



# JUDGES MATTER

**Judicial Service Commission interviews**

**12 April 2018.**

**KwaZulu Natal Division of the High Court**

**Interview of Mr M Maharaj**

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Mr M Maharaj: - And Commissioners.

CJ M. Mogoeng: How are you?

Mr M Maharaj: I am fine thank you, Sir.

CJ M. Mogoeng: Great. Tell me where did you obtain your degree?

Mr M Maharaj: Sorry, beg your pardon, Chief Justice?

CJ M. Mogoeng: Where did you obtain your first degree?

Mr M Maharaj: At that stage University of Durban Westville as it was -

CJ M. Mogoeng: Yes when was that.

Mr M Maharaj: 1989.

CJ M. Mogoeng: The next one was in Zululand?

Mr M Maharaj: Durban Umlazi Campus Zululand.

CJ M. Mogoeng: Yes.

Mr M Maharaj: 1998.

CJ M. Mogoeng: Yes. What have you been doing in the legal sphere over the years?

Mr M Maharaj: From the University of Durban Westville, as it was then I joined the Department of Justice in '87 -

CJ M. Mogoeng: '87.

Mr M Maharaj: -- Prosecutor Board in the District and Regional Court.

CJ M. Mogoeng: Where?

Mr M Maharaj: At Durban. Durban Magistrates Court.

CJ M. Mogoeng: Okay, yes.

Mr M Maharaj: Then appointed to the Bench in the District Court 1st of June 1993 and -

CJ M. Mogoeng: Durban again?

Mr M Maharaj: -- Then 2000 Acted Regional Court Magistrate until appointed in 2006 permanently.

CJ M. Mogoeng: Let's take it in stages. When were you first appointed a Magistrate?

Mr M Maharaj: 1st June 1993.

CJ M. Mogoeng: '93?

Mr M Maharaj: Yes, Chief Justice.

CJ M. Mogoeng: Where?

Mr M Maharaj: At Durban.

CJ M. Mogoeng: Yes.

Mr M Maharaj: At Durban Magistrates Court.

CJ M. Mogoeng: Yes, now while you were there did you do both civil and criminal law or only one of the two?

Mr M Maharaj: At that point in time we were allocated to do criminal work only.

CJ M. Mogoeng: Yes. Was it because there was no civil work? Or was -

Mr M Maharaj: No there was civil work, but it branched out into the District Court Civil and the District Court Criminal.

CJ M. Mogoeng: Yes.

Mr M Maharaj: So we were allocated to do crime.

CJ M. Mogoeng: Was it a matter of choice or was it the decision of the leadership?

Mr M Maharaj: It was the decision of management at that stage. We did ask to do civil, but we were confined to do criminal work.

CJ M. Mogoeng: Yes and then as at the time you went to act in the Regional Court had you not yet done civil?

Mr M Maharaj: That is correct, Chief Justice.

CJ M. Mogoeng: Okay. Tell us about your experience in the Regional Court.

Mr M Maharaj: In the Regional Court primarily criminal work up until the time that the Regional Court was ceased with civil jurisdiction then we had the opportunity to do so civil work in that regard. Divorce matters and the normal civil work.

CJ M. Mogoeng: Yes. When were you appointed to the Regional Court?

Mr M Maharaj: Round about April, 6th April 2006 permanently.

CJ M. Mogoeng: 2006.

Mr M Maharaj: That is correct.

CJ M. Mogoeng: So all and all if you combine your appointment to the Regional Court and the District Court you have been a Magistrate for how long?

Mr M Maharaj: For twenty-five years.

CJ M. Mogoeng: Twenty-five years and you say you got to do some civil work as a Regional Court Magistrate?

Mr M Maharaj: Yes, I did, Chief Justice.

CJ M. Mogoeng: Yes and did that prepare you for your subsequent acting stint as a High Court Judge?

Mr M Maharaj: Yes it did, Chief Justice. We did divorce matters were more or less the same. Just the complexity of the civil work was different.

CJ M. Mogoeng: Yes, are you settled? Are you comfortable in the High Court environment?

Mr M Maharaj: I think I am. I mean I have been there in a total period of nine months if one counts from 2015 up until 1st April 2018 –

CJ M. Mogoeng: Sure.

Mr M Maharaj: -- So I think I have settled down there.

CJ M. Mogoeng: Did you find yourself taking long to deliver reserve judgements or finalise part-heard matters or has that not been your experience?

Mr M Maharaj: No, fortunately, I have managed to finish all the case -

CJ M. Mogoeng: And what is the longest it has ever taken you to deliver a reserved judgement in the High Court?

Mr M Maharaj: A week.

CJ M. Mogoeng: A week. And what is the largest number of part-heard matters you have ever had as a Regional Court Magistrate?

Mr M Maharaj: About five.

CJ M. Mogoeng: And how long did the longest take to be finalised?

Mr M Maharaj: About six months.

CJ M. Mogoeng: Okay. If you really want to make a good impression should I put it that way – to make sure that we do not inadvertently give less weight to what ought to work in your favour what are the factors that you would want to highlight to demonstrate to us just how ready you are for the High Court?

Mr M Maharaj: I think the words that I would choose would be efficient, expeditious in terms of the fact that I do not have any outstanding cases in the High Court, I finalise all the matters within the allocated time that have been in the High Court. I think efficiency would also come to mind in the sense that you start a matter you want to finalise it as soon as you can. So be proactive in getting the matter expedited as soon as we can.

CJ M. Mogoeng: Yes. Thank you. DJP?

DJP M.I. Madondo: Thank you, CJ. Mr Maharaj, you have had a long-acting stints since 2015, as you have said, but it is of the view that you still need to develop further experience, more particularly in civil procedure. What is your comment?

Mr M Maharaj: Deputy Judge President with respect I would say that in the nine months that I have been in the High Court I think for two months we had totally devoted to civil. In the last three sessions we did civil appeals, civil court work as well, motion court, case flow, civil trials, opposed motion. So I think I have the experience in terms of discharging the function but not necessarily comparable to criminal work where I spend most of my experience work.

DJP M.I. Madondo: Is your opinion that you still need further experience?

Mr M Maharaj: No, no I do not believe I do. I have learned, and I can learn as I go along.

DJP M.I. Madondo: Further, the members of AFT have also expressed concern that you employ bodyguards to protect you while sitting as a judge. May you throw some light on this?

Mr M Maharaj: I have no knowledge of that. I think somebody is confusing me with somebody else. With respect that does not apply to me.

DJP M.I. Madondo: In the light of the demographics of KwaZulu Natal would you say that your appointment will in any way advance transformation in the Bench?

Mr M Maharaj: DJP what I would like to say I am alive to the Provisions of Section 174 subsection 2 in terms of race and gender being as a factor as to be considered in the appointment. From my side, I would say: yes. In the sense that while I made be of Indian origin, I cannot take that away, I have been born in this country. I would say that I am South African and proudly so. I do not see that as a impediment for appointment so given the experience and given the level of work that I have done I think I can be an asset to the High Court Bench.

DJP M.I. Madondo: Is that how we will advance transformation?

Mr M Maharaj: If transformation you are referring to appointment of an Indian person because there are more Indian Judges then perhaps not. If it is referring to the fact that you need to appoint African male and female, then definitely that must take preference.

DJP M.I. Madondo: Okay. Are you in any way conversant with the Customary Law or Customary Legal system.

Mr M Maharaj: Not entirely beside what I have studied in the LLB degree in Indigenous Law, but I am well aware that you did write a book concerning Customary Law. And you are the author -

DJP M.I. Madondo: Yes, I am asking about you.

Mr M Maharaj: No, no. I do not know everything about Customary, just bare necessities in terms of marriage in terms of Labolla perhaps yes. But I do not know all the customs, to be honest.

DJP M.I. Madondo: And are you aware that the Courts are Constitutionally required to develop Customary Law when the circumstances so demand. Are you aware of that?

Mr M Maharaj: Yes.

DJP M.I. Madondo: Have you ever come -

Mr M Maharaj: I have never done a case.

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

CJ M. Mogoeng: Thank you DJP. MEC?

MEC W. Thusi: Thank you, Chief Justice. My question is a follow-up on the DJP's question. Is that over the twenty-three years of our democracy transformation of the judiciary is still a challenge. If you look at the racial and gender demographics of KZN how have you contributed over the years in your professional to ensure that there is progress and ensuring transformation? And then also KZN is a very rural province can you speak any indigenous language? So that there is transformation as well in that?

Mr M Maharaj: Thank you for your question. A lot of questions that you asked but I will try to recall it as best as I can. In terms of transformation, from my side, what I would consider my contribution to transformation is that some point in time, I think from 1999 to 2001/2003/2002 I did lecture part-time basis at the Durban Umlazi campus for students who were interpreters, prosecutors who wanted to improve themselves. I was part of that and most of them qualified, all of them. In terms of trying to assist with transformation in the legal field, I have had the opportunity to author a book. "Confident Criminal Litigation" which services primarily for the young entrance to the legal profession so I think that helps to empower them. In terms of the last question whether I have learnt any indigenous language, with respect, no I have not.

MEC W. Thusi: Thank you.

CJ M. Mogoeng: Thank you MEC? Commissioner Nayambi? Aren't you Commissioner Stock?

COMM Stock: Yes.

CJ M. Mogoeng: I apologise maybe I have been calling Commissioner Nayambi a lot. I apologise. Over to you Commissioner Stock.

COMM D. Stock: No thank you very much, CJ. No, the apology is well accepted. I know normally there is that confusion because of the size of our heads. I have a much bigger one than Commissioner Nayambi.

CJ M. Mogoeng: I was afraid to be specific.

COMM D. Stock: Thank you very much, CJ. Good morning Mr Maharaj.

Mr M Maharaj: Good morning, Commissioner.

COMM D. Stock: All right. I would just like to bring your attention to the questionnaire which you had actually filled in, and then there is a section in the questionnaire that deals with any other relevant matter which you feel you might bring to the attention of the Commission to consider for your appointment. Now what happened there you have actually indicated that there is information, you have ticked a yes. Then you have also attached an annexure to that particular effect. I want to bring your attention to that annexure, and it reads as follows: "That on the 28th of January the office of the Director of Public Prosecutions in KwaZulu Natal to charge yourself and Mr Smith with the following offences namely fraud, theft, corruption and defeating the ends of justice". So Mr Maharaj in light of the annexure I would just like you to take the Commission to confidence as to what actually transpired and how was the matter resolved? And whether this matter was in actual fact taken on appeal or whether it has been settled?

Mr M Maharaj: No, the charges were withdrawn in June of 2000 after representation were made to the Director of Public Prosecution. The charges arose out of the sentence which I had imposed in the District Court as part of a condition of suspension. The authority that I used at that point in time which I have with me was the Transvaal decision who had said that in terms of 297 sub section HH a Court could impose any condition in terms of that provision that could be imposed was allowed. And if I may just read to you that particular provision so you have an idea that it was a judicial discretion that was applied. The case I refer to is State versus Mosterd, the citation is 1991, Volume 1 SACL 636, it is a Transvaal Case where the Court held that "a Court had such a wide discretion in imposing conditions for suspension of sentences that vertically any condition which could be imposed was included". So at the end of the day, I impose those sentences. The office of the DPP took a different view. When it was pointed out to them that listen this was part and parcel of the judicial process they withdrew the charges. So there was nothing untoward in terms of any benefit or any of the children being at the crèche of any of that sort. So it was just a sentence that was imposed, and they believed that was a crime which I disagreed with.

COMM D. Stock: Now my other question is that since the matter was resolved the charges were withdrawn did you sue the State or -

Mr M Maharaj: Yes, I did.

COMM D. Stock: --To claim any damages to that particular effect?

Mr M Maharaj: Yes.

COMM D. Stock: What was the outcome?

Mr M Maharaj: The outcome was the judgement went against me. The Court ruled that the State had acted reasonably. So, if you want to put it in mild terms I basically lost that case. The judgement went against me, as the plaintiff.

COMM D. Stock: Now in the matter between yourself and the State which came before Justice Coen.

Mr M Maharaj: That is correct.

COMM D. Stock: -- And then I want to bring your attention to that judgements. I reads as follows, I am just going to make a citation of an extract part of the judgement and it reads as follows; "even to the extent that the plaintiff may have been fortunate to have the charges against him withdrawn because if during any trial against Mr Smith the plaintiffs evidence as to what Mr Smith on his version allegedly told him was disbelieved. His complicity and would continue to exist and hence also his status as potential accomplice. The State might in those circumstances have them remise on that information not to continue against Mr Smith and the plaintiff leaving any conflict between them to be resolved and decided in one forum". What is your comment in regard to this?

Mr M Maharaj: The fact that I did not take that matter in appeal means that I have accepted the decision. It does not necessarily mean that, with respect, I agree with it. It is just that we did not decide to take it on appeal we accepted the decision.

COMM D. Stock: Thank you CJ.

COMM M. Mogoeng: Thank you, Commissioner Stock. Commissioner Singh?

COMM N. Singh: Thank you very much, Chief Justice. Good morning, Mr Maharaj.

Mr M Maharaj: Good morning, Commissioner Singh.

COMM N. Singh: The two questions that I wanted to ask have been answered by yourself asked by the DJP and another Commissioner and that is on the question of what AFT had to say. But there is another matter that I have referred to and if I may read: "Mr Maharaj is a Magistrate in the Regional Court. Members have raised concerns about Mr Maharaja's temperament in proceedings before that Court". Can you speak to that, so we can understand why you think that –

Mr M Maharaj: Commissioner Singh, you must appreciate sometimes as judicial officers maybe you falter maybe you are human. But in the fact is that you want to get your Court started. My work ethic is that you must start at 9 o'clock. You want to be punctual. You want to have discipline in Court. You want decorum of the Court and sometime you may cross swords with people who come late for no apparent reason. You engage them on that it is not a question of being personal with anybody. It is just a question of wanting to do the job. You employed to do a day's work you need to engage with the day and any disruptions or time that is wasted in Court impacts on court productivity. So people are referring to temperament, yes sometimes you may be firm, but you are not trying to be personal with them. There is a purpose behind trying to be firm.

COMM N. Singh: Did any of these members ever approach you about your temperament and how have you dealt with it?

Mr M Maharaj: That is the irony, you may have complaints in paper no one has ever approached me either personally so say; listen Mr Maharaj we think that you are being heavy-handed or written something down on paper and given it to the Regional Court President or to the Deputy Judge President or to the Judge President for that matter. I can understand that nobody wants to complain in writing but at the end of the day, I do not believe that I have acted in such a way to insult someone just for no reason. It was merely trying to enforce discipline and punctuality.

COMM N. Singh: Thank you, Chief Justice. We also heard earlier on in another interview about the Fridays that you spoke about, Chief Justice. Friday afternoons.

CJ M. Mogoeng: I will come to it -

COMM N. Singh: Oh, you will come to that one. Okay, you can ask Mr Maharaj that. Thank you from my side.

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

COMM T. Masuku: Thank you, Chief Justice. Good morning Mr Maharaj.

Mr M Maharaj: Morning Commissioner.

COMM T. Masuku: Just following-up on what Commissioner Singh asked you. The question is not really about trying to be firm. The question is about being blatantly rude. I will refer you to what the BLA says in its comment about you. It says; "our main concern is that the Durban High Court sitting as a Court of Appeal in the case of Nonebabala Nonzuga versus the State, the learned Judges Kruger and Steyn made the following comments: the manner in which the learned Magistrate referring to Mr Maharaj yourself, berated Dr Harmond for arriving at Court a few hours late and the manner in which he treated Dr Harmond is deplorable, to say the least. In my view, the learned Magistrate was abrupt and rude and discourteous towards Dr Harmond whose evidence as I have already stated could not be faulted and was indeed corroborated by Dr Harmond.

Mr M Maharaj: Dr Hatting.

COMM T. Masuku: Dr Hatting. Your answer to Commissioner Singh is not completely an honest answer to your temperament.

Mr M Maharaj: No, with respect, I disagree. I will tell you why -

Male: Sorry you disagree with what he said to you?

Mr M Maharaj: No, no. The Judge of Appeal made those comments that particular case, Chief Justice, dealt with Mnzuka who was the mother of a child that was recently born, a newborn baby, that was charged for murder of that child. That child was discarded in a bin bag, the paramedic who arrived at the scene found the child with marks on the neck. The post-mortem report that Dr Harmond had, as you refer to, conducted was far from satisfactory in my opinion. Dr Harmond was given many subpoenas to attend court. He was discourteous he refused to come. Being a part-time District Surgeon he saw fit to give time to his practice. Eventually, after a few hours, he did come to Court and he was asked why did he have to keep the Court

waiting. It is a serious matter. While the Judges of Appeal have expressed an opinion, I respect the opinion, but with respect, I disagree with that. Because I was seized with the matter in the live form with the trial. The Judges of Appeal, with respect, they dealing with a matter on record. The Judge may have made those comments, I accept that I do not have an issue with that but, with respect, there is not much I can take it further. The Judge made a comment I accept it. But I do not believe that that case was held six, seven years ago Nmzuka and obviously, since then you have matured. We are judicial officers, as I said before, we sometimes we falter sometimes we be overly firm.

COMM T. Masuku: Just a last question. What would you consider are your weaknesses as a Judge?

Mr M Maharaj: Sorry, I beg your pardon, sir?

COMM T. Masuku: What would you consider are your weaknesses as a Judge in the type of thing you yourself have reflected on and would like to improve on?

Mr M Maharaj: I think with time as you matured you have been in the High Court I do not believe there was any written complaint about my conduct to either the Judge President or the Deputy Judge President and you can work on your demeanour more or less. Perhaps not to take it to firmly in terms of trying to get your Court started or try to expedite matters.

COMM T. Masuku: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you so much. Thank you. Minister?

MIN M. Masutha: Good morning, Mr Maharaj.

Mr M Maharaj: Morning, Minister.

MIN M. Masutha: AFT KZN comment does not only relate to your conduct in Court but raises the question whether you are possessed of sufficient civil exposure. Now

in your questionnaire on questions relating to your civil and other areas of the law including Constitutional Law experience you seem to respond by saying not applicable. Could that be because in your stint as a Magistrate including the level Court level you had never had exposure to civil work? Even after the civil jurisdiction was introduced in the Regional Court?

Mr M Maharaj: When the civil jurisdiction was introduced we did do civil work. Primarily the divorce matters concurrently with the criminal matters. The Regional Court then -

MIN M. Masutha: So it is only divorce that you -

Mr M Maharaj: No, no we did motion court, you did normal summary judgement, your normal civil trial etcetera but in terms to improve myself for civil work in 2011 I took time off from work – two months leave - to sit in the High Court to learn how to do things or how things are done in the High Court with Madam Justice Dhaya Pillay who was kind enough to mentor to show how things done. When I got back -

MIN M. Masutha: My apologies to interject but you see then the form then is misleading. Because in the form you say not applicable, what did you mean by that in your own form? Unless we have wrong information? If are giving a narrative of the extent of your exposure in civil matters as you have begun to do so in 6.2 weren't you then supposed to have responded differently to the questionnaire? In other words, it appears to me that you are contradicting –

CJ M. Mogoeng: Your mic is off Mr Maharaj. Just keep it on.

MIN M. Masutha: In other words just to clarify it appears to me that you are contradicting yourself between what you say on paper and the narrative you are providing us now. I mean have I not asked that question I could have been left with an impression, I suppose wrong impression in your view. Unless I am missing something?

Mr M Maharaj: My understanding was, in the District Court we did not get exposed to civil work. We did primarily criminal work. In the Regional Court, it was primarily criminal work subsequently we did civil work. When I went to the High Court to be mentored by Madam Justice Pillay concerning how Motion Court is run I then went back to the District Court to preside in the Civil Court for a month or two. In July of 2011 or 2012. So when I wrote not applicable I was referring to the fact that we did not do it all the time because the primary function we had was criminal work. The most exposure to civil work was in the High Court. So -

MIN M. Masutha: But was the questionnaire if I may, Chief Justice limiting you in the manner in which you seem to have limited yourself in hindsight?

Mr M Maharaj: In hindsight, I should have I had, but in the CV, I did put that I was mentored by Madam Justice Pillay, so perhaps that should have been included in the civil experience.

MIN M. Masutha: In other words what I am trying to get through to Justice and my apologies for this follow-up. Could it be that at the back of your mind you do not quite see yourself as a civil lawyer? Unless you are prompted to say something about it and that is where you feel perhaps you should share this information.

Mr M Maharaj: I think, with respect, I would say that because my forte if one can call it that is in the field of criminal law and you have less experience in civil work in terms of being exposed to civil work in the Regional Court unless you go primarily to do civil work on a permanent basis. Because the Regional Court runs on a Regional Civil Court and a Regional Criminal Court. I am based in the Regional Criminal Court so as I said the most exposure I have had with civil work was when we went to the High Court.

MIN M. Masutha: And in the Regional Court you never did any civil work?

Mr M Maharaj: No I did civil work in the Regional, for six months.

MIN M. Masutha: Oh, okay. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Minister. Commissioner Notyesi?

Mr N Notyesi: Thank you, Chief Justice. Mr Maharaj very recently in the matter of Economic Freedom Fighters versus the Speaker of Parliament and others the Chief Justice of this country sounded or repeated a strong warning when he had this to say; “the second judgement is a textbook case of judicial overreach”. Now having that statement in your mind and also just before you answer you also take into account what was said by Justice Froneman in the case of the Black Sash versus the Minister of Social Development and SASSA. What is your understanding of the doctrine of separation of powers? And what are the judicial constraints that Judges should maintain?

Mr M Maharaj: Thank you for the question. My understanding of separation of powers is based on the fact that you have the legislature, you have the executive and you have the judiciary as the third branch of the State. Each function in terms of Legislation as to what concerns them. Insofar as judicial overreach is concerned it is a question of whether the Courts have the authority to dictate to parliament as to how they should conduct their business. However, if it is a Constitutional issue if it is within the Constitution for the Constitutional Court to make that decision that they can direct how parliament is to function and I supposed that can be Judicial overreach. But my understanding is Judicial overreach is simply that not entering into the arena of another space as to tell them how to discharge their functions.

Mr N. Notyesi: Secondly, in our debate with the Deputy Judge President about the application of the Customary Law I want to understand from you if you are confronted with a situation where the application of Customary Law is called for is it permissible for you as a Judge to evoke the principles applicable to Common Law in resolving a Customary Law matter? And if you are saying it is permissible, why?

Mr M Maharaj: Well your starting point would be the Constitution. Customary Law which offends any of the rights in the Constitution provided is consistent with it should be followed. If you have to apply Customary Law together with Common Law provided you reach a just outcome I do not have an issue with that. Or you can call

witnesses who are experts in the field of Customary Law to come and assist the Court in arriving at a fair decision.

COMM N. Notyesi: What I am trying to say is that is Customary Law and Common Law according to you at the same level?

Mr M Maharaj: Yes, I would with respect say so.

COMM N. Notyesi: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you so much Commissioner Notyesi. Commissioner Norman?

COMM T. Norman: Thank you very much, Chief Justice. I have been covered in all my questions.

CJ M. Mogoeng: Thank you. Commissioner Fourie?

COMM C.P. Fourie: Thank you, Chief Justice. Good morning, Mr Maharaj.

Mr M Maharaj: Morning, Commissioner.

COMM C.P. Fourie: Mr Maharaj in one of the judgements that you attach to your questionnaire, the judgement of Subotha versus the State, that is an Appeal that you heard in a rape case, can you recall that matter?

Mr M Maharaj: Yes, I do.

COMM C.P. Fourie: That is a matter where the Appellant raped a seven-year-old girl

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Mr M Maharaj: Nine, it was nine.

COMM C.P. Fourie: The judgement says seven-years-old. After kicking open the door of the homestead and then the Appellant took the Complainant into the bedroom where he raped her, and he then took her out of the house into the yard and he subsequently fled the scene. You dismissed the Appeal in respect of the conviction but in respect of the sentence the appeal was upheld, and you interfered as the Appeal Court to reduce the sentence from a life in imprisonment to 25-years in imprisonment. Which with I do not particularly have a quarrel with either cause I think in practice it more or less boils down to the same. But what I do have a problem with is that you say in your judgement; "the following factors persuade me that substantial and compelling circumstances do in fact exist which justify the imposition of a lesser sentence. These factors are are the following". And then you list four factors. But the second factor that you list is the one that is bothering me. And you say; "the failure by the State to adduce evidence of the seriousness of the injuries to the complainants and how this has affected her emotional state". Talking about a seven-year-old and I am just concerned that you regard that as a factor to be taken and which you, in fact, took into consideration in imposing a lesser sentence. And I am just asking you to amplify on that and explain to me why that should have been a factor at all?

Mr M Maharaj: Thank you. Thank you for your question. The Supreme Court of Appeal in State versus Vilakaze said precisely that, that you can take the fact that you decide a case of rape depending on the seriousness, whether it falls within it falls within the upper echelons of seriousness or not one of the factors is the emotional state. The nature of the injuries to the complainant and the Supreme Court held in that case that you could take that as a factor into account which we did. You must also appreciate the fact that an Appeal Judge I -

COMM C.P. Fourie: Sorry just to interrupt you in the Supreme Court of Appeal case -

Mr M Maharaj: State versus Vilakase.

COMM C.P. Fourie: What was the age of the complainant there?

Mr M Maharaj: Twelve. There is two judges sitting on Appeal in the matter. I think that one was Judge Bezuidenhout as well. So it is not a question of one Judge having his views as to whether the sentence ought to be reduced or not. It is a collaborate of issue. You must also appreciate the Supreme Court of Appeal also had in State versus PB that substantial and compelling circumstances the term is so elastic it could include any mitigating factors. So we felt that that sentence ought to be ameliorated and is the reason for that. Not the fact that rape is any less serious, I think in the judgement I go on to say that rape is a despicable crime. It is just that we felt that life imprisonment was not warranted in that particular instance. That is as far as I can take it, sir.

COMM C.P. Fourie: I said I do agree with the sentence, but I have a difficulty with a seven-year-old complainant to use that as a factor to justify a lesser sentence.

Mr M Maharaj: I appreciate and acknowledge the difference, sir.

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

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

COMM L. Nkosi-Thomas: Thank you, Chief Justice. Good morning.

Mr M Maharaj: Good morning, Commissioner.

COMM L. Nkosi-Thomas: I just have one question to you, Mr Maharaj. Taking into account the following factors; that you have, as far as I could determine, no civil litigation experience in that you are said to be temperate and you require to do work in the way you carry yourself as a Judge in open Court. You have seen what the BLA and it has likened your manner as that which obtained in the pre-1994 era. Now that is a very serious assertion to make. And also the fact that you have acted only for a period of seven months. Now my question to you is taking all of these factors cumulatively would you still maintain that you are ready for judicial appointment?

Mr M Maharaj: Thank you for your question mam. Just the last session was not included. The last two months from 29 January to 1st of April, so it makes it a total – neither here nor there – but a total of nine months. The point I wish to stress Commissioner is the fact that having been in the High Court. Having discharged the functions of a Judge in terms of the Civil work whether in motion court whether in the civil trial, whether in the case flow court I have done the work. I take your point that perhaps it may not just be as much experience in terms of Criminal Law, but you must also appreciate the fact that sometimes when you are invited to the High Court you are allocated to do crime, civil, appeal or motion court or purely civil. So that decision as to what you will do in the High Court is based on either the Judge President or the Deputy Judge President as to where they would best utilise you. So in terms of the nine months in total, four of those months included civil, five were criminal.

COMM L. Nkosi-Thomas: Yes, my question is taking all of this factors cumulatively -

Mr M Maharaj: I, I-

COMM L. Nkosi-Thomas: -- Do you consider yourself appropriately qualified or you could use more time? Acting time?

Mr M Maharaj: With respect, I believe that I am appropriately qualified to be appointed.

CJ M. Mogoeng: Mr Maharaj just a quick one in the interest of time. The Regional Court President has according to your CV requested you to preside in matters in various courts in KZN, Regional courts.

Mr M Maharaj: That is correct.

CJ M. Mogoeng: Did you come across any of those stations, for want of a better expression, where Regional Court Magistrates are never there on Fridays? Or on a number of days in a week?

Mr M Maharaj: No Chief Justice, with respect, no. I have been to all of those courts because the other -

CJ M. Mogoeng: Even on Fridays?

Mr M Maharaj: Even on Fridays. Friday is a work day, Chief Justice, you have to work.

CJ M. Mogoeng: Well I know, I visited one with a Judge President and there single Regional Court Magistrate there and we were reliably informed that it is practice.

Mr M Maharaj: No, no I am not aware –

CJ M. Mogoeng: And it is, I must say, it is one of the stations that you have been to. I have gone through this list I see it is there.

Mr M Maharaj: Yes.

CJ M. Mogoeng: So?

Mr M Maharaj: I, I cannot recall when that would happen. But normally if one has finalised ones roll one would leave. Perhaps 1 o'clock, 2 o'clock depending on what is on your roll.

CJ M. Mogoeng: Well we were there, was it about 10? Or earlier?

JP: Just shortly after 10.

CJ M. Mogoeng: Just around 10 o'clock. Not a single Regional Court Magistrate. So you do not know?

Mr M Maharaj: I do not know about that.

CJ M. Mogoeng: Very well. You are excused, sir.

Mr M Maharaj: Thank you very much.