



JUDGES MATTER

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Eastern Cape Division of the High Court (Judge President)

Interview of Judge M Makaula

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CJ M. Mogoeng: I just want to formally welcome the Judge President Eastern Cape Division of the High Court Judge President Samyalo and Premier Masualle of the Eastern Cape Province. Good morning Judge Makaula.

Judge Makaula: Good morning CJ.

CJ M. Mogoeng: Are you well?

Judge Makaula: I am very well, CJ. And you?

CJ M. Mogoeng: I'm very well thanks. Are you relaxed? Or should we help you in that direction? Please switch on the mike.

Judge Makaula: It's not on, thank you. I think I am relaxed though I spend half of the night awake. Which comes with the territory.

CJ M. Mogoeng: Oh yes. I noticed that you were a prosecutor and magistrate before you became an attorney?

Judge Makaula: Yes, that's true, CJ.

CJ M. Mogoeng: For how long were you an attorney?

Judge Makaula: 17 years, I think it was.

CJ M. Mogoeng: For how long have you been a High Court Judge?

Judge Makaula: For 7 years now, 3 years it was acting, it is almost 10 years if I include the acting stint.

CJ M. Mogoeng: In which division are you based?

Judge Makaula: I am based in the Eastern Cape Division, that is Grahamstown.

CJ M. Mogoeng: Which location?

Judge Makaula: It's Grahamstown, CJ.

CJ M. Mogoeng: Grahamstown?

Judge Makaula: Yes.

CJ M. Mogoeng: Now, tell me just take a bit of time. It doesn't have to be too long, but in your own words why do you believe that you are just the right person for the position for Judge President of the Eastern Cape Division of the High Court?

Judge Makaula: CJ, I believe that I am the right candidate in the sense that I've been in the division for so long. I worked in the Transkei for many years, I think 24 years inclusive of the 17 years. I know the division. I've got a vision for the division as well.

CJ M. Mogoeng: Please share the vision with us.

Judge Makaula: The vision CJ which I have is two-pronged. The reason being that the Eastern Cape is unique.

CJ M. Mogoeng: Is?

Judge Makaula: Unique. Unique in the sense that it is, it comprises of the former homelands that is the Transkei, Ciskei and the Republic of South Africa. But in terms of the borders, it is still the same. Geographically it is still the same; Transkei remains Transkei; Bisho remains Bisho and the Eastern Cape remains Eastern Cape, meaning East London, Grahamstown, King Williamstown and PE. So, my vision would certainly differ because of the different cultures and the different situations of this provinces. Grahamstown, for instance, is different from the Transkei. The problems in Grahamstown are not the same as the problems in the Transkei. What the vision I have for Grahamstown is transformation.

Transformation not necessarily of the judiciary but transformation of the Bar and the side-Bar, because interlinked with that is that if the side-Bar and the Bar are not transformed then we have a problem that interlinks with the question of acting appointments, permanent appointments for the division. When it comes to the Transkei it is different, because of my exposure in the PEEC and the various committees the problems in Transkei are different. My vision for Transkei is different. Transkei is still rural, we have infrastructural problems, we have case flow blockages in Transkei, something which it does not occur often in Grahamstown and the rest of the province. So, for that reason, my vision for Transkei is that there has to be an improvement on the question of the infrastructure; on the question of the case backflow blockages in respect of the Magistrate; the Regional Court as well as the High Court. It is unique because it is rural and the problems which are there are

unique. So, my vision for that area of division is that it should be, there should be improvement in that regard. Thank you, CJ.

CJ M. Mogoeng: How can you assure us that you have what it takes to lead? What leadership and managerial strengths do you have on the basis of which you are confident you would lead the division well?

Judge Makaula: CJ, I have been in the area for, as I said in the area of Transkei for more than 24 years working there. I've been in Grahamstown for more than 10 years, for almost 10 years to say the least. I know the culture of Grahamstown which is totally different from the culture of the Transkei. I have the support of some of the stakeholders who are forming part of the dispensation of justice and I've been involved in various committees which have to do with [00:05:52 inaudible] of the province. So, for those reasons I feel I am better placed to be appointed as a leader in the division.

CJ M. Mogoeng: Yes, well I am just asking because your other colleagues who have applied can tell you that in all these places they are familiar with the territory, and they have been judges there. Two of them are deputy judges president what is it about the capacity to lead judges and magistrates and stakeholders? Do you have, or can you share with us to give us that comfort that if the judiciary in that province were to be left in your hands, because of those skills those strengths the knowledge of what it takes to lead, to steer the ship, that you have as shared with us indeed the judiciary in the Eastern Cape will be, would be in safe hands if you were to be appointed. How do you lead? How have you led? What do you have?

Judge Makaula: I have not led the judiciary.

CJ M. Mogoeng: Ja, sure.

Judge Makaula: But I've led in other circles. I've been a leader in the attorney's profession, I've been a leader in the sense that I was a Magistrate before and I've got those qualities to lead and I've led in the respect of the period for which I was a magistrate.

CJ M. Mogoeng: Yes.

Judge Makaula: I've got the respect of the practitioners especially one judging from the comments that I've received. I've got the respect of the magistrates of the area in respect of the comments we have received. So, I've got my personal skills; I am a forthright person; I believe in being straightforward; I believe in solving problems directly with the people and I've over the number of years I've been in the division and the respect of my colleagues as well.

CJ M. Mogoeng: Yes.

Judge Makaula: My voice matter during our meetings and my suggestions are carried through.

CJ M. Mogoeng: Yes.

Judge Makaula: So, in that respect, I think I have the qualities, more especially because of my involvement with the stakeholders in the area. I interact with all the stakeholders who are forming part of the PEEC, for instance, and I've earned respect from them. I've been instrumental in the processes of the PEEC. I think I have the qualities of being a leader.

CJ M. Mogoeng: Yes. One of the challenges that I've picked-up insofar as some of the judges in the judges in the division are concerned are delayed judgements. How do you plan to address that if you were to be appointed Judge President?

Judge Makaula: As I said in my comments to the comments of the Eastern Cape Association of Advocates in respect of delayed judgements. I've been a culprit. I've been there. I know what it takes. I've been reprimanded by this Commission in respect of reserve judgements. I will share that with my colleagues, I will share that, in fact, I've already shared with acting judges as well. Sharing my personal experience, so if there are delayed judgement as we do in the – for instance, I am a member of the Court Monitoring Performance Committee. I've served in that

committee we have instances where judges have got more judgements which are more than 5 months. We go to the colleagues, you go and approach the colleague, you sit down with the colleague, you enquire when the judgment is going to be delivered, you enquire what the problem is, and you try and assist as much as you can. So, in that event, I would call the colleague, sit down with the colleague, sit down with the acting judge and discuss the matter. And share with them the personal experience I had.

CJ M. Mogoeng: What system will you put in place to be able to tell before it is too late? That there are these reserved judgments and from who so that intervention can take place.

Judge Makaula: The Court Performance Monitoring Committee is dealing with that currently, but it does that on a monthly basis after month-end. So, in that event, we are able to monitor the age of the case. For instance, we have a template which says zero to three, you know that he has got three or four judgements in that category and if he in the following month when statistics are done you see that the number has not reduced, it is then that it should ring a bell to you that there should be something wrong. You may be proactive in that regard and approach the judge concerned to find out what is the position, what is happening in respect of those matters.

CJ M. Mogoeng: Part-heard matters, what views have you to share in relation to part-heard matters with an eye on ensuring that court performance is satisfactory?

Judge Makaula: When it comes to that, the PEEC deals with that. You check if the matter is from zero to six months, once it is more than twelve months it is then it forms part of the backlog cases. It is then that you approach the presiding judge or for instance in the case me being appointed as a JP you approach the Deputy Judge President in that division, you talk to him, you raise the issue with him, but those matters normally surface when it comes to the PEEC meetings. That's where they are flagged. And even in respect of the Court Performance Monitoring Committee you pick-up the criminal matters which have not been resolved, and then you deal with those issues. I think the system is there in place in respect of both committees

to secure and guard against those cases being, like for instance I'd make an example, In the last PEEC which we had we were able to pick-up that there are so many numbers of cases which are more than 5 years, which are more than 2 years, and somewhere 4 years and others were 8 years, so we were able to pick those matters through the structure and even other than the structure, if I am hands-on I would get the statistics from the statistician and then deal appropriately with the matter.

CJ M. Mogoeng: What challenges does the Magistracy face in the Eastern Cape according to your observation and what needs to be done to improve court performance, both the Regional Courts and the District Courts?

Judge Makaula: The stats show that there is a problem, especially in Mthatha, in the Mthatha area or Transkei area. For example, if you check with the reasons why the cases are not progressing there are backlog blockages which are there. Instances, like for instance, the Magistrates Offices in the Transkei the problem is with the question of witnesses, the arrival of witnesses at court. Some witnesses travel a long distance, like for instance I am from Mount Frere there is a locality which is called Maholoholo[?] which is about 30 km away from town and its gravel road and transport arrives in town after 10:00 am, it is a fact of life. In the PEEC we would have the situation of Galamahashe[?] and Elliot. Galamahashe is 80 km from town and all those people have to travel by public transport which gets to town very late. There is problem of electricity outages, there is a problem of stereographers recording machines not working, so those are the main blockages which are there. There is a problem which is being faced in the Transkei, it's High Court, Regional Court or District Court where the prisoners arrive in court very late. They arrive in court very late, the police officials will point fingers at the correctional services and that is the major problem we encounter in the district courts as well as the regional courts.

CJ M. Mogoeng: Is there any case management system that is being applied by the regional courts, the district courts, and if so is it effective?

Judge Makaula: The regional court is effective. I worked with Mr Dunywa who is the Regional Court Magistrate, he was the Regional Court President. His management skills are very effective, and I am of the view that if I get appointed we would have to emulate what he is doing. Like for instance, this month-end if you were to ask him this month how many outstanding cases are there he would tell you immediately. How many backlog cases are there? He would tell you immediately. So, the manner in which he structured his statistics is very good. So, there is case flow management in the regional court as well as the district court, but I am of the view because of the, I am of the view that it is effective but for the blockages which are there.

CJ M. Mogoeng: How do you intend to contribute to the enhancement of performance or efficiency there in those courts?

Judge Makaula: The only thing that has to happen, as I initially said Grahamstown is different from the Transkei and it is painful to me. Because the same stakeholders who form the PEEC are the same in Mthatha as well as Grahamstown. But in Grahamstown they are efficient, and they are working, but in the Transkei, they are not efficient, and they are not working. So, what I plan to do, both for the high court, the regional court, as well as the district court, is that I should, if fact we should come together as the PEEC sit down and iron out the reasons why witnesses go to court late. In Grahamstown for instance, we have a system where you book in witnesses. If you have a case for the whole week, all the witnesses are booked in a B and B, I think there is no reason why that system is not used in Transkei because the major, major reason for matters not proceeding is that matters start late. So, my answer to that, CJ, would be; I would first see to it that the PEEC works. All the stakeholders in that organisation they should work, or in that committee, they should work. Work with the intention of improving the stats, and with that, there will be no problems apart from the fact that then the buildings in that area are old, the infrastructure is bad, other courts have no courts we use make-shifts like the cases in the instance of Mqanduli, there is no court. We are busy with that situation in Mqanduli, we busy with the question overpopulation in the Mthatha High Court, but in the Mthatha Magistrate's Court but in the PEEC we've managed to unblock that. When I got to the PEEC I was informed from 1994 they wanted to move the Magistrate's Court of

Mthatha, of rather of Mthatha but in the last meeting we managed to secure that, we've managed to identify a site in Mthatha with Mthatha Magistrate's Court is going to be moved.

CJ M. Mogoeng: You touched on the organised profession. What views do you have in relation to empowering women and black men? My ensuring that they get quality work like their white compatriots?

Judge Makaula: It's a problem CJ which I am grappling with when it comes to Grahamstown.

CJ M. Mogoeng: What plan do you have?

Judge Makaula: The plan which I have is that I want to engage the societies, that is the Advocate Societies, with a view to asking them that transformation is key they should heed to transformation. And furthermore, what I would say in respect of that is that I was talking to a colleague who was an advocate, they have to take in, senior counsel have to take in junior counsel. There is an effort in the Western Cape to try and cap that. There is an effort elsewhere to try and cap that, I don't have a hard and fast way of dealing with it because it depends entirely on the work which one gets; that is the advocates. If one gets work, or if client decides to brief advocate A I have no powers to say that he should not, and he should give that brief to a black counsel, but stakeholders like the attorneys of the State Attorney's Office there has to be policy that they should brief black advocates. Especially black women.

CJ M. Mogoeng: JP?

JP C. Samyalo: Thank you, CJ. It's already known, we are not keep on going back to it, that you've appeared before this commission especially at the time you're a candidate for the position of Deputy Judge President.

Judge Makaula: Yes.

JP C. Samyalo: Now, let's look at the problems that were raised there. The problems that were raised there were the issue of delayed judgment.

Judge Makaula: Yes.

JP C. Samyalo: Outstanding judgments. Now one of the people criticising you I think quoted some cases which have not been completed to date.

Judge Makaula: Yes.

JP C. Samyalo: Or which were outstanding for a long time. Can you briefly tell us what the position is in those cases? There is Fanie and others, do you remember that case?

Judge Makaula: I don't have an independent ... [interjects]

CJ M. Mogoeng: JP it is difficult to hear you, maybe you should bring the mike closer to you, please.

JP C. Samyalo: Thank you.

CJ M Mogoeng: Thank you.

JP C. Samyalo: They quoted some cases Fanie and other, now they say the application was heard, that was an application matter on 27 May 2010 and judgement was delivered on 4th August 2011.

Judge Makaula: Yes.

JP C. Samyalo: Could it be true?

Judge Makaula: I try to verify that Sir, JP, and I couldn't find the file. In fact, three of the files I couldn't find. It is the only file which I found is the Trizone file, the Trizone

matter. The other two I was not able to comment in respect of the other one that is the 2010. I am unable to comment because I couldn't find it from the archives.

JP C. Samyalo: I know in your response you said one of them, judgement has been delivered. In fact, long time ago.

Judge Makaula: Yes, there was a case which there was apparently, as I responded I don't want to call it an error or I don't know whether to call it an error where they said I was the scribe and that judgement has not been delivered. It is not correct. It was delivered, and I was not the scribe. It was Miss Mjali who was the scribe.

JP C. Samyalo: But generally, what I would like to find out from you, have these cases been taken care of?

Judge Makaula: They have as they correctly, as they also say JP that they have been delivered apart from the one which the, they have a problem with. Which I have a problem with and I don't regard it, most probably as a mistake, but I take it, it is a mistake.

JP C. Samyalo: Now why should it be so? Why do, must we think it is not a mistake? What are you trying to convey to us?

Judge Makaula: I'm saying it is not a mistake because if the person who was investigating those cases, he should base whatever he is writing on information before him. You can't just say its suck from the thumb and say a judgment has not been delivered when you have no basis for it. You must have a basis for it. You must have a starting point. So if the starting point is not there, then one would assume that it is not correct.

JP C. Samyalo: Are you perhaps suggesting that as an attitude which is not altogether honest?

Judge Makaula: It is. Why I say so because I have also referred to the instance of Chique. When Chique applied false information was what trickled to him and it was

a glaring thing that it was false. And I think of another case of Acting Judge Greenland, Acting Judge Greenland was said to have not been aware of the procedure of admitting advocates and attorneys and it was stated that those he admitted attorneys, advocates in chambers. And when we listened as grams in charge to the judges to the transcript, it transpired that it was not correct. But I did not quote and refer to that instance because the facts I don't have at hand. That the Chique one, Chique was prepared.

JP C. Samyalo: But in your view, if you are right people are guilty of that would could they be trying to achieve perhaps?

Judge Makaula: Grahamstown is a tricky horse to ride. Very tricky horse to ride, I may say so. The reason why I say so is because they have, you have to stay in Grahamstown in order to understand the dynamics of Grahamstown. You have to be there. I'll make an example, of the attitude of the Grahamstown Bar, in fact, I cannot brush everybody with one brush. I remember sometime last year, it must have been last year? Yes, it was last year, beginning of the year. We were invited to a function in Grahamstown of, that was a Bar function when one of the senior advocates of the division was recognising the people who were there and us in particular. He is an x-member of this commission, he resigned from this commission. When he stood up to address us he said, Honourable judges and then he kept quiet, and said judges thereafter. Honourable judges and judges, a colleague of mine who was there took exception, as I did, and we wrote him a letter and asked what he meant by saying, Honourable Judges and Judges. And the response was it was a joke which went bad. But, to us, we clearly knew that it was not a joke. And ... [interjects]

JP C. Samyalo: Other words [00:26:32 inaudible]

Judge Makaula: Yes ... [interjects]

JP C. Samyalo: To cut you short ... [interjects]

Judge Makaula: In other words, JP there is an underlying attitude in the power of Grahamstown.

JP C. Samyalo: Supposing then you are taken in, you are recommended and subsequently appointed what would you do about that?

Judge Makaula: What I plan is to sit down with the Grahamstown Bar, to say to them they are part of the judiciary or they are part of justice in this country the transformation is key and beg them to tow the line.

JP C. Samyalo: So it's a question of transformation?

Judge Makaula: It's a question of transformation, we have to try and engage them in an effort to transform them.

JP C. Samyalo: I see that ... [interjects]

Judge Makaula: In fact, just before that, JP, because this thing touched on me. You know what happened two days after that remark? The newly appointed Chairman of the Bar approached us, in fact, he came to my office to say that he was apologising for on behalf of the Bar for what happened. And I asked him one question, who else did you approach? It turned out that he approached me, and Gerald Bloom and I did not want to further. And then I kept quiet and said apology accepted. So if that was not meant for us, why did he come and apologise? So I think they have to be set down, deal with them, try and weed out whatever wrong information which they have, and try and inculcate on them the culture of transformation. And even in respect of that, I've had access to their website, there are 82 advocates in Grahamstown and PE; 10 of whom are black and out of that 10, 3 are woman. So it tells something is wrong.

JP C. Samyalo: Have you not been asked to provide, if you can, witnesses or rather women for acting positions?

Judge Makaula: Have I been asked?

JP C. Samyalo: Yes.

Judge Makaula: To bring? I bring.

JP C. Samyalo: What is the outcome?

Judge Makaula: The outcome is that there is none.

JP C. Samyalo: So you don't blame anybody about that?

Judge Makaula: I can blame the Bar and the side-Bar because of not producing the women. Because it is inconceivable that we can from the judiciary or from the judiciary groom people who are not there.

JP C. Samyalo: Now, you've indicated that you've been asked to avail your services or yourself to partake or perform some duties insofar as the BEC is concerned.

Judge Makaula: Yes.

JP C. Samyalo: Now, also you have talked about the infrastructure of the area.

Judge Makaula: Yes.

JP C. Samyalo: Is there anywhere where you were giving assistance?

Judge Makaula: There is.

JP C. Samyalo: To improve the situation?

Judge Makaula: There is. For instance, I was, when I got there I was told that the question of moving Mthatha Magistrate's Court started in 1994, I don't know why, yes, I think I've moved away from the mike. Started in 1994, from 1994 till 3 weeks or 4 weeks ago they were not able to move the magistrate's court. They were not

able to find a site to dig into. But, through the process of me being involved, I enquired about the embassy, which I knew belong to Works and Energy. We facilitated a meeting with the National Office because I am going, to be honest with the Premier as well. We had the problem with Regional Department of Works and Energy in Mthatha, it is a serious problem I don't know whether the Acting Regional Works and Energy manager is, has been acting for a long time; but there is a problem to an extent that the contribution I made was to call the National Office, arrange the meeting the national office with Mr Mcuculwa Jnr and the BP and we manage to secure a site for the moving of the Mthatha offices which is underway. We are supposed to be having a meeting next week as a report back of what has happened.

JP C. Samyalo: In other words, things have now improved?

Judge Makaula: They are improving, with I've been to Nchangole CJ. When Nchangole got burnt a few years ago, there were problems with mobile courts. We have been able to secure mobile courts, we have been able through the regional office, able to deal with Nchangole. The only problem which we have, currently is that everything is on site apart from the fact that we were informed that ESKOM says it's going to take 3 years to have electricity on site. We were told that the municipality will take more than 2 years so connect water and we are busy with that.

JP C. Samyalo: Thank you, CJ.

CJ M.Mogoeng: Thank you, JP. Premier?

PREM Masualle: Thank you so much, CJ. And thanks to the Honourable Commissioners. Honourable Judge Makaula, good morning. Just one question for me. I was a bit taken aback, I must say, but on the subject of transformation you referred to the uniqueness of the Eastern Cape and I quite agree with that. Given the presence of a large measure of communities that practice or live in traditional or communal ways, would you say the practice, the theory and practice of the law as we have does sufficiently accommodate their practices? So far, 23 years later, notwithstanding the disparities you referred to but just the integration, what is your

comment in that regard? If it is sufficient if not would you upon you getting this position, in any way contribute in actually ensuring access and integration to justice services?

Judge Makaula: I think it is not. If I understand the question correctly. The Transkei is predominantly rural there are tribal courts, there are district courts, there are regional courts. If I understand your question correctly are you saying that the traditions of the community have they been taken into account in the dispensation of justice? I think they have in terms of the constitution. The constitution is clear on that one. Not unless everything is in conflict with the constitution, but one may be proactive in writing judgments and promoting what you say Honourable Premier. And one thing which strikes me through you, CJ, is that we have a problem currently which has been created by the Superior Courts Act and it is pity that JP has left because I am the one who initially picked-up this problem ... [interjects]

CJ M. Mogoeng: I'm sorry, are you still dealing with the Premier's question or are you moving to something else?

Judge Makaula: Yes, I'm dealing with the Premier's question in respect of the justice to the people on the ground. The problem which we are encountering is that you'll find since Grahamstown is the seat of the court, people from the rural areas, like for instance we've had instances where cases from Bisana are taken to Grahamstown. From Bisana to Mthatha its more than 500 km, it's about 350 km, from Mthatha to Grahamstown is over 400 km, because of the choice and because of the system at place those people are affected. Because they have to travel all the way from Bisana to Mthatha if they want justice done to their cases or their litigation. Something which ordinarily would have been taken care of in Mthatha, but for the new act.

PREM Masualle: Yes, my last question would be in respect of that, what would you do given the opportunity. What would you do to make amends to that situation?

Judge Makaula: It is a problem because it is promulgated in the Act. It's in terms of the Act and I don't think the act foresaw that. I think it's a problem, like for instance

in Grahamstown, we had to introduce the second judge when it comes to motion court because of the same problem Mthatha is going to run dry of cases, it's is going to run because if the plaintiff chooses to issue summons in Grahamstown, in fact it is the position even currently because all the work which is supposed to be done in Mthatha it is done in Grahamstown because the commercial banks they brief people in Grahamstown, the commercial people they do work in Grahamstown and the big firms are in Grahamstown. So the Mthatha in no time is going to run dry and it's going to affect the question of transformation and the like.

CJ M.Mogoeng: I think that Premier is saying if appointed as Judge President what solution would you propose?

Judge Makaula: I have a problem in that regard, CJ. It is a problem which is there, which I see. I've got a problem because it is in terms of the Act.

CJ M. Mogoeng: Why can't you initiate a process in terms of which the Act can be amended?

Judge Makaula: I think it's the major one which has to be done. Because even the Act provides in Section 27 that if the party feels aggrieved then he has to make an application to the court. But, I take your point, in fact, it is something which has to be done because it is affecting the dispensing of justice. If somebody from Bisana will be called upon to go to Grahamstown to answer a case which he could answer in Mthatha, but because of the Act, then the Act has to be amended.

CJ M. Mogoeng: Commissioner Nyambi?

COMM Nyambi: Thank you, CJ. Morning Judge Makaula.

Judge Makaula: Morning Commissioner.

COMM Nyambi: If you can maybe try to share with us because we were dealing other three judges after yourself, what is it that is standing out that might make us to seriously consider you. Because this is very serious leadership position that will

make you to be able to deal with the challenges and the transformation that we talk about?

Judge Makaula: Personality as well as the experience which I have in terms of my involvement in the various administrative committees. The personality; traits which I have as well as the experience which I have. The administrative experience which I have; by being involved in the various commissions.

COMM Nyambi: That is standing out compared to the rest that we will be dealing with today?

Judge Makaula: I think so, I think so.

COMM Nyambi: My second question it's about your weaknesses?

Judge Makaula: My weakness, the one which I rarely share, the one which is the hate is the one of outstanding judgments.

COMM Nyambi: Repeat that part?

Judge Makaula: The one which I hate, the experience and the weakness which I hate is in fact which I hate is the one of having down judgments late.

COMM Nyambi: Do you still have it? Or have done something to deal with it?

Judge Makaula: I don't have it. And even then, I don't know whether commissioner was here, even was ascribed to health and rest. So I've as I've responded to what has been stated is that I've taken measures, it will never happen again. So it's the only weakness which I have which I can allude to. Because other than that even the comments are positive. Even the attributes which the comments are referring to.

COMM Nyambi: Your strength?

COMM J. Malema: Before that, CJ, can I follow-up?

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

COMM J. Malema: On the weakness. On the weaknesses. We are not asking what was your weakness, we are asking what are your weakness now, as a person, not judgments and all that. As a person, you've got weaknesses and strength. What are your weaknesses?

Judge Makaula: Not any I can think of. I can't think of any weaknesses which I have.

COMM J. Malema: Okay, ... [interjects]

Judge Makaula: Not unless Commissioner Malema, I don't understand your question. Weaknesses if you say what are your weaknesses. Like, for instance, if I were to ask you what your weaknesses are?

COMM J. Malema: Ja, because you see ... [interjects]

Judge Makaula: It is subjective honestly, I can't say my weaknesses are.

COMM J. Malema: No, no you see some of the people when you ask them what are your weaknesses they say, I'm short tempered, I can't work with collective, I come late, you know those type of things.

Judge Makaula: None of I can think of honestly.

COMM J. Malema: Okay. Thanks.

COMM Nyambi: What might you regard as your strength, as a judge?

Judge Makaula: Communication. I am able to communicate with people.
Communication.

COMM Nyambi: Thank you, CJ.

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

COMM Helen: Thank you, Chief Justice. Judge I just, I don't want to harp on delayed judgement all the time, but I am not sure what your answer was to the JPs question with regard to the Fanie matter. According to the note, it was an urgent application heard on the 27th of May 2010 and judgment was delivered on the 4th of August 2011. Are those facts correct?

Judge Makaula: I don't know. Hence, I say that I don't know those fact because it's a matter occurred in 2011 and I tried to find access to the file and I couldn't. So it is a matter which I dealt with and it is done and dusted. So it is not before me anymore. I am unable to find whether urgency was no longer the issue at the time the judgement was delivered. I honestly do not know.

COMM Helen: I don't understand that answer, with respect Judge because in your judicial soul, in your judicial conscious is it even possible that you could hear a judgment in May 2010, hear an application, an urgent application in May 2010 and give judgment in August 2011, is it even possible?

Judge Makaula: No, I don't think it is?

COMM Helen: But shouldn't that be your answer then? That's not possible.

Judge Makaula: I can't say it's not possible JP ... [interjects]

COMM Helen: You just said it is not possible.

Judge Makaula: Can I just answer the question, Sir? I say it's not possible, it is not correct, it cannot be correct. But it is possible.

COMM Helen: So it is possible?

Judge Makaula: But it cannot be correct? Depending on the circumstances of the matter.

COMM Helen: I don't understand it's possible but not correct. But this is not a place for cross-examination.

CJ M. Mogoeng: Did you inquire from the attorneys, the advocates involved in the matter, when did I according to your records were you before me and when did I give you judgement? Or from your notes?

Judge Makaula: The problem – You're regarding the 2011 matter?

CJ M. Mogoeng: Yes, 2010, 2011.

Judge Makaula: I did not even try to do that, CJ. Because only, the only thing which was furnished to us was the front page of the judgement. My secretary, we were working in Port Elizabeth this week, my secretary tried to phone the Registrar's Office and the Registrars Office looked at all his files and we couldn't find any of those files apart from the file that dealt with Trizone. Even the other one, which I am saying they made an error to say it was my judgement it has not been delivered to date. It was because she was able to track it on her computer. And then pick it up because she filed some of the judgments. But she couldn't go back to 2011 and 2010 CJ.

CJ M. Mogoeng: Yes.

Judge Makaula: That was the handicap which we have, we've tried our level best to pull out those files but we couldn't find them, but for the Trizone file.

CJ M Mogoeng: Thank you, Commissioner Norman?

COMM N. Norman: Thank you, Chief Justice. Good morning Judge Makaula.

Judge Makaula: Good morning Ms Norman.

COMM N. Norman: Good morning, still I'm just following up on the issue of the judgements. You say you cannot find the Alldore Bus Company file, you couldn't find the Alldore Bus Company file?

Judge Makaula: No, I couldn't.

COMM N. Norman: Now what I want to understand the two other judges that you are working with what do they say happened to that case?

Judge Makaula: The scribe, in that case, was Ms Mjali.

COMM N. Norman: No, I'm talking in 7.24, sorry. Maybe I should have directed you. The Alldore Bus Company.

Judge Makaula: Let me check the list.

COMM N. Norman: [00:44:33.3 inaudible] you were with Zero and Enana?

Judge Makaula: It is the same matter.

COMM N. Norman: It is the same matter?

Judge Makaula: Yes, it is the same matter I am talking about. The same matter which I say it is not true that that judgment was not delivered.

COMM N. Norman: Oh, that because we were not ... [interjects]

Judge Makaula: We were able to find that that judgment was delivered. We were able to even find the judgment from my secretary's computer and Nsoku even confirmed that is Ms Mijali, I am sorry. So it is not correct that I sat with Zelwa, the only thing which rang a bell is that in my entire career as a judge I never set with Zelwa AJ. Never.

COMM N. Norman: Okay, thank you.

Judge Makaula: So immediately I pick that up, I made enquiries. Excuse me, and my secretary keeps all the delivered judgments in her computer. She was able to pick it up. We confirmed with Judge Mjali and he confirmed that she was the scribe and the judgment had been delivered.

COMM N. Norman: Thank you. And then in all the committees that you've mentioned that you are involved in your administrative duties to the division, I have not seen you mention anything about how you monitor judgement writing by your judges and how do those judgments get published, and whether you have any interest at all in what your judges write?

Judge Makaula: We share judgments in our division. Once judgement is delivered it is circulated.

COMM N. Norman: Yes, and then so far as publication? Do you have any role that you play there to say ... [interjects]?

Judge Makaula: No, I don't have any role-playing in terms of publication.

COMM N. Norman: Of publication?

Judge Makaula: Yes.

COMM N. Norman: All right. Thank you.

Judge Makaula: But in terms of the Court Monitoring Committee that is where on picks up that there is a judge who has got a judgment which is more than 3 months.

COMM N. Norman: Yes, thank you. Thank you, CJ.

Judge Makaula: So I'm able to monitor that through that committee.

COMM N. Norman: Thank you. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Norman. Commissioner Msomi?

COMM Msomi: Thank you, so much CJ. Morning Judge.

Judge Makaula: Morning Mr Msomi, Commissioner Msomi.

COMM Msomi: Judge I am also just going to raise the same point that seems to be coming up all the time. There is a comment by the Black Lawyers Association, they make reference to a case WesBank versus State Eight Mosedotegani which they say has been reserved since 2009 and then they then say on that basis they cannot support your appointment because it would set a bad president.

Judge Makaula: That was in relation to the 2015 application, October 2015 application and they are dealt with in this commission that I was not well during that period. Oh no, but in respect of that one, that one was a matter which started when I was an Acting Judge, it was in Mthatha matter; it has lost its file. We have lost the file and even there was an ongoing correspondence whereby a file was being reconstructed. I even referred to a letter which was dated from the parties, which was dated in September before, a month before the October interviews.

COMM Msomi: Okay, because ... [interjects]

Judge Makaula: I remember that case exactly. That is what happened. And even before this commission, I referred to a letter or correspondence which was dated September of that year following, September and then October I came for interviews.

COMM Msomi: Thanks for clarifying that, it is just this note is date it's ... [interjects]

Judge Makaula: So, it's an old note which pertained to the previous interviews.

COMM Msomi: It's dated the 27th of March 2017 and they ... [interjects]

Judge Makaula: Probably they just attached, if I remember reading it, they just attached or stuck to what they said initially, and the reference to the body.

COMM J. Malema: CJ, [00:48:15 inaudible]

CJ M. Mogoeng: You want to follow up? Yes, Commissioner? Yes, Commissioner Malema?

COMM J. Malema: The judge said he doesn't have a weakness, but I observe a very troubled weakness of interrupting Commissioner Msomi as he is asking questions. It's a terrible weakness, which the judge should have highlighted us to, earlier on.

CJ M. Mogoeng: Thank you, Commissioner. Commissioner Msomi.

COMM Msomi: Thank you so much, Chief Justice. You have applied for a leadership position and it appears that you haven't really acted as the leader in that division. What would you describe, how would you describe your leadership style? What should we expect if you were to emerge out of this process as the favoured candidate?

Judge Makaula: A unifier, somebody who unifies the division. Somebody who marries the various JDPs and the various local divisions of the court.

COMM Msomi: Thank you so much.

CJ M. Mogoeng: Thank you, Commissioner Msomi. Why don't you keep your files with you until you've produced the judgment?

Judge Makaula: I do now.

CJ M. Mogoeng: Because that seems to be the normal thing. Why leave it to the secretary?

Judge Makaula: I do that, I do that now CJ since I came from this commission. You gave advise and then I took the advice.

CJ M. Mogoeng: Yes.

Judge Makaula: You admonished me for that and then I took heed to that. And if I may say this CJ, from the lessons I learned from my last interview will remain with me for the rest of my life.

CJ M. Mogoeng: Yes.

Judge Makaula: You were so clear and even other commissioner were so clear about that.

CJ M. Mogoeng: Thank you, Judge. Commissioner Fourie.

COMM Fourie: Thank you, Chief Justice. Good morning Judge.

Judge Makaula: Good morning Commissioner Fourie.

COMM Fourie: There is something that is bothering me and that is, is clear that the Eastern Cape Society of Advocates are not in support of your appointment of Judge President. Do I understand it correctly?

Judge Makaula: Yes, I do.

COMM Fourie: And I get the impression that you are pegging that on the fact that the Eastern Cape Society of Advocates is not transformed.

Judge Makaula: Not because of that, but because of other reasons.

COMM Fourie: Okay would you like to elaborate on those reasons? Why you think they are not supporting it? Because you have several times referred to the fact that should you become Judge President you would like to see transformation in

Grahamstown amongst the legal profession, you've quoted figures as to how the Eastern Cape Society of Advocates is made up at the moment. So there is the whole time this insinuation that it is because it is not transformed but you say it is for other reasons. So would you care to elaborate on those other reasons, please?

Judge Makaula: If I may add, that is the side-Bar as well as the Bar. Both of them but I'll give the reasons in respect of both. If one has regards to the number of appointed judges in the whole country from 1994 Grahamstown area has produced only 3 black judges and I'll verified that information. It is the retired JP of the SCA Mpati, Ms Mhalnga, the late Judge Sandi. Those are the only 3, but if you look across the Kei, that is Transkei starting from the Constitutional Court the SCA and even the Higher Courts it is full of judges who come and who have been bred by the Eastern Cape, by the Society of Advocates in the Attorneys Profession. But if you go on the other side of the Kei, there is none. And that is born out by even the statistics that there is none. There is no hope. I've sat in Grahamstown for the past 10 years, as I've said. I've never seen, and I've enquired from other judges a white silk leading a black junior. I've never seen that, and we do motion court every after 2 weeks, 3 times a term but I've never seen it. It is unique.

COMM Fourie: But if you ... [interjects]

Judge Makaula: Oh yes.

COMM Fourie: No, I don't want to interrupt you. I just want you to focus on my question. What are those other reasons that you are not supported?

Judge Makaula: Those are the reasons I am relying on. And I thought you didn't get them hence, I said that they are the reasons. Those are the reasons that pertain to transformation.

COMM Fourie: But that goes back to transformation.

Judge Makaula: Yes, it goes back to transformation. It pertains to transformation. Hence, I say it pertains to transformation but I may have misinterpreted your question but those are the reasons which I have.

COMM Fourie: I'm just concerned that it, that the impression is created that because you are being opposed or not supported it is because of non-transformation and as a result of that it should be viewed with circumspection.

Judge Makaula: No, not at all it is the wrong perception. There are telling the truth and I said it on the last occasion. They were telling the truth when I said there were delayed judgement. I take that. I accept that. They were telling the truth. Even now I am not saying that they are telling the truth, that they are not telling the truth, but I am saying that I haven't been able to verify their facts. And it is important for me to have verified those fact more so if they were lied, or they mislead me in respect of the fourth aspect. So I had to – because they were saying, I think it was Commissioner Helen who was saying that what is the problem. The problem is I don't know whether it is the fact that 2010 and 2011 there was that judgment that was delayed so long. I don't know about finding, and the reason why I say so is because I couldn't find the files. And the second reason I say so is because the fourth one, it turned out not to be true.

COMM Fourie: Yes.

Judge Makaula: But I cannot, sorry Commissioner, I cannot in the least say that they – insinuate that I say they are not transforming because they are raising these issues.

COMM Fourie: Ja.

Judge Makaula: Hence I said in my response, I am prepared to sit down with them show them and talk about this issues.

COMM Fourie: Just on the reserve judgments, my last question; we've many commissioners have touched on it and we dealt with it extensively at your last

appearance. Health reasons were advanced as the main reason why that situation occurred. Am I correct?

Judge Makaula: Yes Sir.

COMM Fourie: In your, are you prepared to share with us what those health reasons or health difficulties were?

Judge Makaula: I will highlight one other aspect which I think the Commissioner did miss. If you look at the Trizone matter, I am coming to the question. In fact, let me answer the question the health reasons which I had was diabetes. I had chronic diabetes. It is a known fact among the colleagues it is known fact amongst the Bar. The Bar acknowledges that, so I had chronic, chronic diabetes which was cured.

COMM Fourie: You say it was cured?

Judge Makaula: Yes, Not, necessarily that I am free of it, but it is under control.

COMM Fourie: Because I see in your questionnaire, paragraph 10 you say is there anything about the state of your health which should be disclosed to the commission, you say yes; and you say diabetic.

Judge Makaula: Yes.

COMM Fourie: But are you saying that it is under control?

Judge Makaula: Yes, it is under control.

COMM Fourie: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Fourie. Commissioner Nkosi Thomas?

COMM N. Thomas: Thank you Chief Justice and good morning Judge Makaula.

Judge Makaula: Morning Judge.

COMM N. Thomas: Are you being forthright and truthful with us this morning as a commission in answering question that are being put to you.

Judge Makaula: I think so, I am.

COMM N. Thomas: You mentioned a minute ago that when you were here during your last appearance which was in October of 2015, the Chief Justice admonished you, to use your own word, and you took that admonishment to heart. In other words, Chief Justice provided guidance which included the fact that you should execute your judicial function with due diligence. In simple language; hand down judgments timeously. And you say to us you took that to heart. In other words, you went back to your office and executed that guidance and instruction.

Judge Makaula: Yes.

COMM N. Thomas: Yes. Now let's take a look at Trizone and see what is happening there.

Judge Makaula: It's exactly what I wanted to raise.

COMM N. Thomas: Please, please bear with me.

Judge Makaula: Yes, I've seen Trizone.

COMM N. Thomas: Yes, please. Is it paragraph 2.7.2.3?

Judge Makaula: Of the judgment itself?

COMM N. Thomas: No, of the commentary from the Eastern Cape Society of Advocates.

Judge Makaula: Let me go to it.

COMM N. Thomas: Please.

Judge Makaula: Paragraph 2. I can't seem to find... just a minute.

COMM N. Thomas: Page 247, the top of the page.

Judge Makaula: Just a minute counsellor.

COMM N. Thomas: If you look towards the foot of the page, you will.

Judge Makaula: I'm sorry Commissioner, let me just get.

COMM N. Thomas: Yes, please. Do take your time, please.

Judge Makaula: I don't see the comments.

COMM N. Thomas: Yes Trizone.

Judge Makaula: Book 1 of 1? Thank you, Mr Malema. Then the pages, Judge Makaula, and then if I go to the motions, just a minute.

COMM J. Malema: [00:59:17 inaudible]

Judge Makaula: The what? 1 of 1, oh I thought this was 1 of... Oh, this one is 1 of 1, 2. 7, 2.12. Thank you, Mr Malema.

COMM N. Thomas: You do have it there?

Judge Makaula: Yes.

COMM N. Thomas: Thank you. You see what concerns me with that is that you heard the matter on the 26th of March 2015, is that correct?

Judge Makaula: Yes.

COMM N. Thomas: And the intervening period, October 2015 you appeared before us?

Judge Makaula: Yes.

COMM N. Thomas: As you appeared before us that judgment was pending?

Judge Makaula: Yes.

COMM N. Thomas: And that is when the admonishment occurred?

Judge Makaula: Yes.

COMM N. Thomas: The admonishment that you tell us that you observed with due, but then you go back to your office and you hand down this very judgment. Armed with the admonishment that you telling us that you observed. A cool 5 months later. Way beyond the period provided for in the Norms and Standards. Now can it be said that you headed the admonishment in those circumstances?

Judge Makaula: Painful as it is I just want to give a brief background to what led to that.

COMM N. Thomas: Yes, please. But if you could perhaps say, just answer the questions as directly as you can.

Judge Makaula: I am trying to answer ... [interjects]

COMM N. Thomas: Yes, please.

Judge Makaula: I will ask the Commissioner because this is painful to me to just be patient with me and try and explain this. Hence, I think it was the Commissioner after Mr Notyesi, I am not, I am sorry that I've forgotten, Fourie. I said to him let me

take this, that matter further when he was questioning me about this. But it's painful, but if the Commissioner can just allow. I think the interviews were on the 9th, on the 10th my son was getting married in Mount Frere. Two weeks down the line, which was on the 1st of November, in front of his wife, in front of his child, in front of my daughter he ran over his child and killed him. It was an accident, but since then it was a painful thing. I had to uproot the whole family to Port Elizabeth. I couldn't function. I remember my colleagues in February taking over my duties because of the pain which I had to go through I had to contend with my son and I was expecting the worst. That he may commit suicide, I was out of touch, I couldn't concentrate on my work because my son had witnessed himself running over his own son.

COMM N. Thomas: Yes, I see. I understand that.

Judge Makaula: The reason, therefore ... [interjects]

COMM N. Thomas: That's what occasioned the 5-month delay. Now, let's move it right along. Excuse me?

Judge Makaula: That's occasioned the 5-months, it's because I couldn't function. And to proof, I'm trying to come to your answer in Trizone, I am sorry to interrupt.

COMM N. Thomas: Sure.

Judge Makaula: I wrote that judgement and I said to the Commissioners that it was with, the mistake that I want to correct is that two heads, they've just filled supplementary heads, it's not correct. What had happened that it was with the researchers. When it comes back from the researchers, researchers said we don't agree with your conclusion and come up with considerations to take into account. I took those into consideration, gave it to a colleague, to look at its because I couldn't function properly. The colleague came back with other suggestions, that is the reason why. I was under tremendous stress which I am still under, even currently because no parent will ever wish to do that. Everybody was running amok at my place, because of that. So that's the reason why Trizone was delivered so late. And I could not write that thing on the answer.

COMM N. Thomas: Thank you.

Judge Makaula: But it is a matter which I was aware when I came here.

CJ M. Mogoeng: What is this about researchers now?

Judge Makaula: Last time, CJ, I said this Trizone was with the researchers.

CJ M. Mogoeng: Yes. What role did they play about your research?

Judge Makaula: They play a major role, the researchers because they check what you are writing about. They check the citations, they check the conclusion.

CJ M. Mogoeng: So they disagreed with you?

Judge Makaula: Not necessarily, they came back with suggestions, that's what I say that with suggestions to – it happens all the time. Where there ... [interjects]

CJ M. Mogoeng: And then, that delayed the process?

Judge Makaula: Not necessarily, delayed the process because I took those and I agreed with some of them and then I wrote the judgment and then I hand it over to a colleague.

CJ M. Mogoeng: Okay. President Maya?

PRES M. Maya: Good morning, Judge Makaula.

Judge Makaula: Good morning, Judge, sorry.

PRES M. Maya: Are you well?

Judge Makaula: I am. I am.

PRES M. Maya: Good.

Judge Makaula: I am, Commissioner Maya.

PRES M. Maya: I wanted to raise just two issues with you. Arising from answers you gave earlier. You and I know that gender formation remains a big challenge in the Eastern Cape Division. Earlier you seemed to shift the responsibility of preparing women judges to the wholly to the professions and I just want to ask you if you are telling us that there isn't anything the judiciary can do to contribute to that effort?

Judge Makaula: There are many things, which even currently the judiciary is doing. There are many things. I was merely concentrating on Grahamstown because even the judiciary will have to source what it is going to take through in the courses which it offers from practitioners who practice in the division. So in the absence of them then the efforts of the OCJ's office through SAJEI are going to be tainted. We have to have a foundation and the base from which to draw other than from the academics and all. That's what it is in that context that I was answering that, but we have a responsibility to develop and build female judges. Female judges are a challenge; hence I was able to say even in Grahamstown, PE there are only 10, there were only 3. But it is incumbent upon me to identify women judges and too fast-track them. It is an issue which we cannot run away from. It's been charged, Commissioner Maya, in Grahamstown because there are many up and coming female advocates and female attorneys. But there are none when it comes to black practitioners.

PRES M. Maya: What concerns me is that over a number a years now I think women that there has been no shortage of women candidates who have presented themselves to this commission and for some reason they were not to be up to scratch, and I just want to find out because we know there is no shortage of women magistrates, women attorneys, women advocates, women teachers in the Eastern Cape. What are the challenges, why can't the women who come to acting in your courts why can't, what is it that is, what experience are they not getting when they're in those courts?

Judge Makaula: I think the major problem which has to be sorted out is mentoring. They have to be mentored. Ones and acting judge is appointed a senior judge has to be appointed or to be approached to mentor that person. If I understand the question correctly that is how I think one can cure that. Mentoring. Because what's what happening is they are thrown at the deep end and one has to fend for himself for herself. But I've taken it upon myself to approach acting judges and to offer my services to them. I've done it on numerous occasions.

PRES M. Maya: You also mentioned that you recently found your monitoring committee recently found that there are cases as old as 8 years and I just want to find out what the cause of those delays would be? Do you have any idea?

Judge Makaula: I do have an idea, you shall recall Commissioner Maya when you were in the Transkei, you have to know the area. You have to know the culture of the area. We interrogated that case, it is a case which is being handled by an acting judge. We've given it, what we normally do in our PEEC we prioritise 20 cases which are old, and we deal with them. This one was one of them. In if you look at the record, there are all sorts of reasons why it was postponed. The accused is not in, he is not well, the legal representative is not there, the witnesses have not arrived, there are all a meriate of reasons which come up. But as I said initially, what needs to be done is that those cases need to be specifically monitored and managed. You call all the stakeholders involved, you sit them down before the date of trial, you cause them to commit to the trail being proceeded with. And it is easy to do because ones you manage it you have weeks before, then ever problem is sorted out. So I think the problem is a meriate of reasons which is caused by the various stakeholders. But my argument is, Ms Maya, if Legal Aid is appointed in Grahamstown and everything starts and runs in Grahamstown where the same stakeholders are operating why is it so that in Mthatha they don't? It's the culture which has to be dealt with directly and nipped in the bud.

PRES M. Maya: Thank you Judge Makaula. Thank you, CJ.

CJ M. Mgoeng: Thank you, President Maya. Commissioner Notyesi?

COMM N. Notyesi: Thank you, CJ. Good morning Judge Makaula.

Judge Makaula: Morning, Commissioner Notyesi.

COMM N. Notyesi: There is something that troubles me.

[Crosstalk]

COMM N. Notyesi: There is something that troubles me which I just heard about it there is resistance to case flow management by judges in your division, that is Grahamstown. Are you aware of that?

Judge Makaula: I am aware that there is resistance. There was if I may say so and there probably still is. Because of the view that everything is running smoothly in Grahamstown, but the JP on our last deliberations, our last meeting came hard and decided that it should be implemented. But subsequent to that there was correspondence from the committee that deals with case flow. But JP took a decision that it has to be implemented. But there was initial resistance because they felt that there no need for it.

COMM N. Notyesi: All right. Also, in your statement, you say things are done differently by the stakeholders for instance in Grahamstown than in Mthatha and elsewhere. But as I understand the PEEC is a provincial structure, in that structure you represent the JP. You sit there as a representative of the JP; all the heads of departments are there. How then it would come about, I, in fact, I want to understand, this assertion you're making that look in Mthatha there is different approach when you sit with these stakeholders they are all leaders, in which event what is happening in Grahamstown is supposed to happen in Mthatha. How does it happen? I mean ... [interjects]

Judge Makaula: I think, I think the problem Commissioner Noryesi is with the local people in Mthathta, that is the Commissioner of Prisons; the Legal Aid board; the NDDP because what you find is that when you go there they will say that everything is fine, but in truth and in reality, all the case blockages, case flow blockages they

come from those stakeholders. Hence, I say that there is a problem in Transkei, which is not there in other areas. Because in Grahamstown if a matter is set down, it runs and it gets finished. But in Mthatha, it doesn't for all sort of reasons which are covered by the stakeholders. So hence I say that it is on that basis that I say there is a problem.

COMM N. Notyesi: My last question, the funny way of running motion court in the Mthatha division where for instance there would be two rolls in the same court because judges saying they can not do more than 25 cases of Mthatha, whereas in other division there is a single roll run by one judge, resulting in judge who entered first in the court, once he finished roll at 11 o'clock he takes his bag and leave. What would you do if now you are appointed as a JP in view of those practical experiences that are taking place there?

Judge Makaula: I wish to bring to your attention, Commissioner Notyesi, that it is not the correct view. These thing of running two courts started in PE because we could not cope with the workload and more so especially when it comes to opposed matters. One would have 8 or 10 opposed matters which run from Thursday to Friday. And then it was felt that we are not doing justice to those files. And it was decided that there should be two courts; motion court courts. We had to introduce that towards mid last year in Grahamstown as well. And the reason was similarly the same, because of the migration of work, if I may call it that way, migration of work from Mthatha to Grahamstown, we, our roll was bursting. I remember for 6 consecutive weeks each motion court judge did not entertain less than 8 opposed matters. To an extent that before we appealed to the JP that a second judge should be introduced. And even before we did so, we would help each other. So the reason why we, it was introduced in Mthatha as well, is because it is working elsewhere, it is working in PE, it is working Grahamstown and there has to be uniformity. And this brings me to one aspect which is the problem in Mthatha as well, the question of backlog cases. The High Court has got backlog cases, and we have found and we have discussed that even in our meetings, that Mthatha should not be different from the other two divisions. Because there has to be an introduction of a running roll. Both in civil and in criminal cases. And that it has a – PE we've done away with backlog cases, and if that is introduced in Mthatha as well

we are sure and confident that if a running roll is introduced and a dedicated court, dedicated court which has to be supervised by the head of the station, to see to it that it is running daily, to see to it that it meet the court hours which are talked about in case flow on daily basis. And then in that event, Mthatha's problems I think will be a thing of the past. But juggling, I think there is a problem, but you can do so much if you are not the deputy at the place.

COMM N. Notyesi: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Notyesi. Are we to understand judge Makaula that Deputy Judge President Nhlangulela who is in charge of the Mthatha High Court has proofed to be ineffective because the things you mention identifying a court, dedicated to this and ensuring that motion roll is not split; ensuring that stakeholders do what is required of them so that there is no backlog that you have alluded to, ought to be his concerns. His responsibilities? Are we to understand that he has not been able to do what ought to be expected of a head of a court?

Judge Makaula: Not at all CJ. What I am saying is that we resolve and discuss in our meeting, first day of term meeting is that the problems, because we talk about the problems in the division. What we said and suggested is that these should be implemented and in if it correctly implemented it will deal with the problems which are in Mthatha. So what I'm saying is not coming from me per say, it's what we have discussed in his presence and come with suggestions.

CJ M. Mogoeng: But those, it was is responsibility to make sure that those problems are not there?

Judge Makaula: Yes, that I cannot shy away from.

CJ M. Mogoeng: I see.

Judge Makaula: I cannot shy away from that. I cannot shy away, it is his division it is not my division. And I can do so much if I am not the JP. But it is his division. He runs the division. I am of the view, I may be wrong, he might come up and say

something else, but as a collective of the department, of the whole division, that was our view. We had a similar problem in PE, we introduced a running roll both in criminal and civil matters and it worked.

CJ M. Mogoeng: Yes, is he from Mthatha?

Judge Makaula: You mean?

CJ M. Mogoeng: Deputy Judge President Nhlangulela?

Judge Makaula: You mean by birth?

CJ M. Mogoeng: Does he have the same exposure to Mthatha and Transkei that you have?

Judge Makaula: I am not sure, I don't want to lie to you CJ.

CJ M. Mogoeng: Okay.

Judge Makaula: I've been in Mthatha for long, I've travelled all those courts in Mthatha. I know each and every one.

CJ M. Mogoeng: Thank you very much, Judge Makaula. You're excused.

Judge Makaula: Thank you very much CJ.