2009 remain indicative of the continued commitment of the group towards employment equity practices, and black economic empowerment'. Chairperson we also had the Phatshoane, I had, we had just established the Phatshoane Henney Foundation. The reason behind that was to assist the underprivileged, and when I addressed a group during that year, this is what I said about the foundation that Phatshoane Henney Foundation emerging in his role as a non-profit organisation evinces the group's commitment to socio-economic

development initiative and it's a priority for further investment by group. The foundation is an appropriate vehicle, to leverage value from the group network and BEE consultants, and established a National presence as a contributor and donor to charitable institution and socio-economic development beneficiaries. The firm had various partners in business. Chairperson, the, the firm also trained its staff. Commitment towards comprehensive training and skills development solution remains an important goal with the annual development of workplace skills plan, and reclaiming of the grants from the SETA, and reinvesting thereof in group training courses and programs, a key component of the group skills development strategy. Training courses and programs are delivered through the group's distance education training facility and the training portal. We had a training portal where we could train our, our staff. We also had the knowledge centre where we could share information. The knowledge centre in that year handled about 1800 queries in that year. There were newsletters that were distributed in that year by our knowledge centre, the articles that were produced by our knowledge centre. We had 51 honour medals that were awarded to students that have performed well at the Universities and acquired their Degrees Cum Laude. For instance that was at the University of the Northwest, Nelson Mandela Rose University, and University of the Free State, University of Johannesburg, Stellenbosch and University of KwaZulu-Natal. Chairperson, this is what I'm saying; I left the legacy behind, the reason that I came to the bench, my Judge President, former Judge President was looking for a Judge. A female black judge to come and join the bench and approached Judge Molemela in the Free State, who knew me very well because at some stage we practiced together in the Free State. And Judge Molemela said to me that, I know that you can contribute immensely in the Judiciary. Would you kindly give me your CV, so that I could forward your CV to the Judge President of the Northern Cape? Chairperson, I had to, to think long and hard about this on my own at some point, I sort of prevaricated, but eventually I decided that I will join the bench, because for me it was not about, about being powerful or about the money. I took a knock on my salary, I took a dive on my salary but I joined the bench. For me it was about serving the people of South Africa. Chairperson, all that I had said so far clearly goes on to show that this is a leader that is very committed. That is very disciplined, that is hardworking, that is very brave. There was one of the colleagues who said to me, when I said that I was leaving practice to join the bench, which said to me that I was, if I have to use his words, that I was very gutsy. You have before you a bold

leader that's able to take the stand. Chairperson I have, I have acted in the Northern Cape as a JP. In June this year I have acted in the Northern Cape as the Deputy Judge President. I am still acting as a Deputy Judge President. But before I deal with the Northern Cape I also need to highlight certain of my background. I was at the CCMA at some point, from 1999 to 2006, as a Commissioner. A Commission for CCMA is the Commission for Conciliation Mediation and Arbitration. I have got conciliation skills, I've got arbitration skills, and I've got mediation skills. It was not only at the CMA, but I also served in other various bargaining councils in the public sector. I served in the public health and welfare sectorial bargaining council. I served in the Education Labour Relations Council; I served in the South African local government bargaining council doing conciliation, mediation and arbitration. That skill is also important if one has to assume the office of a Deputy Judge President or a Judge President, because you use, there would always be here and there conflict in an organisation. You use your mediation skills; you use your conciliation skills to resolve conflict in the organisation. I have been a lecturer at the University of the Free State. I lectured to candidate attorneys. I lectured to those that had enrolled for a Diploma in advance Certificate in labour law. The reason why, and this was during the very same time when I was an Attorney. By this I just want to show the Commissioners and Chairperson that I am very versatile. Apart from my, my hard work, I'm very versatile. I'm able to multitask at one time. That, you need in your leader. Those are the qualities of your leader. I went out there Chairperson. I lectured to the student and one of the reasons, apart from my versatility why I lectured to the student; I wanted to show them that a black, young black female attorney can do it. That the future belongs to those who believe in the beauty of their dreams, I wanted to show them that Chairperson, coming back Chairperson.

CJ M. Mogoeng: Have you finished or are you still continuing Maam? Are you still proceeding or -

Judge MV. Phatshoane: I wanted to say something on my duties on the bench, but I can leave it for later, if the Commissioner is of the view that I have said enough, because I wanted to demonstrate what I have done.

CJ M. Mogoeng: We are not saying anything. We're leaving it up to you to, to tell us whether you still proceeding, or whether that's why you would prefer to stop for now. Mindful of the fact that you said you had butterflies so that, so that's it. So do you still want to proceed or do you want to stop?

Judge MV. Phatshoane: As you carry on, you become more and more relaxed.

Judge MV. Phatshoane: JP?

Judge President: Thank you Chief Justice. Have you said enough that you wanted to say before I put new questions to you? You are free to proceed, maybe that can cut many questions.

Commissioner 1: That is one chair JP.

Judge President: Okay let me put it this way then. What is your role, how do you see your role as the Deputy Judge President? As President of the Division, what is your understanding and what is expected of you as the DJP?

Judge MV. Phatshoane: Thank you Chairperson. There are certain tools that the JP, I would start with the role of the JP in the division. There are certain tools of trade that the JP should have handy with. Firstly the JP should have the Superior Court Act. The JP should have the norms and standards with. The JP should have the Code of Conduct for Judges. The JP should have the, the Judicial Service Commission Act with the role of a JP in a division, JP sorry, JP, in terms of the superior, the Superior Court Act is to manage the functions, judicial functions of the court. The JP should coordinate the judicial functions of the other Magistrate's court, the Regional courts and the District courts. The JP should determine the sittings of the courts. The JP should assign judges to those sittings. The JP should assign any other duties to a judge. The JP should see to it that there is a Judge available at all times in a court conducting the courts business. The JP should see to it that during recesses there are judges available, conducting the business of the courts. JP, having said that and those are not the only duties. They, by saying that, should see to it that there are enough judges that are available, if for any reason one of the other judges should be

indisposed, the JP should be able to write a letter to the Minister for another judge to be appointed in an acting capacity. In the division there should always be enough judges to execute the work. And having said that JP, you ask me the question what is the role of the DJP. I see the role of the DJP as a supportive role. Supporting that the JP, in carrying out these duties, including his constitutional mandate. And apart from that JP, whenever the JP is not around, the DJP automatically should act as the JP of the division. That is why JP, I started outlining the functions of the Judge President. Thank you JP.

Judge President: Thank you. For consistency, The Society for Teachers of Law have mentioned in the report that you would need to elaborate on the role that you've played for transformation of the profession. Do you have anything to add from what you've already told us?

Judge MV. Phatshoane: I believe that I had said a mouthful in terms of Phatshoane Henney Group, in terms of empowerment of the attorneys. But perhaps maybe if I recall what the question was. They wanted to know if I had, what kind of candidate attorneys, if I may Chairperson I think they, they.

CJ M. Mogoeng: I thought you said a mouthful. Maybe you should focus more on helping us understand why you're suitably qualified for the position of Deputy Judge President? How do you intend to assist a Judge President? What are the challenges? How can you move in from your court, help transform other divisions or other courts, where transformation is still, is still required? Maybe you could do that. What as a woman do you think could be done to contribute meaningfully to pushing women to other senior positions and leadership positions. Maybe you would do well in that space. I'm just thinking aloud.

Judge MV. Phatshoane: Thank you Chairperson. I am very passionate when it comes to mentoring the judges. I've mentored several judges in my division. Because if you mentor a judge you can see them stretch and grow. I must also say that I had also played a part in mentoring Judge Pakati. There are also other junior judges in the division, that I am mentoring, as we speak. I had informed them, JP, I had informed them, Chief Justice, that my door will always be open. I want to unleash their potential

because I can see that there's a future for them. I am, I've assisted, and I've assisted many Judges, JP. So that at the end we are able to appoint more Judges, who can do their job, and do their job or their duty effectively JP, sorry Chief Justice. And it's not only that CJ, Chief Justice; I have participated in empowering the young girls. I have, in this year we had a 'take a girl child to work'. I think it was a project, and the idea was that we have to mentor these young girls as they go to the University. I had informed them that next year, those who have qualified or had managed to register their Law Degree, they must contact my office so that we can take them, year to year mentor them, and see to it that one day they enter into the legal profession. And see to it that one day they, they are trained, appropriately trained as aspiring judges, and one day, to be the judges in the courts.

Judge President: Do you think you will get the support of your colleagues on the bench if you were to be appointed to this position? And the general staff in the High Court of the Northern Cape?

Judge MV. Phatshoane: Chairperson, I believe so, I have acted in that Division, as I said earlier, for a period of a month as a Judge President, in June. I did not have any difficulty with any of these staff, or any of the Judges, or any of the administrative staff from the Registrar's Office. I would assign duties as required of me in terms of the Superior Court Act. All of them attended to the duties. There's always collegiality among the Judges. I've never had any difficulty or experienced any difficulty at that stage, Chairperson. Or even now as the Deputy Judge President. In fact, Judge President, if I have to add to that, the Judges wished me luck with my interview. I had a conversation with Judge Olivier yesterday. He wished me luck. Judge Olivier is one of the Senior Judges. Other Judges as well wished me luck. Including Judge Pakati, and I also wished her luck. I cannot see any difficulty with us working together.

Judge President: Even if she was to get the position and you did not get it. How would your relationship be?

Judge MV. Phatshoane: My view Chairperson, sometimes we have to accept that it wasn't meant for, to be for me. I will carry on with my duties as a Judge of the Division.

Judge President: Thank you, and then the Legal profession in general, how do you, would you get their support? How do you relate to them? Particularly the advocate's profession and the attorneys' profession?

Judge MV. Phatshoane: Thank you Chairperson. I relate very well with the Attorneys profession. I have implemented Case Flow Management in that Division. I have participated in, or I take part in the National Judicial Case Flow Management by Justice Ntiani. I don't know if I should expand a bit on that, because I've got more to say about the National Judicial Case Flow?

Judge President: Let's limit it to that.

CJ M. Mogoeng: No I don't think you should. If there is anything to say about it, maybe you could only demonstrate how your experience there will help you serve effectively as a Deputy Leader of the Court?

Judge MV. Phatshoane: Thank you, thank you Chief Justice. The legal profession that the bar and the side bar, they are satisfied with my performance as a Judge. And the side bar particularly commended me on my Case Flow management skills, and effectively the Cash Flow Management was been dealt with at the Northern Cape. As for the bar Chairperson, I can only do justice to that question, by referring to the previous comments about me, in my previous April interviews. They gave wonderful comments about me, about my integrity as a Judge, about my abilities to deliver judgment, within a reasonable time. About my abilities to apply the Constitution, I cannot foresee that there would be any difficulty of any, with any, between me and any of the professional bodies, Chairperson.

Judge President: Thank you Chief Justice. That will be all.

CJ M. Mogoeng: Thank you JP, MEC Shushu.

MEC Shushu: Thank you Chief Justice. Good late afternoon Judge Phatshoane.

Judge MV. Phatshoane: Good afternoon.

MEC Shushu: Is it correct to say, that you interviewed for the vacancy of Deputy Judge President for Northern Cape Division of the High Court in April this year?

Judge MV. Phatshoane: Indeed Mr Shushu.

MEC Shushu: Okay I just want to check. According to you, why do you think you were not considered for the vacancy at the time?

Judge MV. Phatshoane: Chairperson, that's, that's a very difficult question to ask because that, because you don't know, but what did I think, perhaps maybe I must say this, that I'm a very modest person. I'm very modest, Chairperson I usually hesitate to tell the people of my achievements. As a result, I am thinking to myself, in fact I thought to myself that I may not have said a lot to my Chief Justice. That there is certain information that I should have laid bare before my Chief Justice, but they say achievers never speak of their achievements. Their achievements speak for them. And that's me. And I cannot forgive myself for that.

MEC Shushu: So that is the no-no. Thank you very much for that. That is probably the reason why you, you have decided today you will speak for yourself, in relation to your achievements. Thank you very much for that. I'm sure we, we agree that academic excellence does not necessarily translate into, into good leadership skills. What would you say is a combination of traits that can, that make you stand out amongst your peers as a good leader? What are those qualities that you think you possess that, that you content, make you a good, good leader?

Judge MV. Phatshoane: A good leader should be disciplined, self-disciplined. A good leader should be brave. A good leader should be committed. A good leader should be able to work under pressure. Chief Justice I have to say this, that there had been times when I would start to work at 8 o'clock in the morning and believe you me, I will get out of that office the next day at 8 o'clock in the morning. I have done that a couple of times. A good leader should be able to work under pressure and deliver. A good leader should be, should be versatile. A good leader should be democratic in approach, should follow a consultative problems in resolving conflicts. A good leader should be

tenacious. A good leader should be humble, should have Ubuntu and show respect. A good leader should be able to stand firm against anything that the good leader is of the belief that it's not right. In a nutshell, I would say those are the qualities of a good leader, and I would also say, I possess all those qualities.

MEC Shushu: Thank you Chief Justice. Just to follow up. How do you, if appointed it into this position, how do you think conflict management must be addressed in that division of the Northern Cape.

Judge MV. Phatshoane: How should?

MEC Shushu: How should, should conflict amongst colleagues be managed?

Judge MV. Phatshoane: Chairperson, earlier on I have said that I do have mediation skills, conciliation skills. You use your conciliation skills. You use your mediation skills to resolve conflict. You consult with your employees to find out what the issues where. How those issues can be resolved without escalating them. You give time for improvement, in particular depending on the type of conflict that there might be to assess the situation. But I believe that the conflict can be managed that way, through engaging in discussions. And see to it that issues are resolved.

CJ M. Mogoeng: I think what the MEC was asking, considering the fact that reports of conflicts were made to this body about the Northern Cape. How if appointed would you employ your skills to resolve or help resolve conflicts relating to Judge Williams, Judge Pakati or any other judge affected by, by, or in allegedly involved in the conflict. Not in general terms there's what it can do this, but exactly how you would use your skills to resolve challenges that you are believed or known to have as a division now?

Judge MV. Phatshoane: Chairperson, I must say perhaps maybe it will be better if that is unpacked. The challenges, the challenges that the division is having, I'm just, I don't know. The Commissioner would have to say, it's because I would have to know what challenges for me to be able to reserve. Because I'm, I'm not aware of any.

CJ M. Mogoeng: No, no then it means there are no challenges. Commissioner, please proceed.

MEC Shushu: No granted. Thanks, the last question you probably have identified some challenges in your, in your working environment whether in the courts or so. Over and above the systems that are in place, to address some of the challenges that might have been observed in the courts. What extra innovative ideas do you have if appointed into this position that you'll bring on board to ensure that those challenges are addressed?

Judge MV. Phatshoane: Perhaps maybe, then again, we, we have to unpack it and say the type of a challenge.

MEC Shushu: As a person, who's working in the High Court, are there no problems in the High Court, right? Are there no problems in that code, there's a general question. I'm saying because you are a Petitioner. There, there's also junior courts, the magistrate's court and so on and so on. There are challenges that the judiciary would be faced with, in your execution, of your work on a daily basis. What innovative ideas do you have, over and above the mechanisms that are already in place? Like you have got your phase flow committees and all of those things and so I'm just making that as an example. What other methods do you think can assist in alleviating some of the challenges that might be prevalent in your environment?

Judge MV. Phatshoane: Thank you Commissioner Shushu. When I assume the office of the JP, in those few days into the office what I did is, I had a meeting with the side bar. I had a meeting with the, the bar, I had the meeting with Legal Aid, I had meeting with the Magistracy, and the reason why I called on those meetings was that, let me hear what were the challenges, because, Commissioner I had not been in the Northern Cape for more than a year at that stage. I was acting at the Labour. At the Labour Appeal Court, although I'm serving in the PEEC I was of the view, that let's not wait for the PEEC. Let me hear what were the challenges, so that we can resolve them at that stage. I sat with them and most of the, of the issues discussed, most of the, of the, of the, of Council where of the view that they did not have challenges. The

challenges that were reported, where the lack of, or rather the moratorium that had been placed on appointments, for instance the office of the, of the, of the Director of Public Prosecutions said there had been moratorium on appointments. Only critical post could be filled. The same went with the Magistracy. Only critical post could be filled and those were the sort of challenges that they had aired. And, and because this was a national thing, it's something that ought to be is escalated. I also had at some point a meeting with my, with my, Judge President, with the BLA, and in that meeting there were concerns raised that there were some problems at the Magistrate Courts in Khailushu, and that the, the processes were not being served. I went to see that Chief Magistrate, I went to Khailushu Magistrate Court to find out how we can assist. And I do have a response from the Magistrate, the Chief Magistrate that had a problem of the court. Of the problems, the problems that were reported about the court being record, I was not being properly honoured in Khailshu; the problems have been sorted out. The same applies with the service of process. There was no sheriff that had been appointed but the sheriff was appointed, I think it was in the beginning of September, and processes have been served.

MEC Shushu: Thank you Chief Justice.

CJ M. Mogoeng: Thank you, thank you MEC. Judge President Hlope.

Judge President Hlope: Thank you Chief Justice. I have one question for you, if this, if the Commission were to recommend you for appointment. Are you able to assure us that you would support the Judge President, and work very closely with him in his efforts to run the division smoothly?

Judge MV. Phatshoane: Absolutely Chairperson, absolutely Chairperson.

Judge President Hlope: Now related to that, there are two of you who have applied for the same position. Working on the assumption that, on the assumption that you were to be recommended by the Commission. Can you assure us that you would reach out to your colleague? Embrace her and not look down upon her to ensure that there is peace and harmony in the division.

Judge Phatshoane: Absolutely Chairperson, absolutely.

CJ M. Mogoeng: Commissioner Nyambe.

Commissioner Nyambe: Thank You CJ; I've done [INAUDIBLE 43.33]. I heard you mentioning that you assisted in mentoring Judge Pakati. If you can elaborate a bit about that mentoring aspect.

Judge MV. Phatshoane: I thank you Chairperson. During my 2010 interviews, I remember the question like that also arose in that Interview, and if I may Chairperson, refer to that interview of 2010. I was asked this question by my JP, and I cannot remember but, one of the commissioners enquired from Advocate Hendrix whether she was present when Judge Pakati was acting there. Taking a cue from that, can I inquire from you whether you have assisted Judge Pakati or any other judge, even if you were in an acting, even if you were an acting judge? And if so, in what way did you assist. That was the question that was, during the 2010, before I could even be appointed as a judge and this is this was my response. I have assisted Judge Pakati many times. She would for example request that I helped a interpret some of the documents or judgments that were written in Afrikaans. And I helped her out with the interpretation or the translation, rather, all of those judgments that were in Afrikaans. I also recall that fairly recently we had a Judge Madonda in our division also acting. I also helped her out. She had a court order that was written in Afrikaans and she wanted to know if she had properly translated that into English. Yes I have helped the two colleagues of mine. That was in 2010. I have assisted Judge Pakati with her motion court. Judge Pakati had a problem with, with Afrikaans. She wouldn't understand it. There would be time when she has to sit in a motion court and I would sit with the pile of a motion court file. Go through them and then discuss it with, with her. At the end of the day judicial independence means that she has to exercise her discretion on those matters. But I will go through the files with her. Thank you.

Commissioner Nyambe: Can you describe your relationship with her?

Judge MV. Phatshoane: It's very good yes. Professional, professional. We relate very well, very well.

Commissioner Nyambe: If somebody, if somebody

Judge MV. Phatshoane: We relate, we relate very well. I cannot, cannot think otherwise. We relate well. I've never had any indication from Judge Pakati that there was anything wrong between the two of us. She sent me a message this afternoon, as I had said to say good luck with your interview. I wished her well, as well to say good luck with your, with your interview. We've been sitting in that room chatting. She's my sister and a friend. We've been calling each other that.

Commissioner Nyambe: My, my last question, after responding to my question about the mentoring part. As somebody that you have assisted in the past, will you have a problem to submit to her if this Commission can decide to appoint her as an acting, as a Deputy Judge President?

Judge MV. Phatshoane: As I said Chairperson, I would tell myself that this was not meant for me, and I will support her. I will support her.

Commissioner Nyambe: Thank You CJ.

CJ M. Mogoeng: Thank You commissioner. Minister.

Minister: Justice, good afternoon and thanks for sharing with us the background information about yourself. I, I want to take a slightly different approach and please if you feel my questions are unfair to you stop me right in my tracks and, and I'll revise my questions. I, I want to put it to you that this afternoon you have not been frank, and candid with us about the real situation, relating to relationships within that division. I'm putting that to you, and I'm giving you an opportunity to see if you cannot make some adjustments, to the version that you gave us, of what the truly prevailing situation in the division relating to interpersonal relationships are concerned. Especially between yourself, Justice Pakati, the outgoing Judge President. And what was the other Judge yes, well Williams yes. Would you disagree with, with my, my observation?

Judge MV. Phatshoane: That there, there.

Minister: Would you insist that? Unless I give specifics about my assertion. You wouldn't want to agree with me. Would you want to push me to that extent, or would you prefer to readily concede that there are challenges in, in that in those relationships?

Judge MV. Phatshoane: Chairperson I, I to be, to be... Should I carry on?

Minister: Like I said if you feel the question is unfair, you can indicate. But if you feel it's fair please go ahead and respond.

Judge MV. Phatshoane: Chairperson, I think I earlier on responded by saying I am not aware of the challenges. We relate very well with Judge Pakati. We relate well. I've never had any issue with her.

Minister: Can I also put it to you that.

Judge MV. Phatshoane: We relate well, Chairperson, where. There is that professional relationship between the two of us.

Minister: Okay, I'll accept the fact that this is how you see the relationship.

Judge MV. Phatshoane: That's how I see it.

Minister: The, the next question I want to ask you relates to the example that you gave in support of your assertion that you have played a mentoring role when you asked in that regard, specifically in relation to Justice Pakati. My sense of the examples you've given of the support you gave her was not of the kind you could consider as mentorship. But rather as giving support because it really leads to issues of her lack of knowledge of the Afrikaans language and how you assisted her given I assume your proficiency with that language. Would you still insist that those are examples are a

clear reflection of or support your assertion that you actually, in that context specific played a mentorship role on Justice Pakati?

Judge MV. Phatshoane: Let me put it this way, when I started acting as a Judge I had a conversation with my Judge President, who said to me that there was one of the acting Judges in our division, at that time. That was when I was taking an oath of office, and he said to me that, that he would like all of us to support her because she had difficulties with Afrikaans, and he also told me that she had been, been mentored in the that past year, and had just been appointed to act. So when I was sitting with her, in assisting her, I also had to keep at the back of my mind that she was just through the mentoring process. Perhaps maybe reading through the, the motion code files, and giving some pointers, one could see it as not mentoring, but I did play that role. That supportive role if.

Minister: I just wanted to be clear, because you know this English is of course not our first language, and I don't want to misunderstand what you're saying. So I just wanted to be clear that the role that you played in giving that support was specifically because of, of her lack of proficiency in the Afrikaans language, when dealing with matters that were in Afrikaans. Is that a correct understanding?

Judge MV. Phatshoane: Mostly, mostly.

Minister: Do you want to clarify when you say mostly?

Judge MV. Phatshoane: She didn't understand Afrikaans. You would go through the file and explain some of the things to him, to her, sorry, rather Chairperson, that were written in Afrikaans. But apart from that, she would now and then come in bounce off issues where she could not understand certain of the issues. Not necessarily related to Afrikaans. But I would assist her with those. She would come and ask how, how is my approach on certain other aspects. She would come. And I would assist her with that. Not necessarily relating to Afrikaans. Bounce off; Judges now and then bounce off issues with each other.

Minister: How has your experience working with Judge Pakati, Pakati, sorry, been when it comes to the sharing of responsibilities, general administration management of the courts affairs on a day-to-day basis?

Judge MV. Phatshoane: The sharing of management responsibilities?

Minister: Administrative maybe not so, so much, judicial functions you know.

Judge MV. Phatshoane: Mostly.

Minister: Has there been any such instances or not?

Judge MV. Phatshoane: Chairperson, the JP of a division would ordinarily assign certain duties to the Judges. In my division the Judge President had assigned me a case flow management. Judge Pakati was assigned a, she was a liaison Judge rather, for the Magistrate Courts, because the JP should also coordinate the functions of the Magistrate Court. She was coordinating those functions of the regional; I mean rather, she was a liaison judge for purposes of that function that was assigned to the JP to coordinate the functions of the regional court. Those were our responsibilities. She did that, I did Case Flow Management. I don't know whether that answers your question?

Minister: So was Case Flow Management the only such function that you are assigned, or were there other functions that the Judge President assigned to you specifically.

Judge MV. Phatshoane: That was Case Flow Management. And at times as case flow managing judge by virtue of that, of that obligation you would have to attend the P.E.C., because the P.E.C. is the Provincial Enhancement Efficiency Committee. It's about case flow, as a result I would have to attend those professional, provincial rather, I beg your pardon, enhancement efficiency. Because I had to give a report on, on the court performance, the court statistics. I attended that as well, and the, yes I was also the chairperson of the library committee.

Minister: I see. Thank you Chief Justice.

CJ M. Mogoeng: Thank you Minister. Commissioner Fourie.

Commissioner Fourie: Good afternoon Judge.

Judge MV. Phatshoane: Good afternoon.

Commissioner Fourie: It's almost evening. In your April interview, which was a couple of months ago, the Chief Justice asked you the following and I quote, 'as part of your preparation for this interview, as a person who knows that she will be part of the leadership that will play an oversight role in the performance of the Magistrate Court. What specific problems have you identified? And how do you think the Magistracy, or the leadership of the Magistracy, could be helped to perform better than they are doing already'. Close quote, your answer for the question and I quote, 'I have not thought that through Chief Justice. From the Magistrate, Magistrates' perspective', close quote. I'm sure that you've since the April interview thought that through. I've heard you earlier responding to a question by saying when you were acting, you met with Magistracy. And you even went to visit a Magistrate's court if I'm not mistaken. So can I ask you that question now then today? What specific problems have you identified, and how do you think the Magistracy could be helped to perform better?

Judge MV. Phatshoane: Chairperson, the, the major problem that we are sitting with is the moratorium on the appointments. The Magistrates or the Magistracy, are experiencing role collapses as we speak. Due to the, the moratorium that had has been placed on appointment, on appointments. I discussed this with the Chief Magistrate at some point when he attended to my chambers. And I have escalated this. So he escalated this to the P.E.C. It is a real problem because it's not only affecting the Magistrates, the Magistracy, but it also affects other legal organisations, the Prosecuting Authority, the Legal Aid South Africa and so on. We placed it before the P.E.C. agenda, and in an attempt to resolve that issue. But it seems to me that it's a national issue. We then asked that, I do not know if it was tabled at the next at the N.E.E.C. That is the National Enhancement Efficiency Committee.

CJ M. Mogoeng: Efficiency.

Judge MV. Phatshoane: Efficiency, Efficiency Committee, Chief Justice. My apologies, it has to be resolved as speedily as possible. Apart from that, problems that I had highlighted are the non-service of papers at the magistrate court, and I if I may, with your indulgence Chairperson.

Commissioner Fourie: May I just finish on the first part of your answer. Are you saying that because of the moratorium there's a shortage of magistrates, and that there is the cause of the problems, and the lack of performance?

Judge MV. Phatshoane: Not, not really. That can never be the only problems, because in some of the instances the Chief Magistrate would report problems of the sick leave. That was also reported by Legal Aid, that they are experiencing many sick leaves', which would result in other instances in role collapses. That is not only the, that can, that cannot be the only and, and also sometimes what would happen, we would find, you would find that some of our courts crowd out other courts. There would be a court that he sat down. I remember that at some point as I was acting as the JP in Springbok, there was a time when the High Court, the District Court and the Regional Courts were supposed to sit all at once, be the result that other courts are being crowded out. That's not the only problem. Crowding out would be a problem at this point in time. Again due to the financial constraints, mobile courts cannot be erected in those areas. That may also result in role collapses. But at that stage somehow I liaise with the, the Director of Public Prosecutions to find out exactly why the three courts had to sit at the same time. Because that's, that is it's, it's not supposed to be that way. We have to share in resources and avoid situations of role collapses. That problem was sorted out as I understand. Somehow they managed to make a way in which all the three courts could sit at once. So, there are problems Chairperson, that we would attend to, as and when the need arises.

Commissioner Fourie: Now if I might just then get back to the question, what do you think as, should you be appointed as Deputy Judge President, that you can do to help to better perform the Magistrate's court? You've quoted a few examples, but what would your approach be, to the whole problem?

Judge MV. Phatshoane: Chairperson, how do you assist the immediate, well to the whole problem, my approach would be.

Commissioner Fourie: Because of your oversight role, in your leadership position as Deputy Judge President. How would you tackle and approach that problem?

Judge MV. Phatshoane: I've listed several problems or the challenges. According to the nature of a particular challenge, one would have to act in a particular way. In one challenge that I had mentioned, of the moratorium that had been placed on the appointment, one would have to act proactively. This is the incompetency of the... We've escalated this to resolve the problem. That is how I would resolve a problem. Because otherwise it's, it's not, it cannot be something that's within my power to resolve. With regard to their problems of crowding out in the courts, you would have to make sure that when matters are sat down in their future, they are not sat down on a party on the same date, because we have to bear in mind that we have to share in the resources.

Commissioner Fourie: Thank you all. I'll leave it at that. Thank you Chief Justice

CJ M. Mogoeng: Thank You Commissioner Fourie. Dr Motshekga.

Dr Motshekga: Chief Justice, good afternoon.

Judge MV. Phatshoane: Good afternoon Chairperson.

Dr Motshekga: You know the South African Judiciary is held in high esteem.

Judge MV. Phatshoane: Indeed.

Dr Motshekga: And on the continent internationally, because of the quality of judgments that hands down. Now, we're I guess even if you get into the taxis, the trains, ordinary people would speak highly about the judgments that comes out of the courts. I thought that in your flowery explanation of your distinctions, you would also tell us something about one or two ground breaking judgments that you, you handed

down. Because at the end of the day, were interested in the quality of justice. Not just the administration of offices in the courtyards, where we are not able to reach. Can you tell us about what, or to why you think you'd contribute to the image, the image of the judiciary, because of the quality of justice that you do.

Judge MV. Phatshoane: Thank you Chairperson. Before I refer to perhaps I've, I've in my in my application, attached several judgment and a concise commentary, concise exposition on the judgments that I've attached to, to the profile, but before I say anything on that, on that aspect. I again wish to refer to the commentary that was made by during my April interviews, where they had mentioned that my judgements, my judgments are well researched. My judgment shows my commitment to the values that underpin the, the Constitution. They went on to say that her judgements are clearly, well researched. They went on to say that the Candidates Judgments show very good linguistic skills. She has also shown good communications skills in sitting as a judge. They went on to say that the candidate has not shown a propensity, or to unreasonably delay the handing down of the judgement, and other things as well, about my judicial temperament and so forth. Just too, just perhaps maybe let me refer to the Polokwane Municipality judgment. That's the one that I've, the first judgment on the concise exposition. It's about the interpretation of the Prescription Act Section 10 thereof and the, the issue there really perhaps maybe if I have to say the facts briefly there was land. The municipality had sold land.

Dr Motshekga: With respect, are we talking about the quality of justice. But we are talking about communication skills, linguistics, temperaments and then you can you talk about break, ground breaking judgments that we have handed down. And not what other people say about it. That you are saying yourself.

Judge MV. Phatshoane: That's, that's what I am busy doing at this stage Commissioner. I'm referring to this judgment, where the judgment that dealt with the interpretation of Section 10, whether a debt, a reversionary right was a debt in terms of Section 10 of the Prescription Act. I think it's a very important judgment. It involved a land that was sold by the municipality 200 hectares of land that was sold by a municipality for R200, back in the 1999, and the municipality wanted to claim the land back there, their land back. And what was at issue was that, had that claim had

prescribed, the municipality could not claim the land back, the land back. And I found in that judgment that because this reversionary right included the sale of land by the municipality. Section 2 of the land alienation Act would have to be applied. And in terms of Section 2 the, there must have been an offer and acceptance of the offer to complete the cause of action. And in that, in that matter I then found that, that that claim could not have prescribed and went on to say that even if that claim one could, could say that they claimed oh I do prescription a Section 11 B of the Prescription Act says that a state land would prescribe after 15 years. And I had found through the interpretation and reference to case law that a municipality would constitute a State for the purposes of that section and therefore the claim would prescribe after 15 years. I believe that that that was a ground-breaking decision, sort of. You, you, you don't know whether your judgments are background breaking. Other people would have to say again maybe it's a question of, of achievers not being able to say much about their achievements. The other judgment

CJ M. Mogoeng: Do you want more, Doctor? He is happy. Let me just put one or two questions to you. One of the problems that trouble the judiciary, is the overcrowding of prisons, because that overcrowding does not allow rehabilitation to take place, and actually breeds recidivism quite often. When I visited the two prisons in Kimberly, those days when I used to, I realised that both of them are ideal facilities for rehabilitation. I was impressed beyond description. The competence of the, of the correctional officers there, and my private interaction with the inmates about their own experience, how they were been trained and so on, the bakery there just the, the state of the art facility. But even the old prison I was impressed. Those with children, they are able to raise their children, there are facilities there. Those two prisons they are so, so well run. Now as somebody aspiring to us, a leadership position who has even acted as Judge President, and Deputy Judge President, and on the assumption that as required to have visited those facilities. What would you suggest should be done? Based on the good work that was there, is been done there, hope it is still been done. To impact other prisons, so that there is at least, there is some room; some possibility created for those we send to prison, to be properly rehabilitated for a more meaningful, what is the word now? Yes, reintegration into society, but on the assumption that you visited the prisons and applied your mind to the problem.

Judge MV. Phatshoane: Chairperson, I have not visited the prisons but in our PC, we do have Commissioner Moody that would if give some report to us on the crowding, or on the prisons that overcrowded.

CJ M. Mogoeng: Yes, now that's enough for me. I'm sorry to interrupt. I've got the answer, but here is my next question. If appointed to the position of Deputy Judge President, what is it you would suggest to the magistrates, and maybe even the prosecutors, and the police to do under the auspices of the Provincial Efficiency Enhancement Committee, to lessen the number of people who get taken to prison, in circumstances where this could have been avoided? Those who can't afford bail, you still give fixed bail, knowing that they can't afford them, afford bail, and the number of some of the arrested. What suggestions do you have as a leader concerned? What is it that you think needs to be done to alleviate prison overpopulation in the Northern Cape and elsewhere, to the extent that especially the magistracy has a role play here?

Judge MV. Phatshoane: Chairperson, I would say that the police would affect arrest. I believe that what one would have to do, the Commissioner that's representing the police in the P.E.E.C. would have to have a meeting at the provincial level, possibly with all the clusters of the police in that, in that area. Advise them and not only, not only coming to think of it, not only the police. The MPA would also have to be involved, because, and the Legal Aid possibly involved because it's all about the interpretation of the Law. Interpretation of, I think it's a stand to be corrected. I think it's the Criminal Procedure Act that deals with the manner of effecting arrests and so forth, that a police officer must, must satisfy himself or herself before affecting arrest, if those could be brought to the attention of the, the police. In other words through training them on those aspects of the law, they would not affect arrests in situations which are not necessary Chairperson.

CJ M. Mogoeng: As Deputy Judge, Acting Deputy Judge President, I assume you are aware, more than all other judges of reserved judgments in the division and you'd be aware that I insist on receiving reports, and I received them regularly. And the reports I have in relation to the Northern Cape is that there are six reserve judgments. Five of them have been reserved for 10 months and one 11 months, you aware of them?

Judge MV. Phatshoane: Chairperson I am aware of, of that and I am aware that my JP is working on that.

CJ M. Mogoeng: Do you know why I do not have any of them in the list of those referred to the Judicial Conduct Committee?

Judge MV. Phatshoane: Chairperson, I would not know.

CJ M. Mogoeng: As the DP, acting DJP?

Judge MV. Phatshoane: I do not have that information.

CJ M. Mogoeng: Okay, has there been, where you involved in, and in talking to the, to the judges involved to say what are you doing. How long are you going to, how, how much longer is it going to take to finalise this judgment. The public is waiting.

Judge MV. Phatshoane: Yes and the, I believe that at some point if I recall well the JP said to me that he was working on that.

CJ M. Mogoeng: In preparation for this interview, did you not take interest in knowing about some of these critical challenges? And so that you can even suggest how in the future it could be avoided?

Judge MV. Phatshoane: Yes Chairperson, I agree. Perhaps maybe I should have enquired on how, how far that had been, and I must also say that I mean the judges are there to judge. We have to judge. It's one of our core functions and we have to deliver judgments promptly. Yes there can be no excuse.

CJ M. Mogoeng: Thank you very much Judges and I apologize for, that we have kept you this long. But thank you very much for, for making yourself available you're excused.

Judge MV. Phatshoane: Thank you Chief Justice.