



# JUDGES MATTER

**Judicial Services Commission interviews  
1 October 2018**

**Free State Division of the High Court  
Interview of Judge C J Musi**

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CJ M. Mogoeng: Good afternoon Acting Judge President Musi.

JP C. J. Musi: Good afternoon, Chief Justice and good afternoon Commissioners.

CJ M. Mogoeng: Are you well?

JP C. J. Musi: I am well, thanks Chief Justice. Yourself?

CJ M. Mogoeng: Thank you, I am very well, thanks. When did you begin to work?

JP C. J. Musi: I started to prosecute in the Western Cape 1986.

CJ M. Mogoeng: 1986?

JP C. J. Musi: Yes.

CJ M. Mogoeng: Until?

JP C. J. Musi: Until 1991, I became a Magistrate.

CJ M. Mogoeng: Was your Afrikaans already good? Or did you pick up a bit of Afrikaans there?

JP C. J. Musi: Well, I do not know what the level really was, but I picked up a lot of Afrikaans in the Western Cape, yes.

CJ M. Mogoeng: And you are now provisioned in that language?

JP C. J. Musi: Very much so.

CJ M. Mogoeng: Yes. And for how many years were you a Magistrate?

JP C. J. Musi: I was a Magistrate for about 6 years, then I became a Regional Magistrate, which was also about 5 years.

CJ M. Mogoeng: 5 years. And for how many years have you been a judge?

JP C. J. Musi: I have been a judge for 13 years. I was appointed effective the 1<sup>st</sup> of June 2005. I acted for approximately three terms for that in the Northern Cape.

CJ M. Mogoeng: Yes. And when were you appointed Deputy Judge President?

JP C. J. Musi: It was in 2016.

CJ M. Mogoeng: Yes. What are the challenges there? And what have you briefly been able to achieve from the time you came in and deputising for the JP?

JP C. J. Musi: Thank you, Chief Justice. Firstly, we had a problem with appeals. Because appeals coming from the lower courts, especially the Regional Courts to the High Court was a bit slow. I then identified the main reason therefor, what happened is there was a decision that the legal aid because the legal aid is *dominus litis* in the appeals that the appeals should go to the legal aid. And that the legal aid attorneys will then scan the appeals and if an appeal is ready they will communicate with the director of Public Prosecutions, Free State, and the matter would only be set down thereafter. When I inquired I was told that there are approximately twenty-four cases at the legal aid, which have not yet been processed. The cases were there for approximately two months. I then requested the clerks to write to legal aid so that all the matters should be brought back to the court. When I had a meeting with Ms Smith of the legal aid, they informed them that the problem with most of the records is there is a lot of inaudible. I said well if a record is depleted with inaudible the people to do the reconstruction is the clerk of the court in conjunction with the magistrate, prosecutor and the attorney or the accused in cases where the accused are not defended. I then started a process to make sure that all those matters go back to the district court so that the necessary can be done. That is the reconstructions in the sense that the clerk of the court must get the magistrates notes, the notes of the attorney if there was an attorney, the accused and the prosecutor. That was done what we now have, for an example on our court roll, we do appeals on a Monday. We would only have two appeals but the arrangement is as and when the appeals become ready they must be put on the court roll and in that way we can eradicate those matters that were at the legal aid. But in terms of backlogs, there are only 3 matters which are, at this stage, backlog. Because they were removed previously by legal aid.

CJ M. Mogoeng: Yes. You can proceed, did you want to say more?

JP C. J. Musi: Yes.

CJ M. Mogoeng: Yes please proceed.

JP C. J. Musi: The challenges. I have also started a continuous roll. In the Free State, we did not have a continuous roll, in the sense that a matter is set down for 2 weeks if, for example, only 1 or 2 days extra are needed to finalise the matter, the matter is postponed. Invariably the matter would be postponed to the next term or the term thereafter. I have then spoken to some judges and I told them, and also the legal aid where the legal aid is involved that please people if there is only 1 day needed, the DPP will call my office and I will then arrange that the matter rather continues the next week. If it is only 2, 3 days then the matter can be finalised. I would arrange for another judge or go to court myself if I am available.

CJ M. Mogoeng: Yes. Now you know that the norms and standards require that judgment that is reserved be delivered within 3 months, but that is just for our internal processes is it not?

JP C. J. Musi: Yes.

CJ M. Mogoeng: So that if you have not finalised your judgement within that period, the head of court can then approach you and say: "Watch out, you are going towards the dangerous zone. Are there challenges? Do you need time?" Now in terms of Article 10(2) of the Judicial Code of Conduct then it specifies circumstances under which you may be in trouble if you do not deliver your judgment within that timeframe. But that notwithstanding we still have people taking as long as a year, others 2 years to deliver their judgements. What in your experience is a challenge here? Why is it that some judges still take as long as 3 years to deliver a judgment?

JP C. J. Musi: Yes thank you, Chief Justice. Well, I think 3 years is totally unacceptable. There are, however, cases that would go beyond the 3 months period, but 12 months, 3 years totally unacceptable. In the Free State, fortunately, we do not have those kinds of cases, but I am told in the busier divisions, especially in Gauteng, it is bad. Especially judges who are in motion court. Sometimes they pick up 10, 12, 15 reserve judgements and the next week they are again in court in civil trials or criminal trials and as and when they write their judgements it is just more judgements arrive or matters arrive and they have problems writing their judgements, and there are those that would say well it also depends on the degree of complexity. I know, I have heard the judges saying well in some cases they would get the papers in Afrikaans, the must precede over such matters and they would have problems. But those are anecdotal kind of –

CJ M. Mogoeng: We have some are proficient in Afrikaans with judgements that are outstanding for at least 2 years.

JP C. J. Musi: Well as I, sorry Chief Justice, as I said that is totally unacceptable.

CJ M. Mogoeng: Yes, what could be done in your view. According to your experience, what is it that should be done?

JP C. J. Musi: Well Chief Justice what we –

CJ M. Mogoeng: What would you do if you were appointed JP of the busiest divisions for instance?

JP C. J. Musi: Well I already have a system in the Free State which I think can be replicated in the busier divisions. What I have is every Monday I get a complete list of reserved judgements and it is colour coded. The red ones are those are older than 3 months. Then they have the orange ones and the ordinary white ones. The orange ones would be those that are 2 months and going towards the 3 months. In those cases I approach the judge personally, I call the judge and say: "Well look here, your judgements are now in the red. Literally in the red. We cannot have that. What is the problem?" Judge tells me what the problem is, I then say: "Well is it possible for you to deal with at least these ones that are in the red within the next 2 weeks? Or 1 week?" And I monitor it in that way. Every Thursday we have motion court and the tradition in our division is that reserved judgements are delivered on that Thursday. The registrar's office by 11 o'clock on that day, sends me a list of the judgements that were delivered. I then update my list and if, for example, a judge has promised to write a judgement or deliver the judgement on that Thursday and it is not been delivered I go to the judge and I tell the judge in no uncertain terms that it is totally unacceptable. The judgement must be delivered by tomorrow or whenever. Depending on what the problem is. But the minute that a judge promises that a judgement will be delivered the Thursday I keep the judge to it.

CJ M. Mogoeng: Yes. Now judges president play a supervisory role over the magistracy.

JP C. J. Musi: Yes.

CJ M. Mogoeng: In their respective provinces. You know that it tends to take a bit long before cases are finalised in the magistrate's court. With your experience as a magistrate, I then asked you to assist with a compilation of credible performance-related statistics. What are the challenges, briefly, with the magistracy? What is it that causes the delays and what is it that needs to be done to move us from there to an acceptable level of performance?

JP C. J. Musi: Thank you, Chief Justice. You would recall, Chief Justice, that the first problem which we identified was that there were no set and discernible key performance indicators, firstly. Secondly, magistrates would receive cases, the matter would first go to the internalisation court, even if a matter is ready for a guilty plea under certain circumstance, the matter would be postponed. In the Free State specifically the Gold Fields Region, they have a big problem with illegal miners. The Chief Magistrate and I went and I looked at the court rolls because they were just sky high when they send me the stats. I then found out that what happened is the Director of Public Prosecution would charge illegal miners for being illegally in South Africa for being in the mines illegally but also for attempted

theft. Now normally if it is a question of being illegal in the country and trespassing, illegal mining, there would be a fine or in the extreme cases imprisonment, but immediately thereafter the person is extradited, send back, to his or her country of origin. But with the attempted theft being included, where there is no real evidence of theft, it is now a question of bail must be set because they do not want to plead guilty on attempted theft, it was done inter alia, so well I am in the mine shaft to go and sell bread. My reason for being there was no to go and steal and therefore I plead guilty. In conjunction with the Chief Magistrate, I spoke with the Director of Public Prosecutions and asked them in how many cases do you really get a confection of attempted theft? I was told that it is a very negligible percentage. And I said to them: "Well what does the administration of justice gain under those circumstances? If we have situations where people are kept in custody because we cannot give them bail there is this attempted theft case and ultimately 2, 3 months down the line if the attempted theft case is withdrawn the person pleads guilty the matter is finalised and the person is deported. We then agreed that they will charge them on trespassing and being illegally in the country. That has helped. There was a marked reduction in outstanding cases in that entire region.

CJ M. Mogoeng: Yes.

JP C. J. Musi: With Sasolburg in the regional court I also looked at the stats. It was clear that there is only one regional magistrate there. It is clear that there is a problem, I physically drove with the regional court president from Bloemfontein to Sasolburg, sat down with the regional magistrate and said: "Well this is unacceptable, the stats are just way too high. Whenever somebody else is acting here there is indeed a reduction. Something has to be done. What can be done? What do you suggest?" She then made a few suggestions, inter alia that the court will start earlier, and she will sit longer hours. She also sat down more cases because currently as things are, regional magistrates determine their own court rolls. When the systems started, it was a good system, good innovation because initially, the prosecutors would set down matters in the regional court or regional magistrates. The regional magistrate now has his or her own diary and sets down matters. When then also anecdotally heard that regional magistrates do not use their office hours optimally. And I said to the regional court president you will have to physically go to all the regional court seats, look at the stats and then report back to me as to what remedial steps have been taken to make sure that the court hours are optimally utilised. Three weeks ago she sends me an email confirming that she has indeed done so and during our next PEEC meeting she will report on whether there has been any positive progress in that regard.

CJ M. Mogoeng: Yes. Is your PEEC functional? Are you able to resolve blockages at that level?

JP C. J. Musi: Yes, definitely, Chief Justice. We hold the PEEC meeting once every term, at least, during the meeting we obviously have an action log and we give tasks to different role players. And we have most of the role players normally under one roof. At that stage where a blockage is caused by one of the role players we normally have the decision maker. If it is in the province, you will have the provincial commissioner, we will have the representative of the Premiers Office,

we will have the director, or chief director basically of Social Services there in terms of juveniles and juveniles in custody. So after the PEEC meeting, we expect action and normally they report back. They report back directly to me and I make sure that before the next PEEC meeting they give the reports and those reports are disseminated to all the stakeholders and people are interrogated on the reports themselves and why they did not action on certain things which the PEEC requested them to action.

CJ M. Mogoeng: If you add up the entire period during which you acted as judge president what does it come down to?

JP C. J. Musi: It was approximately 6 months when the former JP acted in the Constitutional Court as well as an additional 6 months when she acted in the Supreme Court of Appeal and I have now acted from the first of June. So roughly it is about a year and about 4 months.

CJ M. Mogoeng: Yes. Are you well maybe it is a rhetorical question, let me avoid it. Now you are the one responsible for basically allowing us or disallowing us to have a salary raise if appointed, will you continue in that capacity or are you going to have to relinquish the responsibility?

JP C. J. Musi: Well Chief Justice with our current economic situation I do not know whether it is a good or bad thing to be that judge but my tenure ends next year October. I am now in the middle of comprehensive reviews to review the salaries of the Executive Legislators as well as the judiciary so I will have to complete those projects, at least. But it is not a hands-on thing, I was hands-on when I conducted the interviews of the Legislator. I have left it to the consultants to do the executive. Likewise the judiciary I have already spoken to Judge [Wegly(?) 19:06] and we already have tentatively worked out how the thing will pan out. When it comes to the magistrates it is the lower court remuneration committee they will also be consulted in that regard.

CJ M. Mogoeng: Yes. Acting Deputy Judge President van Zyl any questions?

ADJP C. van Zyl: Thank you CJ. Good afternoon Judge Musi.

JP C. J. Musi: Good afternoon.

CJ M. Mogoeng: Your mike is off.

ADJP C. van Zyl: Sorry, good afternoon Judge Musi.

JP C. J. Musi: Good afternoon Judge van Zyl.

ADJP C. van Zyl: In the report of the IAWJ you are described on the one hand as a rare breed of judicial officers, similar to none and on the other hand it is also stated that you come with a wealth of experience in leadership. Now would you say that during this lengthy period of time, during which you have been acting as judge president, that you have been able to balance and successfully fulfil your tasks as

preceding judge on the one hand but as administrator of the division on the other hand?

JP C. J. Musi: Thank you Judge van Zyl. Yes, definitely. I think the IAWJ was very kind, or too kind, in their comments. I do balance it, as you know, I go to court regularly, in fact, there is no week that goes by that I am not physically in court. I do everything; I do trials criminal, civil trials; I do oppose motions.

ADJP C. van Zyl: So you carry your weight fully with regards to the court roll on the one hand and at the same time fulfilling your administrative functions on the other hand?

JP C. J. Musi: Yes. Well, when it comes to administrative functions I think it should be contextualised because as a judge president most of the administrative functions are case allocations. When there are problems with special allocation, parties will come and see you and for that, I am always available. I am early at the office and I leave late, as you know. So it is a question of time management.

ADJP C. van Zyl: Thank you. Then in her letter of nomination our erstwhile Judge President Madam Justice Molemela *inter alia* made the following statements, and I am just going to read it to you, to refresh your memory; "*He is a team player and he has earned the respect of all the colleagues in the division as well as the stakeholders in the trust in the Free State Province. A continuation of his cohesion is obviously of crucial importance in maintaining the stability of the division.*" Do you agree with this statement? And how would you describe your relationship with your colleagues and with the other stakeholders within the province?

JP C. J. Musi: Thank you. Well, I have an excellent relationship with my colleagues as well as all the other stakeholders, especially members of the organised profession. I have had no problem with the Bar neither have I had a problem with the side-Bar. My colleagues know when it is time to work, it is time to work and I do not suffer fools gladly as you are aware there were incidences, which I perceived at that time to be somewhat racist and inappropriate and I challenged the colleagues right there in the meeting.

ADJP C. van Zyl: You were appointed in June 2005, I was appointed in February 2006, so we have come a long way and I have always experienced you as a very approachable colleague. At the same time, since you have become part of the leading team or the leadership team of the division we also became accustomed to your open door policy. Should you be permanently appointed, is there any reason why your management style would change in a way that might jeopardise the respect and good relations you currently have with both your colleagues and the other stakeholders in the division?

JP C. J. Musi: No, it ought not. Firstly, as you also know my management style has never disruptive it has always been more facilitative that is why all the changes that I made were implemental changes there is no reason why it should change.

ADJP C. van Zyl: Thank you, thank you CJ.

CJ M. Mogoeng: Thank you so much AJP. MEC Mashinini:

MEC S Mashinini: Thank you, Chief Justice. Sabona baba.

JP C. J. Musi: Sabona baba. *Unjani?*

MEC S Mashinini: Chief Justice from our side as the Provincial Government we want to make the following submission; one, is that in our view the candidate fits very well.

CJ M. Mogoeng: MEC there is a reason why -

MEC S Mashinini: Out of order call for?

CJ M. Mogoeng: Yes.

MEC S Mashinini: I can see everybody.

CJ M. Mogoeng: Yes, it is time for questions, if any.

MEC S Mashinini: Okay. No, no from our side then if Judge Musi can just tell us broadly, just shortly about the experience that he has gained to be a judge in Lesotho, for an example, just briefly.

JP C. J. Musi: That is fine, thank you MEC. While I sat on and off in Lesotho on the high court bench, I have sat in their constitutional court because their constitutional court consists of 3 high court judges who are then appointed to sit in the constitutional court there. I have sat in their labour appeal court, as well as their commercial court. The experience with regard to the manner in which papers are drafted has always been a struggle, but the practitioners there are always timeously at court. There was a big issue though with advocates taking direct instructions from the public and as you know they do not have a system of pupillage as such. After LLB you go and you practice. Many of them hold chambers at different places. I, in fact, penned a judgement where the issue was exactly where the advocates may take instructions directly from the public.

MEC S Mashinini: The area of Welcome, [Matabele(?) 26:32], the illegal mining; quite correctly so, the charges to many of those people there are basically the trespassing and also the issue of the illegal mining.

JP C. J. Musi: Yes.

MEC S Mashinini: What is it is that we can do better in the Free State to try and stop that because if you look at the repercussions in that area, number of people getting killed in that area, what is this thing from a judicial point of view? What can be done better to try and reduce that situation?

JP C. J. Musi: Well for the judiciary it is a bit difficult because we only deal with the people when they are brought to court. I was told by the chief magistrate that the magistrates in the Welkom area have made many suggestions relating to the absolute closure of the old shafts. Because what happens is the old mining shafts

are not closed down properly. The illegal miners then get into those shafts and some of them stay in there for 3, 4 months and as they go in, they create other exit and entry points to the extent that you do not know where they enter. You do not know where they exit. Two months ago I was investigating this whole thing I was told that some of them now just decide to give themselves up to the police. They do not know what the reason is, but there is speculation that it is because of the turf wars down there in the mines. Because getting killed in those mines because you go and you mine at a particular place. The rivals come and they shoot them.

MEC S Mashinini: What is the impact of delay of cases, with regard to people, after having been involved in the illegal mining and then they cross the border and they into Lesotho? Does that have an effect on the delay of the cases?

JP C. J. Musi: Well a delay in the sense that warrants of arrest are issued and the matter basically then stays in the system. But what has happened now is people who are charged with illegal mining or trespassing, and being illegally in the country are not given bail. They are kept in custody until the matter is finalised. So thereafter it is put to the Department of Home Affairs to take them back but as you also know MEC our borders are very porous and especially when it comes to Lesotho, South Africa you basically just cross the Caledon river on foot. There is no fence, there is nothing there.

MEC S Mashinini: Thank you CJ.

CJ M. Mogoeng: Minister?

JM M. Masutha: Thank you CJ, and good afternoon Justice Musi.

JP C. J. Musi: Good afternoon Mr Minister.

JM M. Masutha: If I am allowed first to declare that we do have an acquaintance by virtue of your confederal relationship we have in your capacity as head of the Public Office Barrister Remuneration Commission.

JP C. J. Musi: That is correct

JM M. Masutha: Which I must say has been very cordial and all other positive things to say the least. The PEEC as you correctly describe play a critical role in streamlining processes that would lead to speedy finalisation of matters by ensuring all the role players come to the party. What more do you believe can still be done through that system to enhance the efficiency of the running of courts and speedy finalisation of matters, based on your experience?

JP C. J. Musi: Thank you, Mr Minister. Firstly, one should look at what I would loosely call the turf wars between the police and correctional services because the police are responsible to take prisoners to court and from court when they are awaiting trial and when they are sentenced prisoners it is something that falls squarely in the purview of correctional services. But those people are held at the same prisons in most cases. Recently, about last week, literally last week a colleague of

mine sat in Kroonstad what then happened is, there were accused persons who were held at the Kroonstad prison but they were in their awaiting trial section. One of them was indeed a sentenced prisoner. They then came to the court with the one sentenced prisoner, left all the unsentenced prisoners at that prison because it is not their responsibility. The police, on the other hand, said well we do not have transport to take these people to court. So at the PEEC level, one would then ordinarily take up such issues and find out how there can be cooperation and synergies between these different departments. But what we find, Mr Minister is that the Department of Public Works or Public Works Department does not come to the party most of the times. To the extent that I, in my capacity as chairperson of the PEEC, wrote to the chief director of the province and I copied the Minister, the Honourable Mr Nxesi to complain about that because many courtrooms do not have proper court cells. Police stations do not have court cells. I recently went with the chief magistrates of Bloemfontein and Welkom to all the courts that are housed in police stations. There too it was shocking what I found there. The constant refrain was, we have written to Public Works Department nothing is happening. So in terms of the PEEC, one what we have resolved is the matter must be escalated to the NEEC and put on the NEEC agenda. Two, in order to make it more efficient if a provincial role player does not play his or her role the matter must be escalated to a national level in order to make is more efficient.

JM M. Masutha: Maybe a small request from my side would be if I could be copied some of this report from the PEEC maybe we will establish a mechanism so that we are aware because many of those institutions do report to us in a way.

JP C. J. Musi: Thank you, Mr Minister.

JM M. Masutha: Yes. The over and above dealing with some of the practicalities that result in delays in the finalisation of matters, just in terms of promoting efficiency in the justice system generally, to what extent do you believe that other measures other than formal judicial processes could serve to chief justice, extrajudicially and therefore reduce the burden of the court system to have to deal with every other dispute, it at all?

JP C. J. Musi: Thank you, Mr Minister. ADR, as you know, has been explored. In terms of Court-Annexed Mediation. Unfortunately, by most accounts, if not all accounts, it is not successful. The reason profit for its failure are also varied and diverse. Many say well the attorneys are also not really embracing it and they are to some extent adverse to it. The other problem is who pays for the mediator? Do we have skilled and qualified mediators? All those problems play into it and it makes the pilot projects fail and we are waiting for the role out but as you know Mr Minister the roll outs do not happen because the pilots implode in most cases. So what we can do is to see whether we can try and re-instate as it were. The ADR system of Court-Annexed Mediation. But we should make sure that the system is of such a nature that one in the civil cases, the judicial officer must also play an active role to say well should this case not go to ADR? Then get the mediator, the mediator tries to mediate the matter if it cannot then it cannot. In terms of the criminal matters, Mr Minister, we have the diversion system. Magistrates are complaining that when it comes to diversion the prosecutors will sometimes wait for the date of the trial and then say, well we cannot deal with this case now because the parties

have been sending for assessment to see whether the accused can be diverted. So that, in itself, then becomes a waste of time. How can we address that? Maybe we should think about having a more structured approach either by way of policy from the NDPP to the prosecutors as to when people should be assessed for diversion and, I think, definitely tell them that it should not be done on the trial date.

JM M. Masutha: No, I think that would certainly be useful information as we reviewing the entire criminal justice value chain framework to look at what it is that is missing in the system that can be improved upon. Hopefully, you will put forward some of those suggestions, prompted to do so.

JP C. J. Musi: Well thank you, Mr Minister, I will definitely do so because as the Chief Justice has already indicated, I am overarching in charge of efficacy in all lower courts district as well as regional courts from the judiciary's point of view.

JM M. Masutha: Thank you, Chief Justice.

CJ M. Mogoeng: Before I move on the next, did you send judges and magistrates to attend training on mediation here?

JP C. J. Musi: Yes, Chief Justice. Definitely. I was here myself.

CJ M. Mogoeng: Okay. I attended to. Commissioner Nyambi?

COMM A.J. Nyambi: Thank you, CJ. Afternoon Judge Musi.

JP C. J. Musi: Good afternoon Commissioner.

COMM A.J. Nyambi: If you can share with us the special attribute that can make you to stand out to be seriously considered for the position of the JP of Free State Division.

JP C. J. Musi: Thank you, Commissioner. Firstly, as you have already heard I from a judiciary perspective know exactly how the system works. There is the saying that a chain is only as strong as its weakest link. I can identify the weakest link because I have been a magistrate in the district court, I have been a magistrate in the regional court and I have been a judge of the high court for 13 years and a few months. All and all my experience on the bench is nearly 30 years in higher court bench. So I know exactly how the system fits in. Secondly, I have seamlessly acted in that division as a judge president and during which time the stats will show that two, the stats currently of outstanding judgements older than two and a half months is at eight. Stats of judgement that are older than 3 months as of last week in the recess is five and we always have the situation that after any recess all the judgements must be delivered and I want full account of it. So I have a hands-on approach as well. I speak the languages that are spoken in the Free State, so even litigants who come there who are at that stage undefended, and do not know where to go to and there for one of reason refer to my office by either the security or the office of the registrar I can also assist them in any of the languages spoken in the Free State.

COMM A.J. Nyambi: What might be your weakness, if any?

JP C. J. Musi: Well in terms of weakness to some extent it is a question of wanting to do too much myself. When I do delegate I always make sure that I keep an eye on the person to whom I have delegated powers to see that it is indeed done. And in that sense maybe put too much pressure on the person to whom I have delegated some of my powers.

COMM A.J. Nyambi: My last question. It is in relation to the one that has been raised by the CJ about your other role as a chairperson of the Remuneration Commission, what is your understanding if you come with recommendations and the leader of the executive decides to go against your recommendation?

JP C. J. Musi: Well mine is just a recommendation. The determination is made by the leader, the executive, his Excellency the President. So I have no choice but to accept it because my role per definition is only to make a recommendation. The decision is ultimately taken by his Excellency the President.

COMM A.J. Nyambi: Thank you. Thank you, CJ.

CJ M. Mogoeng: Thank Commissioner Nyambi. Commissioner Didiza.

COMM T. Didiza: Thank you very much, CJ. Good afternoon Judge Musi.

JP C. J. Musi: Good afternoon Commissioner.

COMM T. Didiza: How are you?

JP C. J. Musi: I am well, and how are you?

COMM T. Didiza: Fine thank you. Judge Musi, I have looked at your form and also in terms of your expertise and experience you have been involved on issues of training and transformation and you also have alluded, as you were answering on how you yourself have dealt with an issue that presented itself at a particular time which bordered on racism as you said. You have had a division that has been headed by a black woman. You have been acting in that position and you know that one of the issues that we have raised, with respect to transformation, has been the issue that relates to the composition in the bench, generally and in terms of race and gender and if I may ask you what would you do to ensure that we see woman and black woman also in your division?

JP C. J. Musi: Thank you Commissioner Didiza. Well, firstly it is a question of appointing women as acting judges, which is something that I have done. I have asked the Minister to appoint female acting judges. I have constantly done that, I have also done it now. In fact, when I could not find women in the Free State because they had other commitments, it was short notice I requested a woman from Gauteng to come and act in the Free State. And I have asked her to come back next term, to come and act there again in the Free State. So my view is, as a JP, one has to go

and look for women, enquire from colleagues, from the magistracy as I have said to you in the past, academia as well as the organised profession.

COMM T. Didiza: Thank you very much. The second question in one of the questions you were asked whether there is any matter relevant matter that you want to bring to the JSC you mentioned two; one that you are an attorney and the second one relates to your work in Lesotho as a judicial officer. I just wanted to know whether your work in Lesotho, for instance, has it enhanced your work and, you know, which you would find relevant to the work that you do in this country?

JP C. J. Musi: Thank you, Commissioner Didiza. As have said I have acted in various courts in that country. I have been exposed to their laws, they are indeed different laws although most of them are similar to ours. There are differences in new answers, one must also look at their precedence so I have gained a lot. It has changed and broadened my view as well as my knowledge on how to deal with matters.

COMM T. Didiza: Thank you very much CJ.

CJ M. Mogoeng: Thank you, commissioner. Commissioner Mpofu?

COMM Mpofu: Thank you, CJ. Good afternoon JP.

JP C. J. Musi: Good afternoon –

COMM Mpofu: Not yet. It is a bit early. I am a prophet. Thank you. There is one issue that I wanted to raise with your which was of concern to me as a practitioner the last time I was in your court. There is this thing called the certificate of urgency.

JP C. J. Musi: Yes.

COMM Mpofu: Which, in your court, is even – we have two courts in South Africa that still have that, you and the Eastern Cape. And I am just pushing my luck because the last time the candidate for the JP of the Eastern Cape after I asked about this he said he was going to abolish it. So I am hoping to have a 100% record in this concern. On a serious note, yes, it was something that actually struck me as both archaic and quite unnecessary, especially in your court because it only applies on Thursdays, on the days of the opposed motion. The experience we had, I mean we had 6 practitioners, 3 per side, all from Jo'burg who did not know about that rule, which I suppose was our fault. But then we ended up holding literally a full bench for the whole day debating whether or not they should have a certificate of urgency, which defeated the entire purpose. And needless to say by the time that issue was decided the day was gone. Then, fortunately, it had a happy ending in that we came the following week but now we had to constitute another full bench, so 6 judges really ended up having to do the same thing. But the point really, of my question, is that the certificate of urgency in my view, and I would like to hear your comment, really does not serve any extra purpose because even if you do a certificate properly you are still going to have to argue urgency. It does not really get you out of the hook. Is it something that you could look into? I know what the

intended purpose is but whether it really serves that purpose or whether, as I say, maybe I just have a particularly negative experience of it.

JP C. J. Musi: Thank you, Commissioner Mpfu. Firstly, I will definitely consider it. The rules themselves make provision for urgency. You already told us now that you know what the reasons are behind it. Now it is just a question of looking at whether the means justify the ends and see whether it should not be abolished. But as you say, you know what the reason was behind it. Thank you.

COMM Mpfu: I do., thank you. Thanks, CJ.

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

COMM T. Norman: Thank you, Chief Justice. Good afternoon Judge Musi.

JP C. J. Musi: Good afternoon Commissioner Norman.

COMM T. Norman: My question really related to the one that Commissioner Didiza asked you. She read out to you in part of 20 of your application where you were asked is there any other relevant matter which you should bring to the attention of the commission and on page 7, it is part of 20, paginated page 17.

JP C. J. Musi: 17?

COMM T. Norman: Yes.

JP C. J. Musi: Yes.

COMM T. Norman: And there you say I am an attorney of the High Court of South Africa. I just want to ask you before I assume that to be correct, is that correct that you are still an attorney?

JP C. J. Musi: Non-practising, but I am. But not practising.

COMM T. Norman: Are you still on the roll of the attorneys?

JP C. J. Musi: Yes.

COMM T. Norman: And for this whole time that you have been a judge of the high court you remained on the roll of attorneys.

JP C. J. Musi: Yes. I have never applied to be struck of the roll. Yes.

COMM T. Norman: Thank you.

CJ M. Mogoeng: Why?

JP C. J. Musi: Is it necessary CJ? Because I am not practising as an attorney so I do not think it is necessary.

CJ M. Mogoeng: You are subject to disciplinary measures of the Law Society?

JP C. J. Musi: No I do not think so CJ not when you are not practising.

CJ M. Mogoeng: Yes, as Justice is a follow-up on this one?

Judge Navsa : Yes, Acting Judge President do you have to pay dues every year?

JP C. J. Musi: No.

Judge Navsa: No you do not?

JP C. J. Musi: No not.

Judge Navsa: Are there no dues called upon by the Law Society?

JP C. J. Musi: No. They have not called on me to pay any dues.

Judge Navsa: I do not think it is a – but I think it may be wrong to describe yourself as an attorney. I think that relationship has ended.

JP C. J. Musi: I have admitted as an attorney.

Judge Navsa: Yes, you were admitted but I do not think you can continue to describe yourself as an attorney.

JP C. J. Musi: Thank you Justice Navsa

CJ M. Mogoeng: Commissioner Fourie?

COMM Fourie: Thank you, Chief Justice. Good afternoon Judge Musi.

JP C. J. Musi: Good afternoon, Commissioner Fourie.

COMM Fourie: I wanted to raise that same issue with you and there is another one as well, but I am a bit confused now as to your answer. If I look at paragraph 6 of your questionnaire, page 12, paginated page 12. You therein set your career path. You say you were a prosecutor.

JP C. J. Musi: Yes.

COMM Fourie: A magistrate, a regional magistrate, a judge and a deputy judge president. Now, where does the attorney part come in?

JP C. J. Musi: Well whilst I was a regional magistrate I wrote the Bar exam and I successfully passed it and I was admitted as an attorney at the Cape High Court.

COMM Fourie: Should that not have been reflected as part of your career.

JP C. J. Musi: But it is not work experience. I have never practised as an attorney. That is why I mentioned it somewhere else. Because what this ask, is please furnish chronological particulars of employment since leaving school. I was never employed as an attorney. I am just admitted as one.

COMM Fourie: Just on your reference to; I am an attorney of the High Court. I do not think you can be both. You cannot be an attorney and a judge.

JP C. J. Musi: Admitted attorney, I think what is with the -

COMM Fourie: And on your CV I see as one of your referees you give Judge Tlaetsi as one of the referees. I know that Judge Tlaetsi is now the Judge President of the Northern Cape and he used to be the Deputy Judge President of the Labour Court and the Labour Appeal Court

JP C. J. Musi: Yes.

COMM Fourie: To the best of my knowledge that position of Deputy Judge president is now vacant.

JP C. J. Musi: Yes.

COMM Fourie: But you still refer to him in your CV as the Deputy Judge President of the labour court and the labour appeal court, is there any particular reason for that?

JP C. J. Musi: That might just be a mistake.

CJ M. Mogoeng: Have you finished Commissioner Fourie?

COMM Fourie: I am just wanting for – oh, I thought you want to have a look. Are you saying it is just a mistake?

JP C. J. Musi: Yes, it is just a mistake.

COMM Fourie: Oh, thank you, Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Fourie. Chairperson?

COMM Thandi Modise: Thank you CJ, good afternoon, Judge Musi.

JP C. J. Musi: Good afternoon, Chairperson.

COMM Thandi Modise: I think I hear you earlier on saying you do not suffer fools?

JP C. J. Musi: Yes.

COMM Thandi Modise: Which means you also speak your mind.

JP C. J. Musi: Yes.

COMM Thandi Modise: So have you ever found yourself compelled to write a descending judgement? And was it difficult?

JP C. J. Musi: Thank you. One of the comments here, I think it is by the Democratic Rights Unit, you will note in 2007, *State versus Rebaco* the JP of the division wrote a judgement, it related to whether the rape involved inflicted grievous bodily harm. The JP wrote the judgement and I descended from the JP. The third judge agreed with me, and my judgement became the majority. But it started off as a decent from the JP, and then I was only 2 years on the bench as a high court judge.

COMM Thandi Modise: Thank you. So do you think that descending judgement add positively or negatively in the development of South Africans jurisprudence?

JP C. J. Musi: My personal view is it adds positively because it gives you a different perspective from the same factual matrix or an interpretation of the law. What is actually says is that 2 people can view the same thing from 2 different vantage points and perspectives and then articulate their views and justify why they settle on a particular conclusion, which is good for the development of the law. In fact, there is a saying that today's descending judgements becomes the law of tomorrow. Because in most cases the visionaries are the decentres.

COMM Thandi Modise: Thank you CJ.

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

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

JP C. J. Musi: Good afternoon Commissioner Thomas.

COMM L. Nkosi-Thomas: In your questionnaire to us, on paginated page 16, paragraph 19, a question is asked of you; are there any circumstances known to you which may cause you embarrassment in seeking the appointment for which you have been nominated. You see that?

JP C. J. Musi: Yes.

COMM L. Nkosi-Thomas: And you gave us a response there and you said; I have been informed by Judge President Hlophe has lodged a complaint against me. Now I am not going to ask you about the merits or the demerits of that complaint I just want to find out from you has that complaint been finalised?

JP C. J. Musi: No, not yet.

COMM L. Nkosi-Thomas: So if that complaint is still pending, would it not be well advised of this body to differ consideration of your application until such time as this matter has been resolved?

JP C. J. Musi: Well I cannot speak on behalf of this organisations commission but ultimately it is your decision.

COMM L. Nkosi-Thomas: Well you – [mike muted]

CJ M. Mogoeng: You may complete the Commissioner will follow up if necessary.

JP C. J. Musi: Oh okay. No, I wanted to say that it is for the commission to decide the way forward. All that I can say is that the complaint was lodged on the day on which the matter was supposed to be heard was the second of July, I have not formally been informed about any movement. As a matter of fact, that is why I say I have been informed but the JCC has not communicated anything with me. Today is one day shy of 3 months.

COMM L. Nkosi-Thomas: Thank you. Now, the Free State Province, is a fast province, I do not know it that well but I do know that Parys a town like Parys is 330 km removed from the seat of the high court?

JP C. J. Musi: A little bit less than 300, but it is far.

COMM L. Nkosi-Thomas: It is a bit far. Now in matters, criminal one would understand that there would be the circuit courts. With a view to taking the criminal justice to the people that are far removed from the seat of the high court, but what is the situation in respect of civil matters?

JP C. J. Musi: In respect of civil matters, all civil matters are dealt with at the Bloemfontein court and there again the reason therefor is attorneys and litigants involved in civil litigation can appoint correspondence in Bloemfontein to assist them in the filing of matters and dealing with those matters. It is then just on the trial date itself that the parties will have to come to court to testify. Whereas a different consideration applies with your criminal matters.

COMM L. Nkosi-Thomas: Is this not a case that is crying out for intervention in the way you have access to justice from the civil side? And if so what measure do you have in mind to alleviate that difficulty in access if I may call it that.

JP C. J. Musi: Yes, thank you, Commissioner. Fortunately, the Minister is present. The whole idea of deputy judges president when it was mooted for all the courts because previously only a few courts had deputy judges presidents, it was also indicated that a province like the Free State might justify 2 or 3 judges president but they would then be decentralised. In other words, you will have a judge president in Bloemfontein, a judge president in Welkom en probably in Bethlehem. And in that sense, yes, in future there would be ample room to make sure that there is access to justice but you must also remember you have an infrastructural problem because then the court must permanently sit at that particular seat, as things are now, in Virginia, sometimes the high court sit in what I locally call a bunker. It is in the basement, you sit at a bench, probably smaller than this, and there is some makeshift dock for the accused person. Those are the circumstances under which high courts operate in the Free State. Now if you add that you have to cost it properly; there must be necessary infrastructure to achieve that. But in principle, I have no problem with it.

COMM L. Nkosi-Thomas: Well I am closing Chief Justice my question to you is that applying as you do for a leadership position do you have a plan to ensure that there is access to justice considering the scenario that I have painted to you?

JP C. J. Musi: Access to justice is civil matters?

COMM L. Nkosi-Thomas: Yes.

JP C. J. Musi: That is something that I will surely consider. But as I said to you the challenges and constraints are too many to say well it is something that will be implemented. But to consider it, yes, I have no objection to the idea.

COMM L. Nkosi-Thomas: Thank you.

JP C. J. Musi: That is why I thought about all the challenges to it. Because I have also considered it in the past.

COMM L. Nkosi-Thomas: I was hoping for a plan, but thank you, Justice. Thanks, Chief Justice.

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

COMM N Singh: Thank you very much, Chief Justice. Good afternoon Commissioners. I have been covered by Advocate Nkosi-Thomas on the one question on Judge Hlophe, thank you. But just generally, good afternoon Judge Musi.

JP C. J. Musi: Good afternoon.

COMM N Singh: Generally and not specific to you; the Chief Justice mentioned public office bearers Commission for Remuneration that you chair.

JP C. J. Musi: Yes.

COMM N Singh: And you did not appoint yourself, you were appointed.

JP C. J. Musi: Yes.

COMM N Singh: And they had to make provision for a Judge, but just a question do you not see the appointment of a judge to chair that commission as a conflict of interest? Because in the end you also making recommendations on your own salary? Thank you.

JP C. J. Musi: Thank you for the question. Well, the Act does not make provision for a judge, it is a person. But the practice has been to appoint a judge but the act has its own checks and balances thanks to the wisdom of the then legislature. Because what has been said is if it is a judge that is indeed the chairperson those recommendations must ultimately go to both houses of parliament when it comes to the salary of the judge. Because otherwise, you will have a conflict of interest if the judge gives him or herself 20% and members of the legislature 10%. So the inbuilt check and balances, if it is a judge it must go through both houses of

parliament. So chances there for the judge to have a conflict of interest is minimised if not irradiated because the legislator can always say; send it back.

COMM N Singh: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Singh. JP Leeuw?

JP Leeuw: Thank you, Chief Justice, good afternoon Deputy Judge President Musi.

JP C. J. Musi: Good afternoon.

JP Leeuw: I just want to find out as you allocate cases to judges, which factors do you take into consideration in order to ensure equal distribution amongst them? Without compromising the output or the finalisation of cases?

JP C. J. Musi: Thank you, Judge President Leeuw. Firstly, it will always depend on the kind of places that must be allocated. We are a very young bench, of the top of my head, yes, I think 6 of the judges of that division have less than 5 years' experience, as judges. Three of them less than a year. So I even consider that. So to me, it is not the equal allocation as in numbers but substantively equal in the sense that if I give a particular judge a very involved matter because I go through the matters. I give judge A very involved matter and judge B I would sometimes give 2 applications for summary judgement; I balance it out. I consider all those things. For instance, if it is RAF matters I give to the judges equally.

CJ M. Mogoeng: Commissioner Malema?

COMM J. Malema: Good afternoon Judge.

JP C. J. Musi: Good afternoon, Commissioner Malema.

COMM J. Malema: It is there a complaint against you by Judge Hlophe?

JP C. J. Musi: I was told that there is a complaint.

COMM J. Malema: No, no is there a complaint against you by Judge Hlophe?

JP C. J. Musi: It is difficult to answer, let me say yes for all intense and purposes because I have times without number enquired from the admin people and they said well there is such a complaint and they do not know how far is the process of it. So let me say yes.

COMM J. Malema: No, but if there was a complaint how are the complaint presented to you guys?

JP C. J. Musi: What happens is a complaint is lodged at the JCC. The JCC will then write to the judge concerned and ask the judge to comment on the complaint. And that would be the time that you are notified and then you comment on it.

COMM J. Malema: Has that happened?

JP C. J. Musi: No it has not happened with me.

COMM J. Malema: In the absence of that is there a complaint against you by Judge Hlophe?

JP C. J. Musi: Factually there still is. The process has not been followed but there is because I have enquired from the JCC Secretariat and they say, yes there is such a thing but according to me I have not been informed officially of a complaint. So from where I sit, I can say to you there is not, but factually that would not be correct because I have enquired and I was told that there is such a thing and I must just accept their word on it.

COMM J. Malema: Thank you.

CJ M. Mogoeng: JP you know, what is the meaning I do not suffer fools gladly?

JP C. J. Musi: Well –

CJ M. Mogoeng: What does it mean?

JP C. J. Musi: Well in the context that I have used it, CJ is firstly I am a person who is straightforward. Secondly, if I see that a judge has been remiss or a judge does not do what he or she is supposed to do I go to the particular judge and I tell the judge: “Look this is not on. You must do this, that and the other. Because you are here to do the particular job”.

CJ M. Mogoeng: Yes, you see I am asking because I thought I knew what it meant until I looked it up. And the Cambridge Dictionary says it seems to become angry with people you think are stupid.

JP C. J. Musi: No.

CJ M. Mogoeng: So I wanted to be clear that you do not see others as fools because they may not know what you know and therefore you deal with them in a particular manner.

JP C. J. Musi: No, definitely that is not the connotation here.

CJ M. Mogoeng: Yes. No thank you very much, you are excused, sir.

JP C. J. Musi: Thank you very much, Chief Justice and Commissioners.