



JUDGES MATTER

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Constitutional Court: Deputy Chief Justice

Interview of Justice R M M Zondo

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Chairperson, Chief Justice Mogoeng Mogoeng: Good morning, Justice Zondo.

Justice Zondo: Good morning Chief Justice, good morning commissioners.

Mogoeng: Maybe I should ask you what I ask all candidates – Are you a bit nervous or not?

Zondo: Despite the fact that I am coming to this commission for the seventh time, yes I am a bit nervous.

Mogoeng: I need to declare that I have known you since we met in 1981 as first year students at the University of Zululand, and more importantly that we have been friends ever since.

Commissioner Didiza: Thank you Chief Justice. I also want to declare that I have known Judge Zondo for a long time as a family friend.

Mogoeng: Where were you born?

Zondo: I was born at Ixopo in KZN.

I was one of at some stage nine children. I was the third and my father worked in Johannesburg so we lived with my mother most of the time. My father came home only very irregularly so that most of the time it was my mother who took care of us. She worked as a nurse aid, which was not a qualified nurse as such, and at some stage she was knitting and selling jerseys to put bread on the table for us, and to pay for our education. So most of the time it was my mother who saw to it that we had something to eat and clothes to wear and we could go to school.

Mogoeng: So your father also contributed irregularly to your upkeep?

Zondo: Yes, he actually contributed very little.

Mogoeng: What was his occupation?

Zondo: He was a labourer in Johannesburg. Actually he would sometimes be away for two to three years without him coming back, so that's how absent he was in our lives.

Mogoeng: How easy or difficult was it to become a university student in terms of resources?

Zondo: It was very difficult Chief Justice. When I had to go to boarding school, I lost a year at one stage because I had to leave as the school in the area where we lived I was at only went up to standard four. So if you wanted to study further you had to go to a faraway place and live with relatives and study. At one time – I think it was 1973 - my mother sent me a relative in another place – I think it was [?Highfless] and I started school in that area. But my mother had only spoken to the mother of the house, and when the father came back he kicked me out so I had to spend a whole year without schooling, and only the following year could I continue.

When I went to boarding school, my mother had to buy second-hand pants from the owner of a shop – the pants belonged to this shop owner's son. It was a white family and she was working for them as a shop assistant. She didn't have money to buy new pants for me so when I went to boarding school I had one pair of grey trousers and one Khaki pair of trousers only. But when I went to boarding school – it was a Roman Catholic school – the principal identified me as somebody that was deserving of assistance. He asked me about my family circumstances, and I think he could tell

that I didn't come from a well to do family and he allowed me to apply for a bursary – I think it was under the Roman Catholic Bishops diocese. That took me up to Matric and after Matric I got another one that took me to university for my junior degree.

Mogoeng: I learnt that you took a loan with regard to food – I mention these things because there are many people in this country who are poor and they could be inspired not to lose hope despite their circumstances when they hear your story, particularly in view of the position you have been nominated for. Tell us about that loan.

Zondo: Thank you CJ. When I finished Matric I was confident that I would get what was then called exemption to go to university and I was confident that I would get a bursary too. But my problem was that at home my situation was quite bad. My mother had stopped working two years before my Matric, and by the time I reached Grade 11 she said that she had exhausted all her savings. I thought that there was the expectation that after Matric I would go and help my mother, whom the whole community could see was struggling. But I wanted to go and study law, and I was determined, but I felt that I couldn't do so until I had made arrangements to ensure that while I was studying my mother and brothers and sisters had something to eat. My mother was not working but knitting and selling jerseys, but that wasn't going well.

So I decided to one day go to Ixopo and I approached a certain Indian Businessman who owned a shop and told him my story, asking whether there was any way he could give me a loan which I could use to support my mother and siblings so that after I had finished my degree I could pay him back.

Interestingly he said he would help me but he said he could not give me money but would rather give me a voucher which I could give to my mother. Once a month she would have to come to the shop and would be given the voucher to buy groceries up to the value of – I think it was R20 or R40.

And he said I could repay the money after my degree. He didn't ask me to sign anything and when I told my mother that I had made arrangements to ensure that they had groceries while I was studying she couldn't believe it and was so happy.

That is what happened for three years and when I had finished my junior degree I went back to this man – his name was Mr Moosa – and thanked him and asked him what arrangements we could make for me to pay back and he said ‘Don’t worry – just do to others what I have done for you.’ I thought that was very important and in my own small way I tried to do that.

Mogoeng: Now you hold a B Juris degree from the University of Zululand, and a LLB from Natal?

Zondo: Yes.

Mogoeng: There was a gap between the two degrees?

Zondo: Yes, what happened was that the bursary that had been paying for me when I was doing my junior degree indicated that’s how far it would go and I had to find other sources. I wasn’t able to immediately find other sources, so I looked for a job and got a job with the Legal Resources Centre and worked there for year, and during that year I wrote to the then mayor of Durban and asked whether there was any scholarship and – I think her name was Mrs Scotts – she wrote to me and told me that I should get in touch with the Sunday Tribune as they had a certain scholarship. And they provided me with a scholarship to do my LLB degree which I then did the following two years.

Mogoeng: And at some stage with the Mxenge firm – what were you doing, briefly?

Zondo: I was doing articles at that time – I think it was 1985 to 1986, and after Mxenge had been assassinated I went to another law firm – Mthembu & Co and after that to another firm, Chennels Albertyn.

Mogoeng: And ...this is very strange – I believe you hold three LLM degrees. Is that correct?

Zondo: Yes

Mogoeng: And I understand that when you graduated in 2005, two masters were conferred on you at the same time and one was Cum Laude. Is that correct?

Zondo: Yes that is correct. Two were conferred on the same day. What happened is that I had registered for an LLM which was going to be course work plus a mini

dissertation. But after some time I thought that I could turn the mini dissertation into a full dissertation for an LLM. And I arranged that with the university – to do another paper – one of them I did for three years and the other for two years – I can't remember.

Mogoeng: And this one which specialised in Commercial Law, what specific courses were you taking?

Zondo: I think one was trademark law, another was competition law.

Mogoeng: And the third one was on Patent Law?

Zondo: Yes

Mogoeng: Now you have been a judge for twenty years now and Judge President for just under eleven years?

Zondo: Yes.

Mogoeng: Of the Labour Court and Labour Appeal Court?

Zondo: Yes, that is so Chief Justice.

Mogoeng: And you were also the first chair of the governing body of the CCMA?

Zondo: Yes.

Mogoeng: And any leadership experience from there to write home about?

Zondo: Well Chief Justice, I think I gained quite a lot of experience from there. This was at a time when the CCMA had just been established and there was a Governing Body on which sat representatives of organised Labour and Government and organised Business. And to be chairperson all of them had to agree on you and you had to enjoy their confidence. And I was honoured to be asked to be chairperson and since it was a new organisation there was a lot of work to be done in terms of planning.

We had to say how it was going to operate and what policies it would have. And I remember at one time we went to Cape Town and spent a whole weekend on strategic planning, so definitely I gained some experience there.

Mogoeng: And as Judge President you were part of the body known as Heads of Courts under the chairpersonship of the Chief Justice that provided leadership to the entire judiciary?

Zondo: Yes, that is so Chief Justice.

Mogoeng: And – I know because I was part of that committee – there is that committee which was established to look into issues of race and gender discrimination in the judiciary, chaired by Chief Justice Langa, that you and I were asked by our colleagues to serve on.

Zondo: Yes, that is true Chief Justice.

Mogoeng: And there are recommendations of course on how to deal with those issues.

Zondo: Yes.

Mogoeng: And you also initiated – we responded to your initiative – to set up the committee that sought to resolve the sensitive issue of the sensitive issue between the Constitutional Court judges and Judge President Hlophe.

Zondo: Well your memory may be better than mine, but I remember I was involved, but I can't remember whether I initiated it or not.

Mogoeng: And the first meeting was at the Labour Court.

Zondo: Yes now I recall, you are right Chief Justice.

Mogoeng: Our fear was that it might take years before it was resolved and a lot of damage might be done to the reputation of the judiciary in the process.

Zondo: No, now I remember quite well Chief Justice ... we had that meeting at the Labour Court and that was one of the decisions we took.

Mogoeng: And presently you are chairperson of the committee comprising Justice Jafta, Justice Khampepe and Justice Mhlantla that has been charged with the responsibility to organise the Congress of the Conference of African Jurisdictions in Africa.

Zondo: Yes that is so Chief Justice

Mogoeng: The conference that will take place from the 23rd to the 26th of this month.

Zondo: Yes that is so

Mogoeng: And you have been to represent me when no one was available at the meetings of the executive bureaux of the CCJA – twice at least.

Zondo: Yes, that is so Chief Justice.

Mogoeng: Now what contribution to you hope to make, what role do you hope to play if appointed Deputy Chief Justice, in ensuring that courts deliver better than they have been – in your own words? Just very briefly. I know you are a man of detail – your judgments tell. In your own words, what have you identified as challenges call for further attention? What more should be done over and above what is being done? Where should more emphasis be laid? In a nutshell, give us your vision.

Zondo: Well I see the role of Deputy Chief Justice, if I was to be appointed, where the incumbent gives support and assistance to the Chief Justice, and shares views with the Chief Justice on various issues relating to the courts and the judiciary. I am aware of various measures that you have put in place for example, that are meant to address a number of problems and challenges within the judiciary and the functioning of the courts. You have the NEEC, you have the PEEC, all of which bring together stakeholders for the purpose of saying where are challenges that affect adversely the functioning of the courts and what should be done about them. Now I for one would like to play quite an important role in that regard because one of the things that the courts must strive to do is to ensure that they service they give is good service to the public. Now good service in relation to the courts means that judgments are given timeously and are judgments that people can look at and say 'Even if I don't agree I can see that the judge applied his mind to it'.

I also think that with regard to various cases, it might be important that there be a discussion about whether – to the extent that there is some limited role for mediation in our courts – whether we shouldn't have a much bigger role for that. In this regard I think that if we were to have carefully considered mediation in regard to many disputes, that would ensure that workload that judges end up having to deal with is

reduced. I take the example of the CCMA. In regard to labour disputes the CCMA has got a system of conciliation which is a form of mediation, and they have carefully trained mediators who have knowledge of the field of labour disputes. They play a very important role in resolving a number of disputes - I think there are thousands in a year. If that structure wasn't there all those disputes would have to go to the Labour Courts. But one needs to be careful because there may be other dynamics in relation to disputes that are not the same as labour disputes. So it may be necessary to look very carefully at what kind of disputes may be dealt with properly in that regard. I also think that it is important that the case flow management system that you have already put in place be used very effectively. I have spoken to a number of JPs and I understand that it is working, and there is no need to interfere with something that is working well. I also think that it is important that the leadership in the judiciary be able to make a contribution to jurisprudence, and I think I could play that role.

But also, as you have said, I have quite a lot of experience in heads of court issues. For about ten or eleven years I was part of the heads of court, but also Chief Justice, when I was in the Labour and Labour Appeals Court, one of the things I was looking at was that a lot of matters that take quite long to resolve are trial matters and motion matters seem to take much less time to be finalised. Partly that is because a judge can hear two or three or even four motion matters in one day, whereas if it's a trial you might be looking at up to three days. So one of the things I would like there to be a discussion about with members of the profession is whether it is not in the public interest that as a rule certain matters were not brought to court by way of affidavits.

The idea is that whereas with a trial, parties and their lawyers tend to withhold evidence until close to the trial, whereas if you are bringing a matter by way of affidavit you are forced to put up your evidence on affidavit so that the other side knows exactly what case they have to meet. The result is that in no time everyone knows exactly what evidence there is against them or in favour of a particular outcome and if they need to reconsider, they might settle the matter, whereas with trials it can take some time when a party knows that they do not have evidence but they just hope that with cross-examination, they might win. So it may well be that this is something we should look at as it may cut the time needed to finalise some matters.

Mogoeng: The version that we have started applying and in fact last Friday the heads of court had a draft that sets out an approach to a number of issues, all of which are designed to ensure that cases are finalised expeditiously, that provides that as part of judicial case management, you always have a judge running pre-trial conferences for both civil and criminal matters in liaison with the parties so that he or she is able to satisfy himself that issues have been concretised and witnesses that are relevant have been identified and where people have been charged with say 350 counts, you identify key counts and prefer those against the person. If there is proper monitoring and no cases enrolled unless they are trial-ready, then you achieve the same objective.

Zondo: That is true Chief Justice. It is also necessary to look at what can and should be done in say RAF matters, because they could be settled much earlier. The state ends up paying a lot of money either because either the lawyers for the fund did not look at the matter properly, or only did so closer to the trial. Had they done so they might have settled the matter much earlier, even for a lower amount. But also there are other matters where the state, if it could look at trying to resolve matters much earlier they can do so. So it may be necessary that there are a number of areas that can be looked at to say: where can we look at the way things are done to make sure that one, we save on the use of public money and two, we ensure that disputes are effectively resolved much earlier than they are at the moment.

Mogoeng: Digitisation or court modernisation?

Zondo: Yes Chief Justice, you have under your leadership appointed one of the Judge Presidents to look into the issue of digitisation and I had the opportunity of speaking to the Judge President who is chairing the committee that is doing that, and I think that is a very good idea. In terms of that project, what is being looked at is to make sure that the court system and the filing and management of cases once they have been filed in court is going to be done to a very large extent electronically. A computer will be put in place so that as and when a lawyer or litigant takes a certain step, that system immediately identifies the next step that needs to be done and it would any also enable the head of court to monitor the progress of various files without difficulty. It is also going to make sure that heads of courts are able to monitor reserve judgments much more easily than has been the case up till now.

I think that it is a very important project and it will also solve what is a very big problem in some divisions and that is the falsification of court orders, which I understand has been quite prevalent in certain divisions. I know that when I was in the Labour Court and Labour Appeal Court we did have some cases where people were presented with what appeared to be court orders issued by judges in the Labour Court when actually they were fraudulent. This will ensure that this problem is taken care of and will also deal with the problems of files that have been stolen or lost in court, because now all the information will now be kept electronically.

And I understand that lawyers who need to send messengers to court to get various documents – they won't have to do that because they will be able to access documents electronically. I think it is going to be quite an important advance in our legal system, Chief Justice.

Mogoeng: Well one of the things you would have to help us with if appointed would be what appears to be fraud in relation to medical negligence claims and settlements are entered into under questionable circumstances, and sometimes people are ready to settle those because they trust practitioners, and a number of other cases relating to arrest and detentions.

In terms of your contribution to the development of the jurisprudence, I see that your labour law and labour court judgements – those published you have favoured us with are 105 -

Zondo: I don't know the exact number, but that must be so.

Mogoeng: And the Constitutional Court 43.

Zondo: Yes, 44 from last week with the latest hand down.

Mogoeng: Now on average we write four judgments per year, but yours is much more. Have you worked out the average? And it's important because at some stage people thought you were delaying finalisation unnecessarily.

Zondo: I haven't worked out the average but I think last year I wrote 17 judgments. Out of those 17, 15 were handed down. The two that were not handed down had been completed but the reason they were not handed down was that in regard to one I was dissenting from a colleague in regard to remedy and after he had read my

judgment he said 'No I think you were right and if you don't mind can I just take parts of your judgment and incorporate it into my judgment.' I said that was fine and he changed the outcome in his judgement, and so there was no need for me to proceed with that judgment and have it handed down. The other was that there was an issue on locus standi and if I upheld the point on locus standi, there would be no need to write on the merits, but because I was writing for many colleagues, I decided that I would write a judgment on locus standi and write a judgment on the merits so that if I was persuaded by my colleagues that I was wrong on locus standi there would be a judgment ready on the merits. But what happened was that the majority of colleagues agreed with me on locus standi and therefore it became unnecessary to hand down the judgment on the merits. In the year before I am not sure that I wrote about eight judgments – that's in 2015 Chief Justice, but I've usually written more than four.

Mogoeng: And on average you really are the one judge that writes more judgments than all of us.

Zondo: I think that that would not be wrong Chief Justice.

Mogoeng: But that has not occasioned unacceptable delays, has it?

Zondo: No.

Mogoeng: Is there room for a colleague at the Constitutional Court in particular to delay more than is acceptable or excusable?

Zondo: I think there is no room, Chief Justice.

Mogoeng: There is a cry for women to assume leadership responsibilities even within the judiciary. Now you have been nominated by the President, and obviously you are not a woman. But I must say I was struck by something coming from the International Women Judges Association. Referring to you - "he showed formidable leadership on gender issues. During his tenure he met the gender transformation challenge. Before his tenure not a single women judge had ever acted in the LAC. During his term of office he appointed various women to act both in the Labour Court and in the Labour Appeal Court. His earlier women appointees in the Labour Appeal Court moved to higher courts. Justice Bess Nkabinde became a justice on the

Constitutional Court and also acted as Acting Chief Justice for a period. Justice Maya went to the SCA where she will hopefully be appointed president of the SCA. Justice Tshiqi acted in the Labour Court whilst being in private practice as an attorney and was later appointed to the Gauteng local division High Court and later to the Supreme Court of Appeal. Justice Khampepe was appointed to the Labour Appeal Court in 2007, and by 2009 had moved on to the Constitutional Court. Justice M Leeuw was appointed to the Labour Appeal Court and later acted in the Constitutional Court and later became Judge President of the Northwest High Court division. Justice Zondo is sensitive to the challenges facing women in their appointment to the judiciary, and has been instrumental in recommending a female colleague as acting Deputy Judge President of the Labour Appeal Court. His consistency in trying to achieve a gender balance on the judiciary has been characterised by leading and being proactive. It is clear that Justice Zondo has the ability to visualise the future needs of our judiciary, but also has the ability to achieve those goals in regard to race and gender transformation as described. His purpose and mission from his early years as a judge to this day show qualities that will serve him well in his position as Deputy Chief Justice of South Africa. And the Acting Deputy Judge President they are referring to is Justice Khampepe. Is that right?

Zondo: Yes.

Mogoeng: And they end up saying that they unequivocally recommend you for appointment. Any comment?

Zondo: Well Chief Justice, the support from the South African chapter of the IAWJ was quite humbling to me. I am grateful, but what they say about my efforts to give women opportunities is factually correct.

Mogoeng: I think I must leave you now to colleagues to put questions to you. Colleagues?

Commissioner Motimele: Thank you Chief Justice. Like you I am also very humble origins and limited means. First question – what would you say to many out there who sometimes face obstacles that seem insurmountable? What would you say by way of encouragement and advice? And second, how would you suggest that they use this document (the Constitution) and the freedoms enshrined therein to better

their lot? That's the first question. And the second and last question – The Preamble of the Constitution starts with the words 'We, the people...' How do you understand those words? Thank you.

Zondo: I think I would say to young people out there who face the kind of circumstances that I and many of the commissioners may have faced, growing up and sometimes even worse than the situations I faced, would be that education is very important. It can change your life and the life of your family, the life of a nation and it's important that they should not lose hope and that they should knock on doors to get help. Because that is what I did on that day when I went on that Saturday to see Mr Moosa and said that I wanted to go to university, but could not do so if my mother and my siblings were not going to be able to put food on the table. And that they should approach other members of society and talk to them. I wrote to people that I had never met. I wrote to the Mayor of Durban and presented my situation and the result was a scholarship. It's not just her. I wrote to an attorney in Durban that I had never met and had read about in a book about his life, and he gave me some money for some books for university at a certain stage. So one of the things I would say to them is 'don't just sit there and say you are poor.' Also they are growing up at a time when the Constitution makes provision for various socio-economic rights, and they need to use those provisions in order to better their position. And I know there are various NGOs that use these provisions to better members of poor communities. And coming to the phrase 'We the people...' I understand the phrase to talk about us – South Africans, and it is a phrase that shows in my view the centrality of the people in our constitution. How central they are and how we should always remember that we are servants of the people. Sometimes we forget that. We think of positions we occupy and forget that we are servants of the people and our job is to make sure that we help our people.

Mogoeng: You know I was saying to somebody that South Africans are the Chief Justice of South Africa. They have lent me that authority and power of theirs and if I don't serve them, then it is up to them to decide what to do with the responsibility they have charged me with. I was not born with it – my father and mother did not give it to me. It is theirs to give or withdraw. Do you share in that? That is appointed Chief Justice you ought not to behave as if you made yourself Chief Justice.

Zondo: That is spot on Chief Justice. If I am appointed to the position of Deputy Chief Justice, I will remember as I have always remembered that I come from communities that are very poor and that just because at a certain stage I became a lawyer and at a certain stage I became a judge, just because I became Judge President of the Labour Appeal Court and a justice of the Constitutional Court, doesn't mean that I am no longer part of those people. I am part of those people and I should always remember that they are very important. So if I am appointed Deputy Chief Justice, that will continue to be my attitude and we always have to ensure that we assist our communities and our people and we don't behave as if we are gods.

Commissioner Nyambi: My question flows from that of Advocate Motimele. I must first of all say that you inspired a lot of us from those beginnings. What would you regard as a significant contribution based on your humble beginnings that will stand out and in keeping with the words that were said to you 'Go and do to others'?

Zondo: Thank you Commissioner. Well I wouldn't want to talk about names but I have over the years made sure that there are young people, students that come from needy families where I have contributed to their schooling. Sometimes I contributed to their being able to buy groceries. It is something I intend to continue to do as long as I earn some income. I will make a contribution to help others. Because if there were no people who were prepared to share what they had by helping me, whether it was people who contributed to a bursary of the Bishops Conference or whether it was people like Mr Moosa, I would never have gone beyond Primary School, beyond Grade Seven. I have gone as far as I have because they were people who were prepared to assist me. I have worked hard but there were people who were prepared to assist me and I must also assist others.

Nyambi: I've seen that at some stage you were a chairperson of the Language Committee of Heads of Court, and currently in South Africa the issue of language is a very serious problem. So with that experience of chairing such a committee in the past, what might you consider to be the challenges?

Zondo: Well commissioners, I must say that I think I have lost that debate already because as you might have picked up in the documents there was a majority view and a minority view in the report prepared by that committee. Part of the concern was this: English speaking and Afrikaans speaking South Africans under apartheid

had the opportunity of going to court and testifying in a language that the magistrate or judge knew and could use to talk to them, whereas with regard to Africans, most of the time you had to use English or Afrikaans or there had to be an interpreter so one of the issues we in that committee were concerned about was whether under democracy it should not be possible for somebody from a township or a rural area who has a case in the Magistrate's Court for example, where the magistrate is African, the lawyers are African and the prosecutor is African, whether it would not be possible to have the proceedings conducted with everyone speaking an African language, whether it is IsiSotho, IsiTswana, IsiZulu or IsiXhosa, so that they could just experience this justice in their own language as well. But there are certain problems that we identified in regard to that and I think that is why the position that the Heads of Court took was that English would be the language of record and that makes things quite simple in terms of appeal and the keeping of records and so on, and that maybe the position of trying to accommodate African languages was something that couldn't work properly because of logistics. One of the things we had to look at was you don't want a situation where someone who speaks English or who is white or speaks Afrikaans might then say 'I want a magistrate to deal with my case who can speak Afrikaans', so there are some challenges and I think that in the end the decision that English should be the language of record is, on reflection, the correct one.

Nyambi: As an experienced judge, is it correct for a judge to write an opinion for a newspaper criticising a politician or in the public space?

Zondo: I would advise against it. Despite the fact that we all have freedom of expression, I would advise against it.

Nyambi: My last question – what would you regard as a constructive way of engagement between the judiciary, the legislature and the executive?

Zondo: I relation to?

Nyambi: It is linked to the previous question – what would you regard as a constructive way of engagement between these three arms?

Zondo: I think they should have meetings from time to time, but I would think it important that what they discussed be made public. I wouldn't want a situation where

the citizenry wondered what they were talking about. Or whether the executive was saying to the judiciary – you must stop what you are doing, these judgments have been too hard on us.

I think it should be by way of constructive meetings. But I think it is important for all stakeholders, for the three arms of the state, for all the personalities involved, not to be oversensitive. Some criticism is inevitable and should be permissible. There must just be certain limits. But I would think that regular meetings between the three arms of the state would be the right forum to raise certain issues.

Commissioner Notyesi: Recently, just a few weeks ago, the National Association of Democratic Lawyers resolved that law needs to be decolonised. And inherent in that is this issue of languages. Now would you agree with me that the time has come for the indigenous languages to form part of the LLB?

Zondo: I think that that is the right thing and actually it should have happened a long time ago. I know that certain universities have already made decisions in that regard.

Notyesi: And do you agree that it should not just be optional but a compulsory requirement that candidates for the LLB have to do at least one of the African languages?

Zondo: I think I read in the media that one or two of the universities have made it compulsory. But I don't know that I would go as far as that. If they think that is the way to go, I'm happy, but I haven't done enough research to see whether it should really be compulsory or merely encouraged. But those who have looked at it and said we should have it as a compulsory subject, I am very happy with that.

Notyesi: I understand that when you did your LLB it was necessary to do Latin. Why then would it be difficult for South Africans to have to do one of the African languages?

Zondo: I know that what you are saying in relation to Latin applied to many law students. I did Latin for five years at High School before going to university. I know that Latin was compulsory and maybe because it's a language that is not spoken, which is obviously not the same for other languages we are talking about. Many students ended up taking longer to finish their degrees because of it because in

relation to Latin there were certain challenges but as I say, I wouldn't say it should not be compulsory but I haven't done enough research to say that as opposed to being encouraged, it should be compulsory. But those universities who have looked into the issue and conducted research and come to the conclusion that it should be compulsory, I applaud that.

Notyesi: Just to follow up, let's say you go in Tembisa or [inaudible] and complain at a police station and lay a case before an African and they understand (the language very well) but the statement has to be translated into English. Does that make sense?

Zondo: Well put it this way – I think that there must be a lot of cases which go a certain route in terms of outcome because of language problems. I don't know why in the scenario you sketch a Zulu-speaking police officer shouldn't take the statement in IsiZulu when the complainant or witness is someone who speaks IsiZulu, and to the extent that they might need to translate it for people who don't understand IsiZulu that might be something else, but if they took statements in the language of the witness or the complainant, it would avoid problems. When I was in practice I remember that very often an accused was shown to be a poor witness because when he or she gave evidence there were a lot of things that were not in the statement and the statement was taken in English. And sometimes when confronted by the defence lawyer and asked 'Did you tell the police this or that?' they would say 'Yes I told him but he said it is not important.' So I think there are a lot of cases where injustice happens because of problems like those.

Notyesi: Do you think that practices such as referring to judges as M'Lord or M'Lady is still an appropriate thing to do at this stage?

Zondo: I think there are a lot of people who think it is not acceptable. For me 'Judge or Justice' is good enough.

Commissioner Fourie: Two issues that you touched on relating to the practice side of things that I would like to touch on with you. You referred to motion procedure rather than action procedure as being quicker. I think there's a tendency among practitioners who wish to go the motion route because it is quicker except when there are disputes of fact. And over and above that, when you proceed by way of

motion procedure well knowing of the possibility of a dispute of fact you might risk getting a costs order against your client. I understood you to say that the motion route – because it is quicker - should be encouraged, but how do you envisage dealing with those almost insurmountable problems of disputes of fact?

Zondo: I think that if we were to introduce a regime in terms of which all matters that are brought to court were to be brought by way of motion, certain things would have to change. And in that situation you wouldn't apply *Plascon Evans* the way it is applied at the moment, because you apply *Plascon Evans* the way it is applied because the applicant makes the choice of bringing proceedings by way of motion instead of action, whereas the regime we are thinking of introducing would be one where the client does not have a choice but would be compelled to bring it by way of motion. But what we would then do is when all the affidavits are in, the parties must then look at what disputes of fact there are, which is what they do even now because at a certain stage lawyers have got to say: Do we need to refer the matter to oral evidence or not? Can we win without oral evidence? Parties would then need to look at what disputes of fact there are and I think that what would happen is what happens now – that in some cases you might see there are disputes of fact A, B and C but on certain points there are no disputes of fact in which case the matter can be disposed of without going to oral evidence. But if parties feel there is no way of solving disputes of fact without going to oral evidence, then you could say 'Let the matter go to oral evidence only on the limited issues which are in dispute because the rest are common cause in terms of the affidavits that have been filed.' So I think there would need to be some change of how way we deal with some issues relating to Motion Court.

Fourie: You have referred to RAF matters and the difficulty of matters being settled very late. I don't know if you would agree with me, but that mostly refers to the quantum part of such a claim and not necessarily to the merits. Now one of the things I have advocated for many years – I haven't had much success – is that the rules still currently provide that expert summaries have to be submitted ten days before the trial – notice only has to be given 15 days before. And then it is almost unthinkable nowadays that one would then go to trial where there are various experts on both sides, without getting joint minutes. Now if you look at ten days before the trial date, and between ten days and the trial, joint minutes still have to be

obtained, it's no wonder that matters get settled or at the calling of the roll or have to stand down for instructions. Now one thing I have said for years is that it would almost solve that problem if time frames were moved back considerably and the ten days become two or three months – then there's more than enough time to resolve those issues, get proper instructions, make proper tenders and dispose of the matter well in advance, which will save enormous costs. Is that something you will promote?

Zondo: I would promote that. I think what we need to do is ... while the rules are there we have to comply and are bound by them, but we mustn't be married to the rules. We have got to say to ourselves – What needs to be done for us to achieve an efficient trial system? And identify all the things that are problematic. And that includes exactly what you have said. And that's in line with what I said about the need for a discussion about bringing all matters to court by way of affidavit. Because if you move the time periods and say those expert opinions and notices must be furnished earlier, the sooner a litigant gets the opinions of his or her expert the better because then they know where they stand but if that is left till late – say ten or 20 days before the trial and at that stage they discover that actually they have been pursuing an amount that they cannot justify, then the matter might be settled there but if they had obtained that expert opinion say a year before, they could have negotiated a settlement from a very informed position and that would have promoted a settlement So we need to say – yes the rules might say this but what do we want? The rules must serve us, the public, not us the rules. So I would go along with that.

Fourie: Then we are on the same page. Thank you Justice. Thank you Chief Justice

Commissioner Didiza: Thank you Chief Justice. There are two questions that I have. One was already canvassed by the Chief Justice in relation to your work in the Labour and Labour Appeals Court and how you promoted gender and race representivity. I will talk more about gender. It would be interesting for us on this commission to know – what programmes did you put in place to make sure that you advance the representivity of women on the court? The second question relates to the position you are applying for. I know that when you were responding to the Chief Justice you said you will support the Chief Justice and there were certain things you would do. If I were to ask you: sitting where you are in the Constitutional Court, what

do you think are the immediate challenges facing the Constitutional Court? Thank you.

Zondo: Thank you Commissioner. When I was Judge President of the Labour and Labour Appeal Court, one of the challenges I faced – and this applied particularly to black lawyers and women – was that while the Labour Relations Act under which judges were appointed both permanently and for acting purposes, required, for the Labour Appeal Court, that they needed to have specialist knowledge of Labour Law, the reality was that a lot of black lawyers and women had not had a lot of exposure to Labour Law. I must say that even among white lawyers there not many who had much exposure to Labour Law, although the situation was better than with black lawyers and women. So what I tried to do was to try and identify practitioners that I thought were sound in law because I believed that if a practitioner was sound in law, that if you gave them an opportunity in any field of specialisation, then in due course they would be fine. So I identified a number of practitioners. Some of them had had very little exposure but they were sound as lawyers and I brought them into the Labour Court. I know that at a certain stage I was being criticised in certain quarters, the criticism being that I was bringing people into the Labour Court who did not know any labour law. My position was that if we were to wait until black lawyers and women knew labour law then there would never be any change. Because in order to know labour law, apart from any studies you might do at university, you needed to be given labour law work. A lot of black lawyers and women were not getting that work so things would just not change. So I thought this was what one needed to do.

I also approached judges in the High Courts for purposes of the Labour Appeal Court. I approached them and spoke to the heads of court about the programme I had introduced in terms of which even judges in the High Court would come and act in the Labour Court and Labour Appeal Court to get exposure so that after a certain period they could be comfortable in labour law. And that programme became very popular both with practitioners who were not judges and judges of various High Courts. They came and participated. That is what I did.

With regard to the second question Commissioner, one of the challenges we face in the Constitutional Court is of course the question of transformation in terms of gender. I believe that a lot is being done but it is not just going the way we would all

like to happen. But also another aspect is that in 2013 the jurisdiction of the Constitutional Court was expanded considerably. It moved from a point where its jurisdiction was limited to Constitutional matters to those matters plus any matter of law that has got an arguable point of law of general public importance that the court might decide deserves to be heard by it. Effectively that means that there is no branch of law in which you can't find a matter and bring to the Constitutional Court, as long as you can find an arguable point of law of general public importance that the court considers deserves to be heard by it. I don't have the actual figures but it would appear that in 2010 and 2011 we might have heard about 100 and something new matters that came to court, but already in 2016 the number went up to about three hundred and something. I think the work has nearly tripled. And one of the consequences of that is that because the number of judges has remained the same whereas the work has tripled, there might be some delay in disposing of some new application matters. And one of the things we have been considering is whether we should not have a situation where, in regard to new matters, we should have a few of our colleagues, maybe three, basically deciding whether a matter should be entertained or not. At the moment the position is that all eleven justices must take part in every matter because that is what is required. Of course we can sit with eight which is the minimum required for a quorum but we just take part, all of us. The problem with saying: let's have only three decide is that that would be contrary to the Constitution. The Constitution at this stage contemplates that all of us should take part in those decisions. So it's a continuing debate. We are aware that there were very powerful reasons why the drafters of the constitution said that the Constitutional Court must sit en banc, but there are these challenges we are facing. But we wouldn't be able to have a smaller number decide some of the matters without a constitutional amendment.

Mogoeng: I would want you to say something about Commissioner Didiza's first question. Because people do not know what you and I know and other judges. They are wondering: look at how many women are in this country. What is so difficult in ensuring that courts reach 50:50?. What is so difficult in ensuring that even the Constitutional Court has a 50:50 representation at least of men and women? And I think the Commissioner's question is, what could be done to ensure that at High Court level, at specialist court level and even at SCA and Constitutional Court level,

women are more meaningfully represented than they are right now? Are we as judges or the leadership of the judiciary perhaps too conservative? Are we dragging our feet? Do we not have any ideas of what needs to be done differently to fast track the project of ensuring that there is more meaningful gender representation? What could be done to improve on what has already been done?

Zondo: Yes. Thank you CJ. The approach should be a multi-pronged approach. One of the things that may need to be done – and I think it was done some years back - is to provide some special training of identified women practitioners who have reached a certain level. Training that if you give them, you are going to make sure that soon they will be ready, for appointment to the High Court, for example and if you do that that will have an effect on the SCA and the Constitutional Court. The other one is a point which you Chief Justice have mentioned in some of your speeches and that I have also raised in the past. The issue of black lawyers and women being given legal work that will give them the experience that they need in order to be ready at a certain stage to go to the Bench. Now Chief Justice, Mr Semenya is not here but some years back while I was Judge President of the Labour Appeals Court, being concerned about this issue I called together some practitioners – we had a meeting. I think Ishmael Semenya was representing the Bar, and there were some attorneys. What I was looking at was whether we could have a programme which could be sold to certain big companies with legal departments and say to them – can we have an arrangement in terms of which you will take certain black lawyers and women and for a certain period let them work in your legal department and in due course they would come out and return to their practice – the idea being that then the company would feel confident that this person understands their kind of work and this person will feel free to give them work. And we had two attorneys – I think one was a woman from Joburg and the other was another African attorney - the woman went and spent a time, I think it was at least three months, with a big, well-known company in South Africa and she understood their work and everything but once she went back to her office they didn't give her work, and that was very discouraging. So one, I think something concerted needs to be done to ensure that a lot of women who are in practice get a lot of work. I have said on other occasions that particularly in relation to government departments - we need them to do to women and black lawyers what trade unions did to me – trade unions including those that were in COSATU as well

as those who were not – said to me when I was still in a white law firm, we want you when you are ready, to go and work for a black firm or other black lawyers so that we can give work. And when at a certain stage I left they gave me work. At that time I think they didn't have a lot of grounds to have confidence in me but they let me do their cases and brief counsel when I wanted to and it helped me quite a lot. So it's an investment that needs to be made on a long-term basis. But also in regard to candidates who are women, we all have a duty to nominate women when there are vacancies that are advertised. Whichever courts it is in we ought to look for women and nominate them. But quite often there are very few. I think that in this round of interviews there is only one woman. I think last time I don't know but I think it was men only. So we all have to ask: what are we doing because every one of us has a right to nominate.

Mogoeng: Well based on your experience, both at the Labour Court, the High Court in Pretoria and the Constitutional Court, do black practitioners and women get as much work as their white counterparts from government departments, state-owned enterprises and the private sector?

Zondo: No Chief Justice, not at all and unfortunately it's continuing. This issue has been raised over years and I know that black lawyers and women talk to certain government departments in provinces and nationally. I don't know the actual facts but what I do know is that when we sit in the Constitutional Court and matters come before us, so often it's just white.

Mogoeng: It could be as many as 20 or 26 advocates, excluding attorneys, from government departments, state-owned enterprises and the private sector and they would just generally be white. Is that so?

Zondo: Yes.

Mogoeng: And very few white women in the process.

Zondo: It is simply so and it is just unfortunate. I don't know what needs to be done. But really, at least with government departments and parastatals I don't know what excuse there is. There is no excuse. With private companies they might just decide they can do whatever they want to do but with government departments and parastatals.... it's the public's work.

Mogoeng: How challenging is it – it is challenging, isn't it? – to appoint people without exposure to the higher judiciary?

Zondo: It's a challenge, Chief Justice, because one has got to do a balancing act. If you appoint somebody to a certain position who is not ready you might just be setting them up for failure, and that's not good. So one has got to strike a balance – you mustn't wait till people are perfect. But at least they must reach a certain level where you say – they should be fine.

Mogoeng: And in terms of taking those who are not quite there to the High Court or specialist courts, what impact does that have on their possibilities of moving from that level to the Supreme Court of Appeal and Constitutional Court level?

Zondo: They are going to take some time because they have to get some experience and they are going to walk a longer journey before they are ready to go to the Supreme Court of Appeal and the Constitutional Court. But we should continue to try. I don't know but I was thinking the other day in regard to one of my concerns about transformation is that there are certain branches of law which continue to be dominated by white lawyers and white judges. You know if you go to the law reports – if it's a tax matter or a patent law matter it is going to be a white judge. There should be no branches of law from which certain sectors of our people are excluded. Now one of the things that could be done for example is that when, for example I have no experience in patent law, but I am interested and I'm passionate about it, there could be colleagues in the division where I am, who have more experience and arrangements could be made to benefit from them but also those who have retired who we know might have that experience, to say: Are you prepared to be available to this judge and that judge so that whenever they have a matter such as this they can consult you or they could even draft a judgment and you could then point out if it is fine? So we might need to look at those things including using retired colleagues because I am sure that for the purpose of transformation a lot of them should be interested in our system.

CJ: Playing a mentorship role?

Zondo: Right.

Commissioner Nkosi-Thomas: Thank you Chief Justice and good afternoon Justice Zondo. During the questioning by the Chief Justice you spoke about your vision and you mentioned as part of that the digitisation and modernisation of the court. I listened with interest to that because I think it's somewhat long overdue. I do have a few questions to put to you in that regard, please Chief Justice. The first is when should we expect that to go live – in other words digitisation - and the second is which courts are being targeted as part of that project? And the third is whether it is part of your vision to use this modernisation project to enhance access to justice - and one asks that question bearing in mind the acutely low level of literacy, particularly in rural areas. Thank you.

Zondo: Thank you commissioner. Let me correct one thing - it's not my vision in the sense that I came up with it – it is the Chief Justice's vision and he and heads of court have set up a committee headed by one of the judge presidents to look into this project and I was present at one of the heads of court meetings where it was discussed and there were experts who came to demonstrate to the heads of court how it would work. So I embrace it – it is not my idea but it is a good idea and I embrace it and I'm willing to play whatever role I can play. I must just admit that I am not as technological as other colleagues might be. But I am willing to play a part in that regard.

I took the trouble to speak to the Judge President who is chairing that committee to find out what's happening and he indicated to me that they were hoping that by the end of this past financial year to get some funds but they were not able to get funds. I think he said that they would get funds with the new budget. What they are hoping to do is to start it as a pilot project in certain High Courts. I am not sure which High Courts they will start with but I have a suspicion that it will be Gauteng because they are very big courts. In regard to access to justice, yes it is part of access to justice as I understand it.

Nkosi-Thomas: I don't mean to take too much time but moving now to another topic briefly, it's more a comment Justice Zondo, I have had the pleasure and privilege of touring the Shanghai People's High Court, and what they do there is exactly what you are suggesting ought to be done in relation to their pleadings being affidavit-based and they have achieved time and costs efficiency as a result.

Zondo: Thank you very much. I think the Chief Justice has made sure – I don't know whether it was this committee that was dealing with the matter - they visited certain countries to see how they deal with this and to see what they could borrow from them and mix with what we have and produce something that will work for us.

Commissioner Motshekga: One of the fathers of our Constitutional democracy, Oliver Reginald Tambo observed that racism was used to justify conquest, dispossession of our people of the land and its natural resources, justify turning African people into instruments of labour and justifying white minority rule. Now we have a situation where African kingdoms and queendoms [sic] were conquered at the end of the nineteenth century. Now the Union government then passed the 1913 Act which left African people with only seven percent of the surface of the country, which was increased to 13 percent in 1936. Now do you think that a state based on this fundamental injustice, which used that fundamental injustice to dispossess people of their land, do you think that the cut-off date of June 1913 is fair and just? Do you think that the Community Property Act which gives individuals the right to claim land, other than the kingdoms and queendoms who fought to defend that land and lost it, that it is fair to allow individuals and groups of individuals other than the people who lost the land, to claim the land?

Second question – the Constitution in my understanding makes English and Roman Dutch customary laws equal to African customary law, but how does that equality operate in practice when all our lawyers are taught English and Roman Dutch customary law but not African customary law? Now how can we dispense justice to more than 80 percent of the population when their law is not taught? Doesn't that make our lawyers Euro-centric rather than Afro-centric at the expense of the rights of the African people?

Third question before the last one. It took us more than 15 years to pass the Traditional Courts Bill – we are still busy with it. Now there are community courts which were developed by the people, but it appears that traditional courts and community courts are not taken seriously. What would be your attitude towards expediting the establishment of community and traditional courts? I also saw a very strange thing in the proposal by Government – to say that anybody who is not happy with the traditional courts can opt out. Do you think that it should also be permissible

that when I appear before a court and somebody wants to apply English law to me – I say ‘No I’m not English – I am opting out’. Would that be, in your view, permissible? Lastly Judge, you are very well qualified, well experienced. I am just wondering – where were you between 1985 and 1995 because it doesn’t appear that you studied any constitutional law, and what do you think qualifies you to be a Deputy Chief Justice in a Constitutional Court judge when it doesn’t appear that you studied any constitutional law?

Zondo: Okay, shall I start with the last one? Well, between 1985 and 1995 I was in Durban practising there. Oh no – I was also doing my LLB. Well let me say this Commissioner – I do not hold the view that you can only learn a branch of the law because you attend university and write exams and have a degree for it. There are many lawyers who did not study certain branches of law yet they are very good at it because they have taught themselves, they have read, they have done cases that involve that branch of law. Let me give you an example about myself. I have done a lot of labour law work. But quite frankly the labour law which I studied at the University of Zululand, which was called Industrial Law, didn’t give me much. Where I really learnt Labour Law was in Mrs Mxenge’s office, and there was no labour lawyer in that office. One of the reasons Mrs Mxenge took me as an articled clerk was, she said ‘You have been at The Legal Resources Centre – they do a lot of Labour work so you must know some Labour Law. Here we have a lot of Labour work as part of the political work we do - a lot of unions were involved in the struggle and they would bring the Labour work - and she said ‘None of us here knows this field, so I want you to start a Labour Law department’ and so she gave me a big office as an articled clerk – those who have done articles will know you won’t have an office of your own, you will share with others or move from office to office, at least during our times, I don’t know now, maybe things have changed. She gave me a big office and said ‘I want to make sure that when workers consult with you there’s enough space.’ She gave me a secretary – those who know will know that as an articled clerk there is no way you can have your own secretary – she gave me a secretary and said ‘I want you to devote yourself and do this work’ and she said ‘You must identify people who have Labour Law experience because you can’t sign pleadings, we have to sign them but we don’t know Labour Law. So when we sign them we will depend on you so we know we are signing the right thing.’ And she said

'So you must check with other people. And tell us which books you need and we will give you...' So that's what happened - and I read extensively so the Labour Law I got isn't so much Labour Law I got in university but Labour Law I got in practice.

And then of course we all know that the first team, or first justices of the Constitutional Court in 1994 would not have done Constitutional Law as we know it at university. They would have done some other kind of constitutional law where Parliament is supreme. But we all know how well those justices of the Constitutional Court, without having had formal training in Constitutional Law, how well they performed and how well they commanded Constitutional Law. So that is my answer in regard to that. In regard to the question of Roman Dutch Law, English law and Customary law, I take the view that we don't give enough attention to African customary law. And I include myself in that, because why is it that I have never written an article on customary law? But we should be promoting it, and we should be doing quite a lot in regard to it. But I hope that at some stage I will write something on African Customary Law. With regard to the Traditional Courts Bill I am not sure to what extent I am at large to express any view on it, seeing that it might well come before us if there are controversial issues. My sense is that I should probably try and avoid expressing any views on it. I might have left out one or two of the questions, I am not sure.

Motshekga: No I think that you have done justice to my questions. I just want to put one last follow-up. Whether or not it shouldn't be compulsory for all LLB students to take Customary Law and also an indigenous African language, if we are serious about treating indigenous African law seriously. And the last point is about the participation of judges in debates. I take the view that judges should be able to address conferences and express opinions on certain legal issues as part of the public discourse. What would be your view?

Zondo: Well, with regard to the first question, about whether it should be compulsory for law students to take African Customary Law, I think I would go along with that, but with regard to the language and whether it should be compulsory, I think another commissioner asked me the questions and I gave the answer – if a particular institution has done enough research and thinks it should be compulsory, then I am

happy but I simply haven't been exposed to any research to make me feel comfortable in saying it should be compulsory.

Commissioner Schmidt: Thank you Chief Justice. Judge Zondo, I would like to give you an opportunity to clarify a position that has been reported in the media under media coverage by the DGRU. It has been alleged approximately during 2007 that an amount of approximately R1.2 million was paid to you then as a judge of the Labour Court – not yet a judge of the High Court but that your conditions of service and employment were basically the same. Now that's the allegation. A: Is it correct, and B: Would you like to put it into context?

Zondo: Well that issue was raised – I'm not sure if you are aware but you should be aware because you were here as part of the commission in 2012. That issue was raised and I responded fully to it. I think what had happened was that somebody misunderstood how regulations relating to S & T work. I responded fully to it – the commission even has the document where I set it out. I said that in terms of the regulations you could ask the Minister of Justice to make a certain city your headquarters, and this is what I asked Dr Maduna and he had agreed and that then entitled me. That explanation was given and as far as I am concerned it was accepted by the Commission because after the explanation was given, no members of the interview were interested or asked me any questions about it, so that from my point of view was settled.

Schmidt: Thank you. Secondly, the answers you gave about the experience to be required by judges and acting judges, we are about to interview this afternoon a very eminent judge who, I think, was about 35 or 36 before she became a judge and there are many other judges I can refer to, who have not had the benefit of all the experience, so I think you would agree that experience on its own is not the only criterion – there are many more other criteria in terms of which you would determine if someone is suitable or not. I don't know whether you would agree or not.

Zondo: I agree.

Commissioner Malema: Thank you very much Chief Justice and Judge Zondo. Let me ask very simple questions. Now can you briefly describe your relationship with Chief Justice? I heard him declaring. Can you just tell us – what does that mean?

Zondo: Well, we are friends and we have been friends for a long time, but one of the characteristics of our friendship is, for example, that it doesn't affect our work. If at our conference in court I am out of order, he tells me that I am out of order just like he tells everybody who is out of order. We agree on certain points of law in terms of judgments – sometimes we disagree. One of the cases where he disagreed with me was Toyota, which was handed down I think last year. I stood alone in that matter and found for the employer – everyone else including him was on the other side. When I was acting in the Constitutional Court before I was appointed, he wrote a judgment. Justice Jafta wrote a dissenting judgment and I went along with him.

Malema: Judge Zondo, you are not answering the question I asked. I want you to describe your relationship with the Chief Justice. He says he is your friend – not your professional relationship. Your personal relationship. He says you met in first year and all that. We heard it from him, but I want to hear it from you.

Zondo: Well, we met at university in 1981. We did the same degree. We were friends but not as close as we became later on. But we were friends. In 1983 he went to do his LLB at the University of Natal. I worked at the Legal Resources Centre and then in 1985 I connected with him again at the University of Natal – he was finishing his LLB. I was starting my LLB but I was also doing articles. After that, there were a number of years when there was not as much communication between us because I was practising in Durban and he was in Northwest – I think at some stage he was in Johannesburg, and in 1999 he came to act in the Labour Appeal Court and we reconnected. Later on he and others were appointed as judges of the Labour Appeal Court . After some time he became Judge President – I was Judge President already. Well, I was not at his wedding – he was not at my wedding (laughs) ... I don't know whether you need anything more?

Malema: Well Judge I have a lot of questions so I will ask if it's possible that you can give us a brief response so that I can canvass all of these questions. Now he's your friend to the point where I can say he's your brother.

Zondo: Well people use 'brother' in different contexts. I wouldn't object if anybody said 'brother' and I said 'he's my brother.'

Mogoeng: May I interject Commissioner, but only if you permit -

Malema: No, no -

Mogoeng: Okay carry on -

Malema: Is Chief Justice your brother?

Zondo: Biologically, he is not my brother.

Malema: Okay ... let me ask it this way, in the context of what we have just discussed, are you the Godfather of each other's children or anything like that?

Zondo: No.

Malema: Do you go to each other's birthday parties and dinners at home and friendship like that?

Zondo: Well I have visited his home with my wife and he has been to my house with his wife -

Malema: Did you share room with Chief Justice at the university?

Zondo: No.

Malema: So this friendship is not a close friendship? Because the way you are describing it, it is a non-existent friendship.

Zondo: Well you see... I think in the past few years it has been much stronger than it may have been in certain years. But we regarded each other as friends. You may legitimately say: How come you were not at his wedding if you were his friend?

Malema: And then Commissioner Didiza – your relationship with her?

Zondo: There is no blood relationship. I met her in the '80s and we have known each other since then – I think I was at her wedding, there is a function I attended at her house at some stage, but she too - I am seeing her today but I don't know how many years I haven't seen her for, other than on TV. I presently don't have her phone number and I doubt that she has mine, but we regard each other as friends nevertheless.

Malema: Anyway, I'll canvass it later with colleagues because the earlier disclosure by these colleagues describes that you have some family bond, like you are family

friends. And I was going to ask you a question: Do you feel comfortable being interviewed by friends?

Zondo: Well, I have absolutely no problem being interviewed by friends if it's friends who are professional and who will do their job properly. So I would have a problem if I thought a particular friend was not like that. I mean ...I have just told you that with regard to the Chief Justice, we debate issues and we disagree, in court sometimes he goes with others and sometimes I go with others, it's not a problem. We understand that friendship must not affect integrity. If I don't agree with him, I don't care if all the other nine colleagues agree with him – I will say I don't agree. And that's what I said I did in relation to another colleague in the Toyota matter. I didn't care if I was the only one who was saying: in this case I think the employer must win. And there are other matters where I take my stand and that's it ... and other colleagues do the same.

Malema: But you know I'm scared that somebody else who knows of this friendship and we appoint you to go and work with your friend, this is going to be seen as a 'broederskap' friendship. Will that not damage the good image of the office of the Chief Justice? If friends are seen to be exchanging favours like this and legitimising those favours through a legitimate process like this?

Zondo: I think that those who know me and who know the Chief Justice – and I think he is quite well known – would really not be concerned in the least. And I believe he, just like Commissioner Didiza, are people of integrity and I don't expect them to do me any favour, they don't expect that I would expect that and those who know us would know that nothing untoward is happening.

Malema: I am talking about perception – I am not saying anything about any favour but from a distance - here are two friends running the most senior offices in the Constitutional Court . And perception is everything when it comes to public office. Don't you think this will have an effect on the good image of the court, real or not real? What you and me - and that's why I am here, I am always concerned about the good image about this institution called the judiciary. Don't you think that will have a negative impact?

Zondo: I think it's possible that some people might think like that, but I think that if people took the trouble to inform themselves about this process, which by now I think is quite well-known because the JSC has been there for a long time, they would know that it is highly unlikely that his friendship to me would sway all these commissioners or the majority of them to vote for me, and I think that people will attach special importance to the fact that he has declared his friendship for all to see - he even said you can ask him a lot of questions, referring to me. So yes, it may be possible that certain people would have that perception but if they took the trouble to inform themselves about the nature of this process, their concerns should be laid to rest.

Malema: Now the appointment of Justice Nkabinde as an Acting Deputy Chief Justice, what did she do to enhance the good image of the judiciary?

Zondo: Well, I think what was important as far as I'm concerned was that it sent the message that a woman could be appointed to that position even if was only in an acting capacity.

Malema: And that suggested that we have moved one further step in the right direction, particularly about issues that you have spoken very passionately about of gender.

Zondo: I think so, if you can say that of an acting appointment, but certainly if it were permanent that would be completely valid. Maybe even if it an acting one, one should say the same thing.

Malema: No I'm asking about an acting position – I'm happy that you agree with me that if had been permanent it would have been even more positive. But I'm saying that her appointment – acting – being a female – it was one step in the right direction.

Zondo: Yes.

Malema: And if we were to appoint a permanent female in that position, it will actually send a stronger message that we are committed to the empowerment of women – is that correct?

Zondo: Of course.

Malema: So if that is the case, and having fought for women for all these years, why wouldn't you decline your nomination and suggest that there must be the empowerment of a female?

Zondo: Well...

Malema: And every time people ask questions I never cause problems - I keep quiet and listen to people's questions, no matter how uncomfortable I am with those questions, and I shall be given the same respect Chief Justice. I am not here to please anyone – I'm here to ask questions.

Zondo: Well Commissioner Malema, I am here because I understand that the president wrote to the JSC and said that he is considering appointing me as Deputy Chief Justice and he would like to hear the views of this body. I thought that I don't have the same information that the president might have had at his disposal in making the decision that he made, but when I was told that this body is required to give its views about me, I said I would come and be available for the interview. I would be speculating if I tried to look at why the president made the decision that he made, but I didn't think I could decline to come here and make myself available in circumstances where I am not privy to any information that the president might have. I am aware of course subsequent to that that in relation to the Supreme Court of Appeal, the president did nominate a woman to be president of the Supreme Court of Appeal - a position that has never been occupied by a woman. But as I say, I don't want to speculate about why the president made the decision that he made.

Malema: We are still going to deal with the issue of the Supreme Court of Appeal and that is another level of the court. And now we are dealing with the highest level of the courts. And you and me - we just agreed that the appointment of an acting female was one step forward in the right direction. And therefore if we were to appoint a permanent male in a position where we had an acting female and we were moving in the right direction, don't you think we will be taking two steps backward when it comes to issues of gender?

Zondo: Well it might, I don't know if it's two - it might look like a step that goes in the same direction as the appointment of a woman colleague as Deputy Chief Justice but I don't have the facts that the president may have had to make the decision that

he made and I can't say what influenced him. It may well be that if I were to be privy to the information that was before him, I might say: 'No, this is not a good decision'. Or it may be that I would say: 'Now I understand'. But I just don't have those facts.

Malema: Can you take us through your involvement in community issues?

Zondo: Well I have been on the bench for about 20 years now and I live in Durban, but I have been in Gauteng during this period. I have not been involved in community issues as such during that time, simply because spending so much time away in Johannesburg and then skipping a weekend and spending only a weekend at home, there hasn't been much time for that, but I have had engagements with organisations such as BLA for example, and have made suggestions on some of the issues they should deal with. For example, in relation to the issue of transformation in the legal profession, I made some suggestions about the setting up of a legal transformation fund to try and assist with regard to transformation, so I'm afraid my circumstances do not permit me to play a big role in community organisations.

Malema: No, even before you became a judge, have you been involved in any community issues, development organisations – even before – not only when you were a judge?

Zondo: Yes, no I was involved. For example at a certain stage I was working in a township of Empangeni which used to be called - I think they now call it EThekweni - I was involved in regard toIn 1984 I was there, there were issues that communities and trade unions were involved in. That's where I met the current premier of KZN, that's where I also met the previous MEC for economic affairs, when I was in KZN. I was working in Empangeni and in Durban there was a time when Lamontville township was having a lot of civic issues and that's where I met Lechesa Tsenoli, the deputy speaker, I was with Mxenge's office at that time. I think there may be others, but I was not prominently involved. I took part when there were certain issues such as marches and protests and so on.

Malema: And then you said you met Chief Justice around '81 or so. That was the year when the youth were called on to make South Africa ungovernable and apartheid unworkable.

Zondo: Yes.

Malema: Were you a student activist during those times, because almost all young black people at that time played some role?

Zondo: Well, when we came to the University of Zululand, in 1981, if I recall correctly, the SRC had been banned and it remained banned for the rest of our time that we studied there. Notwithstanding that, I joined, for example you know at universities, I don't know if they have now, they would have a society of this, a society of that, there was what was called a Society of Humanities. It was chaired by somebody who later became an advocate, Mr VVV Duba, he was quite active. In a certain way it sought to try and do something in relation to issues that otherwise an SRC would take up, but it was very limited, it was very difficult, there was a lot of suppression. I was its secretary for a certain time, so I took part in that. But during that time, there was a lot of repression in terms of student activities at that university. When I was at University of Natal, I didn't take part in a body like the SRC, but I took part whenever there were demonstrations, or, that was during the time of the UDF, when for example at one time the UDF had a rally - I don't know if one calls it a rally if it's in a hall, but it was at the Student Union. The then president of COSATU, and COSATU had just been formed, I think he spoke there, Mr Patrick Lekota spoke there, Bheki Cele was translating, and Revered Nkundu was there ... So I took part in certain activities, but might not have been part of any particular body at a formal level. And this must be viewed within the context also of the fact that I was studying and working at the same time.

Mogoeng: Well Justice Zondo, I think we need to clear up a few things. I thought I was harsher on you than all other colleagues considering the comments I made on your Toyota and [inaudible] judgments. I wouldn't have been that hard with any other colleague.

Zondo: I think you were very harsh.

Mogoeng: But let's deal with gender representation. Because it's a thorny issue, worldwide. My sense is that it's such a difficult issue that even political parties – you'll find that the president is a man, the deputy is a man, the secretary-general is a man, the spokesperson or even the treasurer is a man in South Africa. Is that not true?

Zondo: No it is true Chief Justice. We just need to accept that many of us – we are trying to do our best and it's not easy

Mogoeng: Now on the question of friends working together in the same environment, wouldn't it be problematic if one of them lacks integrity or was corrupt? Because the risk is that he or she would influence the other. Or if they are both corrupt or lack integrity?

Zondo: I think there would be that danger in that situation.

Mogoeng: How dangerous could it be for men and women of integrity who are friends to be involved in the same setting? How dangerous could it be for the institution? What possible harm could arise? I'm talking about from the perspective of an informed reasonable person. Not an uninformed unreasonable person.

Zondo: Well if one is talking about people of integrity, there is really no problem as far as I am concerned, but if you are talking about people without integrity then obviously there is a serious problem for an institution.

Commissioner Msomi: Thanks Chief Justice. Justice Zondo I have four questions for you. I never thought I would sit this side and ask questions, having been interviewed by you before for a PA position at your firm.

Zondo: I remember that.

Msomi: How would you describe your leadership or management style, given that you are going to occupy a leadership position?

Zondo: Well I think I am very consultative, but I draw a line. I think that when you are a leader you must not be scared of making decisions and sometimes making decisions that are unpopular. And sometimes some of the people that you lead are your friends and you will sometimes make decisions that they will not like. But it is part of being a leader. One of the worst things I always say is a leader who fails to make a decision. You must make a decision. It might be right or it might be wrong but you must give it your best shot. So even when I was Judge President in the Labour and Labour Appeal Court I would consult my colleagues, but I always said to them: on certain issues I am consulting you and I would like to hear your views. I might change my prima facie view, but in the end I will take a decision that I think is

in the best interest of the institution. Sometimes it might not be the decision that I want, but if I think it is best for the institution I will go for it. I think that if I am appointed to this position I probably should delegate more than I may have in the past. But it is something that I have identified and once you have identified something, that's positive because then you can do something about it. So I think my leadership style is consultative, but in the end if the decision is mine I will not shirk my responsibility.

Msomi: Some argue that the bench has really become a contested terrain and there are all sorts of political pressures and so on. Is there credence to that claim and how would you respond to those who talk of the so-called "capture" of the judiciary?

Zondo: Well I have not heard anybody talk about the capture or attempted capture of the judiciary, and I really hope nobody even thinks there could be any ground for that. The judiciary has a very important role in protecting our democracy. The Constitution says before someone who is appointed as a judge, begins their job, they must take an oath or make an affirmation that they will protect and uphold the constitution. We as members of the judiciary must know that when we are appointed to the Bench it is not about popularity. I am not supposed to give a judgment that will make me popular, where it is with a particular political party of the population in general or certain sectors of society. I must make a decision which, in my view, accords with the Constitution and the Law. And if that means that I will not be popular with certain people or will lose some friends, maybe in politics or in the media, or wherever, that's just part of the job. And those who – if there are any judges – allow themselves to be captured, they will be doing a disservice not just to the judiciary but to themselves. Because people may want you to make a decision in a certain direction and you agree, you lose whatever respect they had for you – they will never respect you. And we as judges are not wealthy people, we mostly depend on our salaries and what we have and should guard jealously is the respect and confidence of the public. And those people who influence you to give a judgment and you agree, they will never regard you as a proper judge. But if they know that they cannot even raise that issue with you, they will not like you but they will respect you. But we must always remember that if we do our job in accordance with the oath of office and our integrity is the only thing we have, then we will know that we will enjoy respect throughout.

Msoni: Just two last questions Judge Zondo. One is a philosophical question arising around the concept of what is normally referred to as judicial activism. What are your thoughts about that, and the last question: the role of the judiciary in a developmental state, or whether there are any judgments in which you have expressed your views on that or what you have done as a judge in fulfilling that role?

Zondo: Well as a judge and a judicial officer you have to operate within the parameters of the Constitution and the law. You may not do anything that the law or the Constitution doesn't allow you to do but within the parameters of what the law and the Constitution allow you to do, there is a lot of room for you to, for example, give a certain remedy that another judge might not give because they do not have the activist judge that is inside you. So I think it depends on one's approach and philosophy to the law. I might not be able to immediately give you a judgment - I don't think there's a judgment where I have referred to the developmental state as such, but I think that if you look at a lot of judgments on evictions for example, you can see the activism of some of the judges who wrote those judgments, but they have done it within the parameters of the Constitution and the Law.

Mogoeng: Colleagues I am well aware of the hunger issues. May we finish with Judge Zondo and break? We still have three more.

Professor Ntlama: What is your view regarding the application of gender equality in a customary law context? One other thing – just a comment - If you are given this opportunity, you are still confronted by the demographics in terms of access to justice of the courts.

Zondo: There are already judgments which have dealt with the issue of gender equality in a customary law context and they are the law. The Constitutional Court has given them, the High Court as well, so it's very important as far as I am concerned. What was the second question again please?

Ntlama: It is a concern about the historic demarcations about access to justice. Where the High Court in Bisho, if you want to appeal you go to Grahamstown, all the way from Queenstown, passing Bisho, to Grahamstown, you go all the way -

Zondo: No, that's a very important question and concern. Actually one of the Judge Presidents I spoke to a few days ago, just to get a sense of things in preparation for

this interview, we talked about that, and one of the things I said to him was this: 'I don't think that in relation to, for example, the jurisdiction of the High Courts, and that would apply to lower courts as well, I don't think that we should necessarily be married to the provincial boundaries because I was thinking that if this is the border between Mpumalanga and Gauteng and going to the High Court in Gauteng and going to Gauteng is an hour's drive but going to Mpumalanga is three hours, I don't see why it ought not to be possible to put in place legislation that can make sure that you can go to a court that is closest to you. We have for many years been used to certain boundaries and we have taken it for granted that that's how things should be, but I think there might be a case for saying that that should be explored. The starting point should be – what would best serve the people? We have got to ask: what do we want to achieve and then use legislative instruments to get what we want.

Mogoeng: Dr Motshekga has written me a note saying that on further reflection there are two questions of his to which you did not respond, and one of them is whether it is fair that 1913 should be set as the cut-off date in relation to land claims. The other is whether it is fair to be where we are right now in terms of which land restitution or land, when restituted, does not get controlled by royalty – those who used to control it, but you can have a situation where a community property situation is to the exclusion of the traditional leadership in control of that land. In other words similar to the [indistinct] case that we decided not so long ago.

Zondo: Yes. Well with regard to the first question, I don't know if Dr Motshekga assures me that there will be no matter that will come before us, challenging the cut-off point of 1913. But I am one of those who was concerned when that cut-off point was made, but I haven't done research that would show me that there aren't any problems that were sufficiently persuasive to justify it – I haven't done that research. When you say something is fair or not, you have got to have all the information and I am reluctant to say so without it. On the face of it, yes, but it may well be that when I am exposed to all the considerations that are relevant, to say: Do we make a cut-off point in 1913 or elsewhere? I might be persuaded that it is unfair. But on the face of it, it does appear unfair.

And then I would have thought that when land was taken from people, it should be returned to the people that had it before. But I think that there are situations where

we have heard stories that, for example, Nkosi of a certain area and his Council are not using the land for the benefit of people and they are reaping the benefits for themselves and a few people in the community. So I don't have the history of how property associations such as the one Chief Justice is talking about came about and whether it wasn't a way of saying: if we don't do it this way then most people won't see a cent from the land. So one would need quite a lot (of research to look at it).

Minister Muthambi: Thank you and good day. I want to refer to the questionnaire for judges on your application. There is Question Six which requires you to furnish the chronological particulars of employment since leaving school or university. This is a follow-up to a question about community service raised by one commissioner as a fellow. I see you have been at the Legal Resources Centre as a fellow and also a director for [inaudible] for the period 1989 up till 1997. I want to check if you still recall how many pro bono matters you have done? Secondly, we are operating in a country where there is a national development plan and one of the pillars of the plan is that all South Africans must play their part in contributing to a better South Africa. I am raising it in the context of challenges of access to justice. As a legal practitioner and a judge, is it not something that you have considered to do, to make sure that there is something you do to assist the poorest of the poor in the communities to make sure they (have) access to justice? I have read your schedule, that you had to go to KZN, I believe there's a period when judges go on recess but have you ever considered doing community work during that recess? I know judges have to rest but on top of that they take leave as well. Or is something that you are considering to do when you retire? That's my first question.

Zondo: Well, I don't - these days when you speak about pro bono work, to me it has the connotation of work that is formally regarded as pro bono work. But during my time and the time of many my age when I was in practice, if you were an African advocate or attorney, almost by definition, there would be a lot of work that you do for people or for clients for which you are not paid. There would be a lot of it. And many of us saw our positions as attorneys and advocates before 1994 as positions that we should use to try and help our people. So I think there was a lot of work that you could properly call pro bono work. Sometimes you charged a very reduced small fee and sometimes you would end up saying - those clients whom you are charging a very small fee or for no fee, if you make the smallest mistake, they are the ones

who will run to the Law Society to report you – not the ones who pay you. So I've done a lot of work as an attorney that helped society. Actually you remind me, in 1986, although I was still doing articles, I was the de facto attorney for an organisation called Sibongile Residents Association for the township of Sibongile. They were being evicted by the township authorities at the time and Messrs Mxenge were instructed and I was the one who did the file. I briefed then advocate Pius Langa and we went to the Magistrate's Court in Sibongile to deal with matters of eviction and some of the residents were being charged with trespass – the accusation being that they were trespassing in their own houses because they had been told to leave their houses. We went there and I remember, when we lost, when we finished in court, the people were so happy that they asked us to go to the chairperson's house and slaughtered for us and they were very happy. So we took up issues related to communities.

Muthambi: Okay, Justice, on page three of your CV, the CJ has appointed you as the chair of the conference organising committee and the question is, how will you ensure that you exercise prudent financial discipline in making sure that the conference will take place within the allocated budget of R7 million?

Zondo: Well, we have a committee of judges. That committee is assisted and I dare say ably assisted by the secretary general and her team. And her team includes financial people and everything that is being done has to be done within the budget. So they have to work within the budget and I have no reason to think that they are not going to be able to stick within the budget.

Muthambi: Then on Annexure RZ 1, the list of judgments that you have delivered but I have an interest in the judgments on page six – the list of Constitutional Court judgments from 2012 to 2016. I see that you have managed to deliver 42 in four years and then being the Deputy Chief Justice, if you are granted that opportunity, given this experience, how will ensure that you will help build that capacity in your fellow colleagues in the judiciary, who are normally confronted with the challenges of delays in delivering judgments? I am referring to the issue that the Chief Justice raised earlier of mentoring and the issue raised by Advocate Msomi about your being a team player?

Zondo: Well in the Constitutional Court, I don't think that there is anybody that requires any mentoring. But in relation to for example High Courts I think it is particularly important that newly appointed judges be exposed to senior colleagues helping and mentoring them and I think that the various judge presidents play that role in relation to their courts together with the senior judges in each division. So it is something that I can encourage, but I can't go to the High Court and start mentoring.

Muthambi: Page 11 of your CV, paragraph 13, you were appointed as a chair of a committee of heads of court that was established to consider various proposals on the use of official languages in courts. And then it states that you have submitted that report to the then Minister of Justice. And it further says that it is your belief that the two reports could have contributed to the solution of the language problem in our courts. Given the time that has elapsed - I think it is almost nine years since you submitted that report - I want to know your comment on that one. Also you remember Section 30 of the Constitution. There is a right to a language of choice and then when you link it to the capacity of interpreters in our courts, now nine years later, what do you think needs to be done in the circumstances? Have you ever taken pains to ascertain how the Minister has managed to implement the recommendations of your report?

Zondo: Well Minister, what you are reading from reflects my involvement in various leadership structures. But it was obviously submitted several years back. We in the committee I think accepted that there was a problem and I think it was maybe not so much even the Minister, but even we as heads of court could not reach agreement. But that, as I said, I think seems to have been resolved because a decision was taken, as I understand, by the heads of court to say that the language of record is going to be English. So, I lost that debate Minister.

Mogoeng: When we realised that the Minister wasn't taking a decision, we took the decision.

Minister: Yes, then let's go to paragraph 16 of your CV. It's women in leadership positions in the judiciary. On page 14 it says that one of the challenges facing the collective leadership of the judiciary in this country is to take steps to have women appointed to leadership positions in the judiciary. I am following a previous question, but I also believe that you might have had sight of the investigative report of the

Commission on Gender Equality on the lack of transformation in gender equality on the judiciary that was released in 2016. One of its recommendations to the JSC was that it needs to be engaged in or encouraged to adopt a policy to ensure that women and particularly black women are appointed as full-time judges in order to address the current imbalances. If you are given this position as Deputy Chief Justice of the highest court in the country, how will you assist the Chief Justice to realise the recommendations made by the Commission on Gender Equality? That's my last one

Zondo: Well as I said earlier on, one probably needs a multi-pronged approach. I did answer the question when it was asked by one of the commissioners. There needs to be a serious effort of making sure that women lawyers are given a lot of work – quality work – not just divorce and maintenance matters but quality commercial work, and as I said we really need our government departments and parastatals to adopt the kind of approach that the trade unions adopted with me in the '80s. They did not say: if we allow Zondo to do this case he is going to lose and we don't want to lose. They said: We are giving him these cases and we believe that he will do his best. We accept that he may lose some cases but will win some so it's an investment. So parastatals and senior management and government departments must think about the long-term investment that is inherent in giving work to women practitioners. I think we also talked about special training sessions.

I don't know if I expanded earlier on but during Minister Mabandla's time there was a time when funding was obtained for training especially women lawyers. I understand that issues of funding are making it difficult to do that but maybe people in the private sector should contribute to a legal transformation fund that should be established – that's what I suggested to the BLA a few years ago. Where everybody who wants transformation in the legal field to be advanced, can make contributions of money and those funds can be used for example when a party wants a particular person to take a certain case but if the client agrees but doesn't have money, then that fund will pay them but they will get the experience. I said to the BLA that I wanted to be the first one to donate R10 000 to that fund but they were unsuccessful but I will increase it to R20 000 if they can get it up and running. Thank you.

Mogoeng: Well just to clear up something relating to your chairpersonship of the committee that is organising the CCJA – I think it is crucial particularly because we

are friends - it may well be that I was profiling you for possible consideration as a nominee for the position as Deputy Chief Justice and that is why you are chairing that committee. By far, in terms of legal judicial service you are senior to all the judges on that committee. But how did it come about that you and not anyone else of those colleagues was chairing that committee? What gave rise to that possibility?

Zondo: This is what gave rise to it Chief Justice. At some stage the year before last you were unable to attend a meeting of a committee – I think an executive committee of the CCJA

Mogoeng: Executive Bureau?

Zondo: Yes, the executive bureau, in Gabon and I received a call from you and you said you had approached other colleagues who were senior to me, to find out if they were prepared to go and represent you there in that meeting there and those who were ahead of me were not available, so you asked me if I was available and I said yes. So I went to that meeting and represented you. I got a lot of information about the business of the CCJA and what was planned and I think that when it came to the establishment of the committee, the fact that I had been part of that committee was important for someone who would lead that committee. That's my recollection.

Mogoeng: And the Minister said something about recesses being for resting. Would you like to comment on that?

Zondo: Actually thank you Chief Justice, I had meant to say something about that. Minister and commissioners, recesses for judges are not a holiday. My wife asked me why I come home to Durban for recess because most of the time I come home and am busy working in my study. She asked me why I just don't stay in Jo'burg. That's simply because although it is called a recess, it's got nothing to do with resting.

Mogoeng: If you are serious about your responsibilities as a judge?

Zondo: Yes, but also Chief Justice, particularly for a court such as ours. You know in the High Court where you sit most of the time alone and might be able to finish certain judgments before the end of the term, so that when you go on recess there are no reserved judgments and you might be able to say – these reserved judgments

I can do later and I can use part of the recess as a holiday. In our court you have no chance of doing that.

Mogoeng: As a matter of principle, as a judge in the Labour Court, the Labour Appeal Court and the Pretoria High Court, was recess ever intended to be resting period?

Zondo: It was never intended. It was always intended as an opportunity for you to catch up with your work, do reserve judgments, do research and so on.

Mogoeng: Did you use it for resting as a High Court judge?

Zondo: No

Commissioner Norman: Thank you Chief Justice. Good afternoon Justice Zondo. My question relates to the Florence judgment. I just want to understand because in the judgment you did not want to upset the decision of the Land Claims Court, having calculated compensation was to be paid as equitable redress to the claimants. Now what I want to understand - it was simply a mathematical calculation – you have the one sum, the purchase price of about R1350 and then you escalate by the CPI and you get about R1.4 million. When you look at that calculation and you compare it to what gets paid to the landowners when they are compensated for restoring the land to the claimants, that differs in my view, because here the calculation doesn't take into account for example, the extent of the land that was lost, how many cattle the family had, it doesn't take into account the inconvenience, except that a solatium was paid, but it doesn't take into account all those considerations that I believe perhaps should be part of the calculation of what should be paid as equitable redress.

Zondo: My judgment in Florence didn't deal with that. My judgment dealt with the cross-appeal and the cross-appeal related to whether the claimants were entitled to an amount that they would use to put up a memorial plaque. That was what my judgment concerned. And I concluded after looking at various provisions of the statute, that once you have received what falls within the ambit of restitution, I forget the terminology now, once you have received what they had received, they were not entitled to anything else including any money relating to the plaque. The process of

arriving at that conclusion, as you may have seen, goes through a number of provisions. Other colleagues wrote about the appeal – I didn't.

Norman: Thank you, but now having heard my comment on it, would you believe that that computation is one that should be done – simply applying the CPI to the purchase price?

Zondo: Well, my difficulty, Commissioner Norman, is that when it comes to judgments written by colleagues, even if I have agreed, to be able to comment, one would need to refresh one's memory and as you have seen, even out of the 140 or so judgments that I have written, I can't remember all of them unless it is a recent one.

Mogoeng: Thank you Commissioner. Commissioner Masuku who is the last one. Colleagues, should we break for lunch after Commissioner Masuku and then break for lunch or finish everything first? Think about it. Thank you. Commissioner Masuku:

Masuku: Thank you Chief Justice. The question I have relates to your view of judicial independence. It is whether you consider there are threats to judicial independence and if you do, whether you can identify those threats. .And what your appointment as Deputy Chief Justice does to increase the possibility to forestall any of those threats to judicial independence? The second one which is a short one – do you agree that the SCA should become the final court or arbiter in constitutional issues in circumstances where the constitutional court judges suffer from a conflict, the nature of which makes them unable to deal with that matter? And I know it's a matter which I was involved in and you were very kind to me when it was the first time I appeared in the Constitutional Court. So do you agree that there's an anomaly where the SCA becomes the final court or arbiter in certain matters of constitutional significance?

Zondo: Thank you. Let me start with the last one. You would of course be aware that I was party to the judgment that was delivered pursuant to your appearance in the matter that you are referring to. And I have been party to another judgment since then which went along the same lines. So I agree that it is rather an anomaly if you want to call it that that in certain circumstances a court lower than the highest court can end up being final, but I think that it is practical exigencies that dictate that

situation - that's how I see it and it seems to me that it is now the law. As I say, it might be that it is not a satisfactory way. Maybe on another occasion somebody will come before the Constitutional Court and argue that we should take a different approach to the one that was taken in those two matters.

With regard to judicial independence and if I am appointed as Deputy Chief Justice, what my role will be and whether there are any threats to judicial independence, as we speak right now, I am not aware of any threats to judicial independence. That's the first point. The second point is this: We take our independence as judges very, very seriously. It is critical for our democracy. We dare not take chances with regard to that and its maintenance doesn't depend on us as judges only – it depends also on the populace, the citizenry and how much they are prepared to fight for judicial independence to be maintained. But talking about myself, anybody who took the trouble to look at my record in terms of judgments that I have given, I would be very surprised if they would ever think that we are here dealing with someone who is not independent-minded and who might compromise judicial independence. I could go on and on with particular examples which have shown my independent-mindedness. So if I am appointed as Deputy Chief Justice I will play a very important role to ensure that our independence as the judiciary is not compromised. Thank you Chief Justice.

Mogoeng: Thank you. That was the last commissioner. Thank you very much Justice Zondo. I was hoping on a lighter note that you would come somewhere closer to my two-day interview but you have failed.

Zondo: I have failed dismally but I am not complaining.

Mogoeng: Thank you Justice Zondo. You are excused Sir.

Zondo: Thank you Chief Justice and thank you Commissioners. I appreciate the opportunity you have given me and quite frankly - I think nobody gave me a "hard time" as the Chief Justice mentioned. I think everybody asked questions very legitimately and fairly.