



JUDGES MATTER

Judicial Service Commission interviews

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Gauteng Division of the High Court

Interview of Mr C M Sardiwalla

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CJ M. Mogoeng: Good afternoon Sardiwalla.

Mr C.M. Sardiwalla: Good afternoon Chief Justice and Commissioners

CJ M. Mogoeng: Are you well? Are you relaxed?

Mr C.M. Sardiwalla: Yes, I am.

CJ M. Mogoeng: Wonderful. Tell us why you believe you are ready for what you have applied for.

Mr C.M. Sardiwalla: Chief Justice, I've been in practice as an attorney for almost 40 years. With an extremely diverse practice; commercial, corporate, criminal and of course the normal run of the mill practices. Giving me adequate exposure to the different facets of the law. I've done extensive work in the High Court and I've also

had the benefit of acting in the Eastern Cape; Durban, on two occasions, well two or three occasions and of course up here in Gauteng. I believe that I have spent my time servicing myself and that with the experience that I've enjoyed and have to offer the time has come to give back a bit of what I have benefited over the years through the system and the judicial system.

CJ M. Mogoeng: Yes, very well. JP?

JP D. Mlambo: Thank you Chief Justice. Mr Sardiwalla you were in the Land Claim Court for a period over 5 years, am I correct?

Mr C.M. Sardiwalla: Yes.

JP D. Mlambo: Right. What did you do there?

Mr C.M. Sardiwalla: I was in the court at Randburg, initially, at the instance of the late JP –

JP D. Mlambo: - Ja, do you mind if I just interject here. All I want you to tell us, briefly, is what sort of work did you do without explaining.

Mr C.M. Sardiwalla: Okay. Trials, urgent applications, inspections in loco, appeals, a whole array of Esta matters, labour tenant matters. –

CJ M. Mogoeng: - Esta may not be known by everybody. We have, I think in this instance I am permitted to say we have Honourable Members here from Parliament, who are not necessarily all lawyers. So, what is Esta?

Mr C.M. Sardiwalla: Extensive –

CJ M. Mogoeng: - They may think you are talking about the woman.

[chuckles]

Mr C.M. Sardiwalla: Chief Justice, I hope I knew about that earlier on. But it is -

CJ M. Mogoeng: Yes Mr C.M. Sardiwalla, can you -

Mr C.M. Sardiwalla: - The Extension of Security of Tenure Act, who deals with the rights of occupants that are, occupants of land primarily in farming areas and farming communities.

JP D. Mlambo: Okay, so in your stint in the Eastern Cape how long did you act there?

Mr C.M. Sardiwalla: I was in the Eastern Cape for approximately two or three terms, let's just get my notes out.

JP D. Mlambo: And what sort of work did you do there?

Mr C.M. Sardiwalla: Everything. Essentially crime, I was sent to the motion court; opposed motions; trials; criminal trials; I sat in Grahamstown as well as in Port Elizabeth. There I had exposure to some of the Marine Law matters. A full array of work that normally is at, that one finds at the High Court.

JP D. Mlambo: Okay. So, in the Gauteng Division you've done work in both courts; Johannesburg and Pretoria. Am I correct, Ja.

Mr C.M. Sardiwalla: Yes.

JP D. Mlambo: And I see that you've got 8 weeks of criminal trial work that you've done in Gauteng. Now, the work that you had to do in the Gauteng Division and in the Eastern Cape Division, I presume you acted in the Eastern Cape after your stint in the Land Claims Court, am I correct?

Mr C.M. Sardiwalla: No, prior to my stint.

JP D. Mlambo: Prior to your stint, okay.

Mr C.M. Sardiwalla: Yes, in Durban as well, prior to my stint in the Land Claims Court.

JP D. Mlambo: But what I want to find is did you find anything different, if any, in the work that the Gauteng Division does, the nature of the work, in relation to what you did in the Land Claims Court?

Mr C.M. Sardiwalla: I think there is a totally different nature and style of practice in the Gauteng Courts. They are much busier, the pressure of work, the expectancy to deliver judgements and get the show moving is far greater than most of the other courts. Simply because of the volume that one has in these courts.

JP D. Mlambo: All right, in terms of your judgements, you can correct me if I am wrong, I've looked at the list of the judgements you've handed down when you're in Gauteng.

Mr C.M. Sardiwalla: Yes.

JP D. Mlambo: I don't see anyone where you took longer than 5 months, unless I'm mistaken. The 5 month one is the number 14 *Johan de Wet and Turner*, I think that was 5 months –

Mr C.M. Sardiwalla: - Truter, yes -

JP D. Mlambo: - But I could be mistaken. Are there others where you took longer than that?

Mr C.M. Sardiwalla: No, generally I try and deliver the judgements within a month, month and a half.

JP D. Mlambo: Yes.

Mr C.M. Sardiwalla: I dictate my judgements, so the benefit that I have is that immediately after a trial I start dictating and try and deliver the judgements as quickly as I can.

JP D. Mlambo: Yes.

Mr C.M. Sardiwalla: Those matters that may have been a bit delayed, a month or two delayed, from the time they were expected to be delivered were as a result of the complexity. The kind of research that I had to do, they were not the run of the mill matters.

JP D. Mlambo: Yes. Okay, my last question is; would it be fair to say from 2010 till current you've actually been doing a judge's job?

Mr C.M. Sardiwalla: Yes.

JP D. Mlambo: Thank you very much CJ.

Mr C.M. Sardiwalla: Yes, sir I've been doing nothing else, but I've, I don't have a practice I have been acting in your division -

JP D. Mlambo: - No, you did more -

Mr C.M. Sardiwalla: - in the Land Claims Court.

JP D. Mlambo: - in the Land Claims Court. Ja. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you JP. Well I think before I forget, unless there is another Sardiwalla, there is a Sardiwalla who did the case of *Musolo vs PRASA* judgement was reserved on the 22nd of April 2016 and has been reserved according to my records for 16 months. Are you the one, or a different one?

Mr C.M. Sardiwalla: That judgement has been delivered.

CJ M. Mogoeng: I beg your pardon?

Mr C.M. Sardiwalla: I said, that judgement has been delivered a while ago.

CJ M. Mogoeng: But for how long had it been reserved before you delivered it. Because, I notice maybe the office has just failed to update the statistics. It was reserved on the 22nd of April 2016 how long thereafter was it delivered?

Mr C.M. Sardiwalla: It was delivered before the end of the of, of last term.

CJ M. Mogoeng: This year?

Mr C.M. Sardiwalla: This year, yes.

CJ M. Mogoeng: That would have been how many months -

Mr C.M. Sardiwalla: - Yes, yes -

CJ M. Mogoeng: - It was reserved?

Mr C.M. Sardiwalla: -Yes, that was one that took much longer than the normal –

CJ M. Mogoeng: How, well I need to know how, how many months would it have been?

Mr C.M. Sardiwalla: What I have on my schedule and subject to correction. I've taken the schedule as extracted from judgement. The date of hearing was the 23rd, this is *Musolo and PRASA*, am I right?

CJ M. Mogoeng: That's correct.

Mr C.M. Sardiwalla: Yes, 23rd of November 2016 and delivered on the 9th of March 2017.

CJ M. Mogoeng: So, it wasn't reserved on the 22nd of April 2016?

Mr C.M. Sardiwalla: No, not according to what I have here.

CJ M. Mogoeng: It will have, just make record of these things so that we can investigate. So, you would have delivered it within what, you say it was heard? Was it in November.

Mr C.M. Sardiwalla: About four months.

CJ M. Mogoeng: In four months.

Mr C.M. Sardiwalla: Yes.

CJ M. Mogoeng: Very well. And then there is another. Is there a Sardiwalla J or would they have been prophesying that you are a J when you were still a J. Because I have a matter of Annur Regina Maoko vs Dorren Billa and according to my records it was, judgement was reserved on the 7th of November last year. Which is 10 months by now. Are you the one who did it? Or is it another Sardiwalla?

Mr C.M. Sardiwalla: Can I have the name of the judgement again, please?

CJ M. Mogoeng: Annur Regina Maoko. M-a-o-k-o vs Dorren Billa.

Mr C.M. Sardiwalla: I must admit I don't have this -

CJ M. Mogoeng: It's case number 41917/2015.

Mr C.M. Sardiwalla: Chief Justice I don't have that particular judgement on my list. And it doesn't ring a bell to be quite honest.

CJ M. Mogoeng: You don't have such a judgement reserved?

Mr C.M. Sardiwalla: On my list. I don't know of such a judgement but, I mean, if it is an omission I don't know. I don't have it on my list.

CJ M. Mogoeng: Okay.

Mr C.M. Sardiwalla: And I don't have that name, at all, on my list. And I don't remember such a matter.

CJ M. Mogoeng: You don't remember reserving any judgement for as long as 10 months?

Mr C.M. Sardiwalla: No. No.

CJ M. Mogoeng: Very well. There is another I think, let me just go through my list and make sure. And this of *Salem vs the Republic of South Africa*.

Mr C.M. Sardiwalla: Yes. That judgement took a long time.

CJ M. Mogoeng: But that's not the one I referred you to earlier, is it?

Mr C.M. Sardiwalla: No.

CJ M. Mogoeng: How long did you keep it reserved for?

Mr C.M. Sardiwalla: This was –

CJ M. Mogoeng: That was in the Land Claims Court isn't it?

Mr C.M. Sardiwalla: It's actually a ground-breaking judgement, because it deals with land rights at a level which has not been dealt with in this country before.

CJ M. Mogoeng: Yes, I see that next to it you have written land mark judgement on restitution.

Mr C.M. Sardiwalla: Yes. And it's been through the SCA and it's been before your court as well -

CJ M. Mogoeng: - Yes -

Mr C.M. Sardiwalla: for decision.

CJ M. Mogoeng: Yes.

Mr C.M. Sardiwalla: That judgement took extensive research, the evidence that was led in that matter was over a period of four years, in breaks and, in the Eastern Cape. And there was extensive expert evidence in that matter. And yes indeed, it did take longer, much longer for me to finalise that judgement because of its nature.

CJ M. Mogoeng: How long?

Mr C.M. Sardiwalla: Certainly, more than a year.

CJ M. Mogoeng: Are you able to estimate so that I have a fair sense of how long after the expiry of a year did you still have to take before it was finalised?

Mr C.M. Sardiwalla: Can I get back to my –

CJ M. Mogoeng: Please, it is important, to me this is all about court performance and one's ability to deliver justice within a reasonable time to the public.

Mr C.M. Sardiwalla: It was heard on the, well over a period, and the last hearing was the 20 –

CJ M. Mogoeng: - 23 -

Mr C.M. Sardiwalla: 2012.

CJ M. Mogoeng: But reserved in, was that the last? I thought it was, well I see 2012, 2013 so I thought you're reserved judgement in 2013?

Mr C.M. Sardiwalla: 2013, yes.

CJ M. Mogoeng: And delivered it in 2015?

Mr C.M. Sardiwalla: 2014.

CJ M. Mogoeng: Is that 2014?

Mr C.M. Sardiwalla: 2nd of May 2014.

CJ M. Mogoeng: What is it there? Let me see.

Male: I'm fine Chief Justice, thanks very much.

CJ M. Mogoeng: You delivered it 2nd of May 2014 judgement having been reserved on which date in 2013?

Mr C.M. Sardiwalla: I don't have the specific date, I just have date of hearing from that period to that period.

CJ M. Mogoeng: Yes.

Mr C.M. Sardiwalla: But I don't, I don't have the specific date of hearing on my copy.

CJ M. Mogoeng: I don't understand Mr Sardiwalla how does it happen that a judgement gets reserved for a year? I, an extremely complex matter, even then how does it happen that you move from January to December and you're working on a judgement? How does it happen?

Mr C.M. Sardiwalla: Yes. Well, I agree it took a long time, and it should not take such a long time, I can see that. But, as I indicated earlier on, Chief Justice, the matter

was, required a fair amount of research by myself, researchers before I eventually delivered the judgement.

CJ M. Mogoeng: No that I understand. Don't you have researchers at the Land Claims Court?

Mr C.M. Sardiwalla: Well, we had a researcher, a temporary researcher, she was there for a while and then she was gone.

CJ M. Mogoeng: Okay, but quite apart from that and mindful of the complexity of the matter and how long it took to finalise the matter, how does it happen that people have to wait for 12 months, more than 12 months for judgement is ready for delivery? I'm just trying to understand. I don't want to assume to your disadvantage. I seek to understand.

Mr C.M. Sardiwalla: Yes. There is no other reason except the fact that it was a very lengthy trial with volumes of evidence that one had to go through and not just witnesses but there were experts before finalising the judgement. And because of the enormity of the judgement it, it did take that long, and at that stage of course, I hadn't been, I didn't have the experience that I have now. And Land Claims was a relatively new kind of concept to me at that time. Without the assistance of too many judges that were in that court to guide you along. The, you know, the JP passed on and we had grappled before finalising that matter.

CJ M. Mogoeng: You were not aware that you summarise evidence and make observations day by day as you go along? And too you did not have the benefit from assistance from able counsel, Heads of Arguments?

Mr C.M. Sardiwalla: Yes, of course, indeed I did. There was the benefit of Head of Argument, comprehensive heads. But because of the nature of the matter it took me much longer than I anticipated.

CJ M. Mogoeng: Yes, yes. No, no I understand, and I apologize that at this early stage I'm raising the matter to extensively it is just something that troubles me -

Mr C.M. Sardiwalla: - Yes –

CJ M. Mogoeng: - In the judiciary that embarrasses us a lot when judges are referred to the JSC for misconducts relating to judgements that have been reserved for a long time. That's why I needed to give you the benefit of the doubt so that you can explain yourself.

Mr C.M. Sardiwalla: Thank you. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you very much Mr Sardiwalla. MEC?

MEC: I'm fine Chief Justice. Thank you so much.

CJ M. Mogoeng: Thank you so much MEC. Commissioner Nyambi?

COMM. A.J. Nyambi: Thank you CJ, afternoon Mr Sardiwalla.

Mr C.M. Sardiwalla: Afternoon.

COMM. A.J. Nyambi: Mine is only one question. It is about the case of Nlobo, the criminal trial relating to the rape of a mentally disabled child, 13 years old.

Mr C.M. Sardiwalla: Yes.

COMM. A.J. Nyambi: I'll read part of the extract, then invite your comment about it.

Mr C.M. Sardiwalla: Yes.

COMM. A.J. Nyambi: *"This crime it's a bizarre as you can find them, sometimes immorality it's the responsible for rape where there is a certain level of attraction caused by a female herself but here we have the weakest of the weakest, a young child disabled. In fact, if there ever was the death sentence still available to these courts it may well have been argued that this was an ideal scenario for that*

sentence. The court has an obligation to protect society from people like the accused and the behaviour of this nature.”

Mr C.M. Sardiwalla: Yes.

COMM. A.J. Nyambi: Your comment about the dress code of a female and the issue of the death sentence?

Mr C.M. Sardiwalla: Yes, let me first start with the dress code. And then I think it will also refer to the aspect of the death sentence. I, in retrospect, when I looked at that judgement subsequently and when raised by you realised that it, it those both those comments were not becoming. I ought not to have made them. At the time I, the nature of the matter that was before me was gruelling. It was one of those horrible rapes of a little girl and, and one sees that there is despite the life sentence being imposed for rape there is an ever-increasing number of rapes in this country. It is unabated, and I think my comments where that if the death sentence was available one may have argued that you were the appropriate candidate for it. But I think even that was wrong. And I must apologize it was not the correct comment to make. Because the death penalty was demolished, it was abolished, sorry and demolished for very good reasons. For very good reasons. And as far as the second comment is concerned I also think that my analogy that I used was a poor one. I should not have said that. Because I believe my, it is my believe that everyone is entitled to way in the way their entitled to dress. You can't impose on an individual to dress in a particular way and expect that, that person would be save or not. It is a regrettable comment and I am embarrassed about it, and I now distance myself from the fact that I made those comments. So, they were not good. And I've learned through that process to be more cautious. Subsequently I've had a serial rapist judgement that I handed down about two, a month and a half ago. I had another child, 6 years old, raped by a middle-aged man and none of those judgements talk at all to that kind of language. Because I have realised that one must be restrained and cautious about these things; despite the fact that they are serious, very serious crimes.

COMM. A.J. Nyambi: Anything that you might have done in the past in relation to these to, where there are insight to address something of this nature, besides the response today?

Mr C.M. Sardiwalla: Well there was not much I could have done because it was on, the judgement was handed down and it was on paper. It was my own regret that I sat with. And I think the appeal court commented on it and corrected me on it as I understand it. One of the judges, one of the two judgements.

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

CJ M. Mogoeng: Thank you very much Commissioner Nyambi. Judge President Hlophe?

COMM J.P. Hlophe: I have one question for you. It relates to briefing patterns.

Mr C.M. Sardiwalla: Yes.

COMM J.P. Hlophe: I believe, obviously, black practitioners are on the receiving end. That is why I would like to ask you this question. I am saying this, being fully aware, that the Department of Justice is doing something about it. The question is simply this were you to be recommended by this commission today for a permanent appointment as a judge, do you believe that the judiciary should do something to ensure that black practitioners also have access to good work which in turn will prepare them to be good judges of tomorrow? Or you believe it is none of our business as a judiciary we must just stay out of it completely? Thank you.

Mr C.M. Sardiwalla: It is absolutely imperative for judges, for aspirant judges to be assisted and trained not only by the training programme that exists. But the type of briefing that is offered to aspirant black judges and practitioners there seems to be a tendency of the lesser work being offered to black judge, black advocates and black judges; and the better work to the more senior non-black practitioners and this must change. The pattern much be such that there is empowerment by those that are empowered.

COMM J.P. Hlophe: Chief Justice, in your own words is that not a form of discrimination?

Mr C.M. Sardiwalla: It is.

COMM J.P. Hlophe: Thank you.

CJ M. Mogoeng: Commissioner Ntsomi.

COMM Ntsomi: Thank you CJ. This is directly linked to the question that my colleague Commissioner Nyambi raised and it arises from the comments that had been made by the JCB because of the exact words that he quoted.

Mr C.M. Sardiwalla: Yes.

COMM Ntsomi: And the question that he raise, and I think this is your opportunity now to address the broader South African populist because they say those comments raise concerns about your, and I'm quoting them *verbatim*: "*The candidates understanding of the constitution and constitutional values*". They raise concern about your understanding of the constitution and constitutional values. How do you then allay the fears of the South African broader populist who may be concerned this afternoon that we are interviewing a judge who's got no, a prospective judge rather who's got no understanding of the constitution and its values. Thank you.

Mr C.M. Sardiwalla: Yes, as I eluded to earlier on it is, those comments were unwarranted, and I regret them. I've certainly, and I'm saying this publicly now hopefully this would get to the rest of the country that I don't associate myself with any form of retrogression in our society when we've progressed so far from these issues. I subscribe to that and it was done at a time when I obviously did not apply myself correctly at that particular time by making those comments. And I regretted them shortly after when I looked at my judgement I thought about it and I see their most inappropriate and I still do regret them. And I subscribe fully to the fact that we

are in a democratic independent individual right society were a person has the right to dress as they please, to do what they please within the ambit of the law. And one can't, one can't go retrogress and make comments of this kind. And I feel, I still feel bad about it.

CJ M. Mogoeng: Thank you Commissioner Ntsomi. Commissioner Smith.

COMM: Smith: Thank you Chief Justice. Mr Sardiwalla I see that you served on the Rules Board for the Court of Law.

Mr C.M. Sardiwalla: Yes.

COMM: Smith: You've served on the committee drafting rules for Civil Jurisdiction Regional Court and a few, many other positions.

Mr C.M. Sardiwalla: Yes.

COMM: Smith: You've also consulted with Lord Woolf on review of the system in the UK in respect of the Civil Justice review.

Mr C.M. Sardiwalla: Yes.

COMM: Smith: There has been some talk in the JCS recently about the necessity for uniform rules and practice directives.

Mr C.M. Sardiwalla: Yes.

COMM: Smith: Do you agree with that sentiment?

Mr C.M. Sardiwalla: I think it is overdue. I think it is overdue. You know, my discussion with Lord Woolf at one of the conferences was most enlightening because they've moved a long way to access justice. And then one of the, one of the aspects that have now, and I've been following this process through, one of the processes that has caught on like wild fire throughout the world is access easy quick,

cheap access; mediation; alternative dispute resolution you know that is the route, that the UK and most other countries are going. Hand in hand with the judicial system not an independent structure but hand in hand under the auspices of the judiciary. Those processes are where we are presently, currently.

COMM: Smith: Which would of course require a coordinated approach and you would be able to assist in that should you be appointed.

Mr C.M. Sardiwalla: I, its I have a passion for it. I've done extensive research and I would give every bit of my time that I, that is available to assist in the project of that nature. I serve with the Judge President on a committee that has commenced that initiative in conjunction with the Chief Justice, as I understand it.

COMM: Smith: Thank you Chief Justice.

CJ M. Mogoeng: Thank you Commissioner Smith. Minister?

JM M. Masutha: Thank you Chief Justice. Should I say Justice Sardiwalla, Acting Justice Sardiwalla, Good afternoon.

Mr C.M. Sardiwalla: Good afternoon Minister.

JM M. Masutha: Am I correct to say that you've served as, is it convener or chair of the Rules Board for a protracted period of time. Well over a decade I think. Until recently, soon after my appointment I think.

Mr C.M. Sardiwalla: Yes. I've served on the Executive with the previous Chief Justice, Justice Ngcobo. I then served with Justice Nkabinde and Judge Somyalo on the Executive of the Rules Board. And I chaired the High Court Committee at, on several occasions and various other committees. Including the ADL Committee of the Rules Board.

JM M. Masutha: And of course, that also includes you having pioneered and led the project that gave birth to what today is referred to as Court-Annexed Mediation which you still, a project which you still lead.

Mr C.M. Sardiwalla: Yes, I can't take the credit for myself. It was the entire team that led. And the efforts of people within the department, the judiciary and all the heads that assists me with under your auspices that we were able to roll out a pilot project.

JM M. Masutha: Ja, maybe let me indicate that a contribution is most appreciated. But I want to take you back a little bit to this uncomfortable space from a different angle. In the Magistrates Commission or rather Magistrates profession there is a specialised training programme called Social Context Training and that is to ensure over, and above ordinary judicial capabilities and competencies judicial officers are prepared to discharge their roles within the context of the many social dynamics that prevail in our society. Do we have similar training for aspirant judges and if not do you think it would make any difference for aspirant judges if some sort of training of that nature would be offered?

Mr C.M. Sardiwalla: As I indicated earlier on Honourable Minister that training is critical, it's just not necessary, it's critical. And training that is geared to the practical tasks the judge has to deal with on a day to day basis within the constraint environment sometimes and the volumes; there needs to be training that assists not only with the legalistic aspect of but the practical aspects of judging. And I think it can do enormous benefit to aspirant judges and judges.

JM M. Masutha: I am referring specifically to social context training if you get a sense of where I am heading to? And this is in light of anecdotal unfortunate remarks not necessarily being in quotes completely isolated. Maybe isolated yes, but we've had a few incidents across the different stratum within the judiciary itself. Put aside the profession as in legal practitioners making remarks in court proceedings that are unfortunate.

Mr C.M. Sardiwalla: Yes.

JM M. Masutha: Would you agree that it is a challenge that the judiciary itself in the context of the packaging of training may need to be, to be looked at?

CJ M. Mogoeng: Maybe before he answers, Minister if you don't mind. Provide an answer on the understanding that it is part and parcel of the curriculum of the South African Judicial Education Institute to provide that training. It is been provided so you can now answer, with that understanding. It is just not compulsory, but it's been offered as a matter of course.

JM M. Masutha: That's why my first question was is this being offered, and I think he did not assist me. But thank you for the assistance from the CJ. Maybe I should have asked if you at any point have had the opportunity or privilege of being exposed to such a training.

Mr C.M. Sardiwalla: Yes, I've done the Canadian training programme many years ago. And I found it extremely beneficial.

JM M. Masutha: Canadian you said?

Mr C.M. Sardiwalla: Sorry?

JM M. Masutha: Canadian you said. Did you say Canadian training?

Mr C.M. Sardiwalla: Yes, the training by, it was a Canadian South African programme to train judges.

JM M. Masutha: Oh, okay.

Mr C.M. Sardiwalla: That I attended.

JM M. Masutha: All right.

Mr C.M. Sardiwalla: And I found it extremely useful

JM M. Masutha: Okay. Thank you very much Chief Justice.

CJ M. Mogoeng: Are you referring to the one where Canada simply provided funding and we South African judges were doing the training?

Mr C.M. Sardiwalla: South African judges did the training.

CJ M. Mogoeng: Okay. Thank you. Professor Ndlama.

Ms Ndlama: Thank you SJ. Good afternoon Mr Sardiwalla.

Mr C.M. Sardiwalla: Good afternoon.

Ms Ndlama: In Section 4 of the, of your questionnaire you have not indicate whether there is any other thing that may embarrass the judiciary. I'm taking it whether you've consider long before the Ndlovu judgement. That it is an embarrassment?

Mr C.M. Sardiwalla: Yes.

Ms Ndlama: Let's leave it there. That since you've been involved in the Land Claims Court on issues of land restitution Section 25(7) of the Constitution limits the claims only to those who were dispossessed as in June 1913. As an academic I am of the view that this constitution of ours creates a class of citizens as if the South Africans, there were no South Africans who were dispossessed over the land before 1913. You are a judge, I come before you. Okay, it's fine you can leave it.

Mr C.M. Sardiwalla: No. Can I answer to that? My judgement speaks directly to that issue. The Salem judgement questions the 1913 cut-off date. And we all know that communities existed before 1913; the Koi and the San particularly I am talking about the Eastern Cape and there was a movement of communities and they settled. These communities settled in different areas and moved along as and when the grazing was depleted. But many of the community members remained and established their own communities all way before 1913 and they seem to be at limbo as far as their rights are concerned. Cause after colonization those rights were totally

removed, and ownership was given to the colonist. And of course, that resulted in another set of communities that worked for the colonists that came about. So, their different, the paradigm is so wide and so complex, and this is the specific issue that my judgement talks to. That one has to look, revisit the issue of the 1913 date and whether it meets the requirements of the expectations that we have created in the constitution. It is a constitution right to have your land returned and that right I believe is being compromised by the way in which the legislation is couched

CJ M. Mogoeng: Commissioner Norma.

COMM Norma: Thank you Chief Justice. Good afternoon Judge Sardiwalla.

Mr C.M. Sardiwalla: Good afternoon commissioner.

COMM Norma: I wish to declare that I have appeared many times in the Land Claims Court before you for the claimant sometimes and for the state sometimes. But I must say that I have observed you over the years. How you have treated the claimants who have, who have no representation. How passionate and how emphatic you have been towards them over the years. But, you were asked by Commissioner Montsime, it was put to you one of the comments that the JCB had made about the Ndlovu judgement, but I would to draw your attention, as well to paragraph 5.1 of the comment from the JCB. Where it says, the candidate's commitment to the values of the constitution is most evident in his judgement emanating from the Land Claims Court for example the Salem decision. I am just putting this, just to say as a person who has appeared before you and observed you numerous times, the way you treated the indigent that I also concur with that statement. Thank you.

Mr C.M. Sardiwalla: Thank you commissioner.

CJ M. Mogoeng: Thank you very much Commissioner Norma. Commissioner Didiza?

COMM Didiza: Thank you CJ. Good afternoon Mr Sardiwalla.

Mr C.M. Sardiwalla: Good afternoon.

COMM Didiza: Mr Sardiwalla you have acted a long stint in the Land Claims Court.

Mr C.M. Sardiwalla: Yes.

COMM Didiza: In your view, do you think, particularly on the matter of labour tenants there is a way in which the issue of burial rights of labour tenants can actually be dealt with such that there is certainty on how that matter, you know, will have to be dealt with going forward. Because one of those issues as you know that would always come up to the Land Claims Court where those that are labour tenants are mostly refused by the farm owners to bury their loved ones on farms.

Mr C.M. Sardiwalla: You are absolutely correct. Most of my Friday afternoons, Saturday and Sundays were taken up with urgent applications because there was a refusal to bury community members that have a burial site on a particular farm. It is a serious problem and it creates at a time of grief, it creates more grief when you are actually barred and gates are locked and you are treated in an inhumane manner whilst simply trying to bury next to your appropriate forefathers or forbears which is a right. And these are the issues in the Land Claims Court that require urgent and pointed legislation to protect the rights of our people. It happens all the time. It, it can't, to its – excuse me, it is expensive enough to bury. Mourners must find money then to bring an urgent application on a Saturday to accord. It is just unattainable in this democracy that we have to still put up with this kind of mentality. So there needs to be some kind of consultation between the respective communities, the owners and appropriate legislation be put into place so that we stop this unnecessary inconvenience and hardship that people go through.

COMM Didiza: CJ if I may ask my last question. With your experience in the Land Claims Court and particularly the backlog on the resolution of the restitution cases do you think the Land Claims Court should only be the one that deal with such matters? Or maybe we need to reflect whether other should deal with this matter so that the issue of restitution and land reform in general can be speedily addressed.

Mr C.M. Sardiwalla: The Land Claims Court is bleeding it needs help. It needs assistance to function. There are two or three judges and they can do only so much. The volumes of outstanding cases have increased over the years. And given the nature of land claims they're not matters that you can run the way you would in a normal High Court. There is inspection in loco, there is all sorts of expert evidence that is required, and matters run for years. There, in fact I had a discussion with one of your members in recent times about the urgency of finalising these matters and a mechanism has to be found. There has to be re, urgent revisiting of the legislation and the process by which land claims could be finalised.

CJ M. Mogoeng: Does that mean that the Land Claims Court must remain as a specialist court or that it may remain but that other courts should also have the jurisdiction to deal with land claims?

Mr C.M. Sardiwalla: Chief Justice I think you've hit it on the head. The point is this, if the court cannot be supported adequately given the financial constraints that we have in the country we cannot simply allow one court to run land restitution. It needs to be spread around. It needs to go to other provinces so that there is provincial convenience for parties to litigate within the respective provinces. And perhaps appoint appropriate judges in those divisions to deal with the court, to deal with land claims matters.

CJ M. Mogoeng: The delays are they at the level of the court or elsewhere? When finalising these matters as speedily as is humanly possible.

Mr C.M. Sardiwalla: I think it is, Chief Justice, it's both ways. It is at the level- nature of the process of land claims. As well as the fact, the capacity to finalise these matters.

CJ M. Mogoeng: Yes.

Mr C.M. Sardiwalla: It requires a very robust approach which I have been taking in these courts.

CJ M. Mogoeng: Capacitation of the land claims commissioner's office and the increase the number of judicial officers.

Mr C.M. Sardiwalla: Yes.

CJ M. Mogoeng: And the resources you say. Is it only judicial or also the research capacity?

Mr C.M. Sardiwalla: Administrative as well.

CJ M. Mogoeng: Okay, yes. President Maya?

Ms M. Maya: Thank you Chief Justice. Good afternoon Mr Sardiwalla.

Mr C.M. Sardiwalla: Yeah, good afternoon.

CJ M. Mogoeng: She is here.

Ms M. Maya: I am right here.

Mr C.M. Sardiwalla: I am trying to find that face in the corner. Good afternoon Justice.

Ms M. Maya: I just seek clarity on an issue raised in the, it is in the comments, relating to Normadien Farms against Mathimbane a matter in which you apparently were asked to recuse yourself. Does anything turn, there is no notes on this issue. Does anything turn on this accusation application. What happened there?

Mr C.M. Sardiwalla: No, it was. Thanks for raising that matter because it relates to a very complex matter.

Female: Excuse me Chief Justice, we've got an appeal on the 7th of November, this matter. Yes. It will be before the Supreme Court of Appeal. Thank you.

Mr C.M. Sardiwalla: Should I –

CJ M. Mogoeng: Well, if you comment let it be in a manner that does not compromise you in any manner. In view of the fact that it is before the SCA.

Mr C.M. Sardiwalla: Yes. I am glad that it is before the SCA. It was an acrimonious matter with various sections of the law involved. Cara. Esta, labour tenants and all the complications and I am glad it's before the SCA for decision.

CJ M. Mogoeng: But had you done anything wrong that points to why you had to recuse yourself or something? Or the suggestion that you should recuse yourself?

Mr C.M. Sardiwalla: There was a pre-trial conference and which I urged the parties to take a particular approach in the interest of the Esta occupants and labour tenants and there was vigorous opposition and they felt that I had made up my mind. But pre-trial conferences in land claims normally settle matters. And I was trying to protect the respective interest of the weakest of the parties there. And they decided that I had already made up my mind.

CJ M. Mogoeng: Did you proceed with the matter?

Mr C.M. Sardiwalla: No, I didn't

CJ M. Mogoeng: Okay. Okay.

Mr C.M. Sardiwalla: I recused myself –

CJ M. Mogoeng: - Yes -

Mr C.M. Sardiwalla: - when I realised that they wanted to proceed, and I engaged to far in the matter.

CJ M. Mogoeng: Okay. Okay. Thank you very much Mr Sardiwalla. You are excused.

Mr C.M. Sardiwalla: Thank you Chief Justice and Commissioners.