



JUDGES MATTER

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Eastern Cape Division of the High Court (Judge President)

Interview of Judge Z M Nhlangulela

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[Inaudible]

Judge Nhlangulela: It's about 9 years

CJ M. Mogoeng: 7?

Judge Nhlangulela: From 2009.

CJ M. Mogoeng: Yes. And a Deputy Judge President for how long?

Judge Nhlangulela: From last year.

CJ M. Mogoeng: Last year, which month?

Judge Nhlangulela: Should have been October.

CJ M. Mogoeng: From October. Now in your own words, just tell us, give us your vision. Outline your vision for the entire division to us. What are the challenges? How do you intend to address them? What plan do you have?

Judge Nhlangulela: CJ there is evidently numerous challenges facing not only my court, that is Mthatha, but also my court put together with the other stations of the Eastern Cape Division. My plan is to take off on the premise that one should tap on the social capital in existence in the division. What that means is that a problem for one station shouldn't be confined to that station but must be understood as being a problem for the entire division. And this speaks to the capacity of each station or all the stations put together if you like. Because they cannot be, in my experience derived from short experience, a short period of my working as the DJP of Mthatha, you cannot solve a problem for one station by confining the problem only to that station. You need to engage colleagues from other stations and resolve the matter or matters. And I am confident that if that is done one would reap the desired fruits. The problem emerges when you partition.

CJ M. Mogoeng: When?

Judge Nhlangulela: You partition. [02:31:7 vernacular] in Mthatha if you have a problem that's your problem. Explain how you resolve it. No single individual can resolve a problem for an example of the roll that governs the entire division. When there are fruits or bigger success made at one station then clap hands but when there is a problem experienced by one station and then you back off. Is that approach, I think, that has bedevilled us. You have to commit human beings, you have to tap into the expertise of colleagues. And my take-off has informed me that the solution lies there.

CJ M. Mogoeng: You sound like somebody who is submitting. Who has failed to do what? And how?

Judge Nhlangulela: It's the system. It will be unfair, I must emphasise, to point to one individual and say, that judge there at the corner, that JP, that DJP and so on; it's just a question sorting out the system which must work for the entire division. I'll make just one illustration, an attempt was once made by the JP to rotate the judges throughout the entire Eastern Cape and when that stopped then the expertise to which I am referring saw most of the problems that we have. In fact, I must point to this that is in Mthatha for an example, it is difficult to deal with appeals. Because of the congested roll, by the way, in Mthatha, it is slightly different. I am making no excuse, but I must state the well-known fact that when it comes to work in Mthatha one is confronted with a deluge of cases. You apply this solution to this problem another one pops-up on the next day. So there is a capacity problem, not of an individual but of that particular station put together. And it is my belief, even now, that if we are taken the suggestion by the JP for granted that we should rotate judges so that we have expertise and speed being applied in the doing of cases, we probably would be having a new system with which, rather as a tool to solve problems.

CJ M. Mogoeng: Let me try and break it up. Sometime last year, I think it was, I visited the court over which you preside together with the JP because there were problems which needed to be resolved. Now, which problems were you confronting, in relation to backlog, in relation to any other thing and how have you addressed them ever since? No, you shouldn't confine yourself to the problem that brought me there.

Judge Nhlangulela: CJ.

CJ M. Mogoeng: What were the problems and how have you addressed them so that we can see from there how you'd address the problems all over the province?

Judge Nhlangulela: CJ, we on that occasion we had a problem with regard to the roll.

CJ M. Mogoeng: Yes.

Judge Nhlangulela: Just the management of the roll. And this problem snowballed in many other problems for example; infrastructural problems and so on. The list is long. But, one has been able to take advantage of case flow management, apply it to the letter and we are beginning to see results. We have gone past that now. What we are confronted with now, is just the amount of work which at the end of the day the court sits with in order to address. It is just so much.

CJ M. Mogoeng: Yes.

Judge Nhlangulela: In fact, even on that occasion we did talk about a possibility of judicial vacancies being created for Mthatha and in my estimate, I would say that two posts require to be created sooner rather than later. But, because of some procedural difficulties we haven't been able to get there. But, the matter is being resolved.

CJ M. Mogoeng: How many judges are unable to, as a matter of course, complete their reserve judgements within three months? On average?

Judge Nhlangulela: Thank you, JP. I am one of the culprits, I must declare. If you want to call me a culprit. But I must declare that there is one case that I've not been able to finish off within the 3 months period, but that is circumstantial. I must ask for pardon, but the reason is the one; it is a case which is quite complex, and it didn't come up alone. It came up together with another. There were two.

CJ M. Mogoeng: No, I just want to know, now, just the statistics; how many cases are older than, how many judges have judgements reserved for more than 3 months? How many for more than 8 months? How many for more than 12 months? From your court?

Judge Nhlangulela: I think because of the improvement, we speak only of the 3 months period. In fact, as observed from the statistics that that's the position

because I engage statisticians to check as to the levels at which we are operating. So it's a source of encouragement if not happiness to me that at least we are not talking about a long period or periods of not delivering of judgments.

CJ M. Mogoeng: What is the age of your part-heard matters and how many matters are we talking about?

Judge Nhlangulela: It has just been 2 matters, I've resolved 1.

CJ M. Mogoeng: Not you, all the judges including you.

Judge Nhlangulela: 3 months, it is basically 3 months. It's about 3 months I know about.

CJ M. Mogoeng: Part-heard matters?

Judge Nhlangulela: 3, 3.

CJ M. Mogoeng: What is the state of your backlog?

Judge Nhlangulela: When it comes, may I address this in two ways. Starting with civil matters. There we don't really encounter a problem, but we do have a problem when it comes to criminal cases. Perhaps it is in that area in which I've said that we have a deluge of matters. But to answer the question; I think that for the financial year ending this, which has ended in March we have a backlog running at about 60 - 68 percent, 60 – 65, 68 percent. Translated from the figures of 16 out of 50 cases resolved. So the response rate is not a good one, I must concede.

CJ M. Mogoeng: So 68 percent and none of them is older than 3 months.

Judge Nhlangulela: No, no the 68 percent that is your cases older than 3 months. In fact, to be precise in those figures ... [interjects]

CJ M. Mogoeng: Oh, I thought they fit within the 3-month period.

Judge Nhlangulela: No, no. It's more than a year, with those 68 percent cases it is more than a year.

CJ M. Mogoeng: Yes.

Judge Nhlangulela: Yes, it is not 3 months.

CJ M. Mogoeng: You've been Deputy Judge President for how many months now?

Judge Nhlangulela: More than 6 months.

CJ M. Mogoeng: Now brag, this is the opportunity you have. You have had the privilege, unlike the other two candidates of occupying a leadership position as you apply for a higher leadership position. Now that you have been privileged to occupy a leadership position show us now, tell us now, how you have been, you have been able to display or deploy your leadership capabilities to deal with the problems within your area of jurisdiction, including problems as they affect the Regional Court and the District Court. Just tell us in your own words now, what have you achieved and how?

Judge Nhlangulela: I've achieved improvement when it comes to human resource. The buy-in has been satisfactory, good enough for one to have hope for the future.

CJ M. Mogoeng: What does that mean?

Judge Nhlangulela: It means that we act in unison, we do our work together in more or less the same way, without one lagging behind and the turnaround being affected is even and I would not have a complaint with one colleague or that other. I am happy with that. And infrastructurally we have arrangements whereby most of our problems are going to be resolved, it is just a question of the renovations being commenced with. By the way ... [interjects]

CJ M. Mogoeng: But let me interrupt you there. I'll be interrupting you from time to time. But infrastructure can't be your achievement, isn't it? Because I came there and immediately spoke to the Minister to intervene in relation to your problems and the Magistrates Court problems. So, and in any event, if any event if any is to be credited it is Public Works. I want to know about how you have carried out your core mandate. From a leadership position.

Judge Nhlangulela: I, I can ... [interjects]

CJ M. Mogoeng: The buildings you report and then if nothing is done you can't be blamed for that. If something is done you can't be praised for that.

Judge Nhlangulela: It all goes back to the system that is being applied in approaching the cases that we do every day. Practically we have achieved satisfactory results through me with regard to civil cases. That is through case flow management and we engaged twice a week, dealing with case management and the setting down of cases is much quicker and it because our rate of cases are satisfactory than before.

CJ M. Mogoeng: What does that mean, satisfactory?

Judge Nhlangulela: It means it is faster, faster.

CJ M. Mogoeng: How fast?

Judge Nhlangulela: CJ, I've not had recourse to the statistics, but I am confident that the statistics will show that.

CJ M. Mogoeng: I am sorry to interrupt you, my brother, but they should be on your fingertips. If you ask me sitting here the Constitutional Court more or less, on average how do you completely, I'll tell you. So it can't be that you, I need to look at statistics. It's my job to know. I live it.

Judge Nhlangulela: I do know, CJ that the success rate on turning around, the finalisation rate of civil cases is more than 60 percent.

CJ M. Mogoeng: Yes.

Judge Nhlangulela: And contrasting that with the criminal cases I submit that with all the commitment and preparedness to solve the problems putting one's shoulder on the wheel and ensuring that everybody is in court. The court hours have improved, we sit long enough satisfactorily. But, still, we have not been able to reach in criminal cases what one would call a ground-breaking turnaround because of the damage.

CJ M. Mogoeng: What are the problems in so far as criminal cases are concerned?

Judge Nhlangulela: It's human resource.

CJ M. Mogoeng: What does that mean?

Judge Nhlangulela: Meaning that the number of Judges doing the cases are less than desirable, for an example, may I just make this one example. In my experience starting from the days when I was acting in Mthatha we would have, not less than 4 acting judges. By acting judges, I am not referring to the acting judges that we are utilising now because the system has changed slightly. It says that the acting judge must act in a post. At the time there were not those restrictions where an acting judge would be acting in a post. So we would, for practical reasons be having as we are serving judges in Mthatha we would be having a complement of more than 7, say about 11, that is acting before judges. And most of the time we'd have a number of acting judges starting from 2 to 4 and that helped a lot. Now when that, when the system changed as such that we now have an acting judge, acting only if Mokgoethleng is not available to do work. Then the problem of capacity started to show.

CJ M. Mogoeng: Yes, do the other stakeholders cooperate insofar as criminal matters? Or are they not cooperating?

Judge Nhlangulela: They are cooperating a lot. And just after my appointment, I took it upon myself to engage realistically with the stakeholders and ever since we have been moving together. That engagement meaning practically that we should operate or depart from the premise that when the case is referred to court for a trial everybody is ready to engage.

CJ M. Mogoeng: What are your leadership and managerial strengths?

Judge Nhlangulela: It's keeping people together.

CJ M. Mogoeng: How?

Judge Nhlangulela: Making one colleague understand that his or her duty is the same of the other. Helping out colleagues and anyway they can. Starting court on time and meeting to share the problems, every beginning of the week; something that had stopped for some time, we resuscitated that, and it is helping. Because in that manner, one gets to know who is doing what in court and how. When as criminal, out of the three-criminal court, when as a criminal stopped and so on, and there's communication which is favourable for the court finishing off its cases at a reasonable pace.

CJ M. Mogoeng: Any other strength you have that would explain why you best suited for the position of Judge President?

Judge Nhlangulela: I bend too much CJ.

CJ M. Mogoeng: You?

Judge Nhlangulela: I bend. I bend too much. I do everything to assist the stakeholders. By stakeholders, I am not referring only to a practitioner but starting there I help them a lot. There are many issues that I have uncovered, you know, as the Deputy Judge President. That there would be a whole range of non-core issues that emerged and which the heads have to be – that the head has to confront. And I

think that I have been able to resolve a lot of problems which otherwise would have become obstructions on the way of us doing our work. And even the JP would bear this out with me, I try, you know the way I grew up; I was taught that I must own up. How I do it I lead from the front, I do things myself and not be a crybaby who when he has a problem he looks for someone else to take over from him.

CJ M. Mogoeng: There seems to be a quite a number of generalisation. I expected you to be very practical and specific so that we under, oh so he can address this problem this way, so he can address this problem this way and contextualise the usefulness of whatever leadership or managerial strength you have with reference to the work you are supposed to do. For instance, the running of the Provincial Efficiency Enhancement Committee you could tell us what is it about your leadership strength that has helped that entity to be more effective. I am just citing an example, I am not saying you must talk about it. Any other leadership strengths, specific? Or weakness? I'll tell you mine, one weakness I have I mustn't eat when I work, otherwise, I become tired so it is better not to eat. I'll eat when I want to sleep and it's not healthy.

[Crosstalk]

CJ M. Mogoeng: Ja, no, I don't eat lunch. So, what are your strengths what are your weaknesses?

Judge Nhlangulela: My strength at the risk of general.

CJ M. Mogoeng: Sorry?

Judge Nhlangulela: At the risk of being general, I must be pardoned for this, is vigilance. Greater awareness of what is happening around me and what is expected of me to do. And practically what that means is that I lead by example. If it comes to going to court, I go to court, I do the right thing. If it means that I must be patient with practitioners I have to be patient but in a reasonable manner and we are a bit harder now because of the platforms that the CJA has created in the PEEC and so on where problems are discussed. The issues of personality, we deal with that and it is

a source of happiness to me how I have recently discovered the humbleness in the colleagues and their readiness to make the court better. I will be lying about them at first before I enter that office I thought that the reason why this court is not doing well is because of that man sitting the corner and so on and so on. But having resolved that pulling everybody to the centre discussing as it were the core issues confronting us. By the way, it is not just about the judges, it is about our community, it's about our society as well. And more so that we have to be seen to be accountable to the public. We do that without fail.

CJ M. Mogoeng: Is it fair to assume that if you were to call upon to address the judges, regional court magistrates, district court magistrates on your vision how to give them hope that things are going to change and set out practical steps through which you're going to change the division for the better, this is what you were going to tell them.

Judge Nhlangulela: This is what I would say, listen to citizens complaints, act upon them promptly and account to them. That is what I have done. A countless number of people coming to me with problems one would perhaps would regard as trawling but the accumulation of which can break down the division. I have been able to respond and in a way, that has made me happy together with colleagues. So that now is all encumbersant, because we have a connection with the Magistracy as well, in many respects, not merely that we are a court of appeal, but the connection has been such there is very little stumbling blocks ... [interjects]

CJ M. Mogoeng: Very?

Judge Nhlangulela: Little stumbling blocks or ... [interjects]

CJ M. Mogoeng: Legal?

Judge Nhlangulela: Stumbling, stumbling?

CJ M. Mogoeng: Little?

Judge Nhlangulela: Little or no stumbling blocks.

CJ M. Mogoeng: Oh, okay. Okay.

Male: Thank you CJ, at least.

Judge Nhlangulela: There are no stumbling blocks.

CJ M. Mogoeng: I thought you were saying legal?

Judge Nhlangulela: No little. There are no stumbling blocks standing on our way.

CJ M. Mogoeng: Yes.

Judge Nhlangulela: Yes. And we've got agents. You know what is good about this is that we've got agents. We are watched every day as judges doing work by practitioners and they can testify to this.

CJ M. Mogoeng: My final question to you, what are you going to do to improve court performance and anything else that require improvement in the entire Eastern Cape Division of the High Court?

Judge Nhlangulela: The first thing is capacity. I know that as Mthatha is complaining about the number, that is numbers of judges as were complaining about the number. A similar complaint is raised elsewhere, I think that confronting this once and for all is going to help because ladies and gentlemen you can't be sitting here talking and the same thing how that Eastern Cape is not better than another division. One at a certain point must realise that unless certain things are done we will get nowhere. So my response is we need to deal seriously Premier with the question the number of judges. We need to deal seriously with the issue of making the judges, the courts stronger in that regards and again operating with a good compliment of judges we then have a healthier and an effective movement of judges. I can't leave this one behind because expertise is key to success. Where I fail and my brother in Port Elizabeth can do better and I call him to tackle this problem, you

know, once that problem is removed I am happy, he is happy, and the division is happy. Secondly, secondly, I've said repeatedly how that we need to create posts of not less than 2 judges, sooner rather than later. We do have an infrastructural challenge because there you would be talking about chambers, you 'd be talking about this and that, and that. And by the way, we've got circuits as well which when 2 judges have gone out to circuit we get robbed of capacity and it's, this matter of not having a good complement of judges has created all sorts of problems.

CJ M. Mogoeng: JP?

JP C.T. Sangoni: Thank you very much, CJ. I am gonna ask you a very few questions. But those few questions if need be think about them. I am listening very carefully and the way I am looking at it is that you only consider Mthatha area as the place where you have a responsibility to look after. Is that so or not? Do you consider yourself to be ... [interjects]

Judge Nhlangulela: No, not exactly, not exactly. It is just that I cannot speak from space. There are bigger problems arising elsewhere which affect, I wouldn't say that when they begin to eat up all our credit they only affect Mthatha, they affect the entire division. So my answer is no, in fact, my eyes are cast much wider, but I was just making an example on what I know the best.

JP C.T. Sangoni: Now, be frank with us. Don't think everything that is going to come out here is going to be eating on me, I am two weeks away from here.

CJ M. Mogoeng: JP, we can't hear you. We can't hear you. Please draw the mike closer to you.

JP C.T. Sangoni: All right. You've heard part of my question?

CJ M. Mogoeng: Heard be frank with me.

JP C.T. Sangoni: Don't ever think you are trying to place me in a good position or whatever or whatever. Just be frank. If you are to be asked now how are we

operating in the Eastern Cape Division. Are we doing good, are doing bad, or we are just one of the people who are operating without any good results as such? I am talking about Eastern Cape as a whole.

Judge Nhlangulela: South Africa counts more to me than the JP, yes. And my answer is we are doing well under the circumstances.

JP C.T. Sangoni: Why do you say, qualify it, I am thinking of the number of judges that are there? Or simply objectively without giving the reasons ... [interjects]

Judge Nhlangulela: Its leadership JP. It is leadership.

CJ M. Mogoeng: Please allow the JP to finish.

Judge Nhlangulela: I beg your pardon. I beg your pardon.

CJ M. Mogoeng: JP complete your question.

JP C.T. Sangoni: I'm just saying objectively speaking, can you say the Eastern Cape is doing good work without giving the reasons why and why not? Can you say it is doing good work, that includes Mthatha, Butterworth rather Port Elizabeth and so on?

Judge Nhlangulela: Eastern Cape, JP, through you CJ is doing well.

JP C.T. Sangoni: When it comes to performance?

Judge Nhlangulela: It is doing well.

JP C.T. Sangoni: Now I see here that the procedure that are adopted and also it is not only procedures, the outcome that comes out of what we do and so on. Can you say positive or it is negative?

Judge Nhlangulela: Positive, JP.

JP C.T. Sangoni: Then what are we complaining about? Is there anything that should make us complain, even about the number of judges then?

Judge Nhlangulela: It's fear, fear of the unknown, JP.

JP C.T. Sangoni: What is that about?

Judge Nhlangulela: It's very much part of South Africans. You know you, I'll tell you as human being in this country you do so much, you do so, you wake up and you apply yourself to the best of your ability, but rewards don't come. That is the fear of the unknown. Now, you are not sure whether you are doing good or doing bad. Because what you are short of are people who are going to say, and who are genuinely going to say we appreciate Nhlangulela what you've done. I am not referring to Nhlangulela only, judges of the Eastern Cape.

JP C.T. Sangoni: You've seen that there are comments which are actually saying they support the position of you being the Judge President of this area. Can we say the people in and around Grahamstown should actually be doing the same thing, support you? They've got good grounds to support you.

Judge Nhlangulela: A lot of grounds. A lot of grounds, and here I speak of the advertisement for the post having been sent out there and the responses to the advertisement. It having been known that Nhlangulela is one of those who aspires to lead the division. And I've examined the basis, or let me say the comments made or levelled against me and having made a proper assessment I believe that there is support. It may not be, it might not have come out in a manner that, Nhlangulela when are you coming we are short of you now in Grahamstown, when are you coming to start to be JP. No, although it has not come out that way, but from what I have assessed there is not a substantive objection.

JP C.T. Sangoni: Are you talking about the Bar or are talking about everybody?

Judge Nhlangulela: Yes, I am ... [interjects]

JP C.T. Sangoni: The Bar and the people in general?

Judge Nhlangulela: I pick, JP I'll use the comments that have been brought up as examples to illustrate my point. The first one from the Eastern Cape Society of Advocates it refers to an unknown factor.

JP C.T. Sangoni: Which is?

Judge Nhlangulela: Which is that judges are not available to do work. That is an unknown factor, it is foreign to me I can't, I lack words to explain it further than saying that it is too general and sufficient for it to be dismissed. Not unless I am confronted with details. Further, I've also considered the comments made by a firm of Mr Makanya which I've said even, in my initial response, that they raise important aspects of the judiciary. But not so far as to speak to the subject matter on which we are about today. Can Nhlangulela be stopped from being JP on the basis of that? No, because it speaks of residence and this and that. I've said, in fact, my view is that no, it's not really a comment which one could regard as being an obstruction.

JP C.T. Sangoni: Did you, in fact, understand what he was saying?

Judge Nhlangulela: I think I understood.

JP C.T. Sangoni: What was he saying?

Judge Nhlangulela: He says that Transkeian have been given more opportunities to be JP's, which is false because Judge Somela was never a Transkeian as far as I know. When there from 1988 I never saw Judge Somela until he came to be judged there. And all I know is that for all intense and purposes the Honourable Somela has lived his life in Port Elizabeth.

CJ M. Mogoeng: Is he not from Khunwe, in fact with a house Khunwe?

Female: Khumbu

CJ M. Mogoeng: Khumbu, I beg your pardon.

Judge Nhlangulela: He is born there, CJ. He is born there.

CJ M. Mogoeng: But doesn't he even have a house there?

Judge Nhlangulela: He is born there. Yes, he does have a house.

CJ M. Mogoeng: Yes.

Judge Nhlangulela: Yes, but I am referring here on professional matters. The duties, the judicial duties he performed. I think that during his work as the JP he was not a Khumbu person, he was an Eastern Cape human being, and you cannot fix him to Khumbu. Not unless you want something else known to you only. So residence is not really a factor here. He was, he served me, he served me in the same way that he served people of Port Elizabeth. In the same way that he served people of Grahamstown. I see, in fact, I JP I don't quite understand this. But insofar as it is limited to the residence, I don't think it is an obstruction and I don't think that one is playing games when we stand up to say that we want to assist South Africa. No, we are not self-serving.

JP C.T. Sangoni: Thank you. If you are to succeed. Let's say you are recommended and appointed. Would you then move to Grahamstown where the seat of the court is?

Judge Nhlangulela: Certainly. I will not do what is happening even in my own division. Where for reasons of no choice to colleagues there have to commute between East London and Mthatha. I've learned good lessons from that that if I accept a post like this one there can be no debate. I will have to live in Grahamstown. Otherwise, how can I be there permanently? How can I occupy that JP's office? How can I listen to problem? How can I respond? How can make the court better at the end of the day without being there? So the answer, in a nutshell, is I'll be there.

JP C.T. Sangoni: Thank you CJ.

CJ M Mogoeng: Thank you very much JP. Premier?

PREM P. Masaulle: Very briefly, thank you, CJ. Judge Nhlangulela, since assuming the position of DJP how long exactly from exactly time in 2016?

Judge Nhlangulela: It's 2016 to now. It's just more than 6 months.

PREM P. Masaulle: Thank you. Just in respect of the plans and the strategies you put in place to deal with this deluge of problems you've cited. Are you happy that you have really achieved the plan itself and the impact of it? What is your comment in that respect?

Judge Nhlangulela: The answer is yes. And my comment is that you know when you look at the system that does not work for you, you make attempts to improve it or change it. That I have done. In fact, there has been a lot of talking, you know the problem lies with the roll management of the roll and the history to it. So in Mthatha, for an example, we did not have the running roll system. That we have implemented, I've reported that to the JP that we have implemented it so long but we are looking at making that the official policy of the station.

PREM P. Masaulle: The last part related to it is; given this very big huge task how would you dispel a notion or a view that given the immensity of such problems and their continued existence in spite of the improvements that it would not place you in good stead for the position of a higher than that, how would you dispel that? Just give the assurance that it shouldn't really be a cause of concern.

Judge Nhlangulela: I worry, it will be unfair for me to be judged on the basis of the capacity that is not there. By capacity, I am not referring to the inability to apply oneself in court. The number, one can overlook this, but it will continue to haunt us. That will need to be addressed. Secondly, the creation of sound relationships one

thing good about other people impressed me as well, CJ allows me to blow my whistle, I know ... [interjects]

CJ M. Mogoeng: Just what I've been asking you to do.

Judge Nhlangulela: Thank you.

CJ M. Mogoeng: But in relation to court performance and leadership.

Judge Nhlangulela: Yes. I know that I will influence, I don't remember ones because I am known for applying myself 100 percent on tasks. I've not been condemned ones or I have not been rejected ones by a colleague. Immediately I ask for assistance. I am not talking about Mthatha, even colleagues from PE and Grahamstown. And that is a source of encouragement because then it then addresses the issue of lack of capacity.

CJ M Mogoeng: Is that how you are blowing your horn?

Judge Nhlangulela: I sell myself, JP, by respecting. If I respect you I know that you will respect me in turn. If I don't respect you, I mean how on earth can I expect a relationship, a sound relationship to happen between me and you. In fact, let me also make this mention of this other point for the benefit of the Premier. Some few days ago I happen to be talking with my JP just on general issues as we must have been talking about the office that he occupies. And I made a comment that one of the reasons we might be seeing as being weaker as compared to others is because we question too much. We question too much, we question too much, the CJ says do case flow management, it will help you in overcoming capacity problems. And then one saying we will do it another one opting out of it. That is unfortunate, so that's one of the issues that I think that I can address by talking to people, seeking buy-ins and so on and above that, I also mentioned to the JP that who knows, maybe we are still settled with the well-known narrative. CJ the narrative that is disturbing our division is this that for you to be a good judge you must be located in Grahamstown. No, I reject that. Judge Maya knows it. You don't need to be located in Grahamstown for you to be then regarded as a good judge. No, I reject that with the

contempt it deserves, because I wake-up early in the morning, work hard and for people to say these things are not fair.

CJ M. Mogoeng: Premier? Thank you. Before I forget for how long including your permanent appointment have you been in the position of Deputy Judge President? Remember you acted for some time before you were permanent. If you include your acting stint up until now?

Judge Nhlangulela: It's from 2015, that could have happened JP around Easter 2015 and from that date, from that date I think I have acquitted myself well.

CJ M. Mogoeng: That's about 2 years.

Judge Nhlangulela: Yes.

CJ M. Mogoeng: Thank you.

Judge Nhlangulela: I have acquitted me well.

CJ M. Mogoeng: Commissioner Fourie?

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

Judge Nhlangulela: Good day.

COMM Fourie: Two of the answers you gave in response to a question from the Judge President were that the Eastern Cape is doing well. That was the one answer and the other one there is no substantive objection to your appointment. If I may refer you to the comments of the Eastern Cape Society of Advocates as well as Makhanya Attorneys, and unfortunately, I have to read it to you or parts thereof, "Judge Nhlangulela have not as yet addressed the administrative deficiencies which are encountered in the Mthatha Division. This raises concerns as to his ability to adequately manage and administer all divisions within the Eastern Cape". That seems to cooperate by Nkanya Attorneys that inter alia says, "the High Court in

Mthatha has problems beyond anybody's imagination. I do not see any reason why Justice Nhlangulela is not concentrating on that position. Only a year and three months he was appointed to that position. It does not seem correct that he should leave that court in such state". Now you responded in a letter dated the 28th of March 2017 and by enlarge as I understand it Judge your response is both in respect of the Eastern Cape Society of Advocates and Nkanya Attorneys you say, "these are vexed issues which I prefer to leave for discussion before the commission if the commission deems it necessary" that is in respect to the Eastern Cape and in Nkanya same you say, "the JSC can deal with this during the interview, again vexed issues". Have you addressed those vexed issues in this interview? And how does that correspond with your answer that the Eastern Cape is doing well? And how does that correspond that there is a substantive objection to your appoint? I regard it as quite substantive.

Judge Nhlangulela: In South, Africa citizens are entitled to say anything and everything and at any time, that is my experience. Nkanya does not work in Mthatha, I've not seen him ever since I've acted there beginning 2015 and many years before that. I've never seen him in that court. Where does he take his things from? And what administrative deficiencies is he referring to?

COMM Fourie: Why then do you answer to say it is a vexed issue? Why don't you say he doesn't know what he is talking about?

Judge Nhlangulela: No, no I didn't want to create a, I didn't want to create an impression that I know better. I invite all of you individually to ask me questions about this administrative, because I, in the first place I don't understand Mr Nkanya.

CJ M. Mogoeng: There is a follow-up question.

[Crosstalk]

PRES M. Maya: Thank you, CJ. Good morning Judge Nhlangulela.

Judge Nhlangulela: Good morning, Justice Maya.

PRES M. Maya: I just want to respond to your most recent response. Yes, Attorney Nkanya does not work at the Mthatha High Court but Judge Makaula, your colleague who told us that he is in the monitoring committee and he is involved with the PEEC, PEC, is that PEC?

Male: No, PEEC.

PRES M. Maya: In your area. Told us about backlogs in your court. Told us about problems where you find that there are two rolls in the motion court on the same day and judges, certain judges are refusing to do more than 25 cases in a day and want to leave early. She told us about a number of problems in the Magisterial, in the Magistracy, mentioned specific cases "Nkandwile and Els" what are we to make of that? Are those not serious challenges?

Judge Nhlangulela: One must look for context first. And those comments are devoid of context. If there are allegations so serious as those they would have been raised in the joint meeting with judges. I take part, by the way, I am part of the PEEC and there has never been an occasion in the PEEC when there was Nhlangulela as a subject matter who has led down the people. There's never been such a thing. Now that is, so that is a take-off, context is a loss. Now let me deal with the attempt to raising of what are problems. Depending on my colleague's interpretation I would fail to understand what to, what reference two rolls really means. Two rolls I don't understand. Let me tell you how we work from Monday to Friday.

CJ M. Mogoeng: I think you can be brief Judge Nhlangulela.

Judge Nhlangulela: Okay, that is not a valid comment. Let me just be brief. Not a valid comment. No two rolls in a day. There is no refusal by my colleagues to do work. I can be hanged if I were to lie to you about that. The cooperation of colleagues I've said, we've started to meet, we meet every Monday, JP will bear me out. I asked for his permission that, look for me to understand and to be understood by my colleagues, we need to meet regularly. We started to meet every Monday,

and these things were never raised in those meetings. It might be an unfortunate interpretational problem. I stop there.

CJ M. Mogoeng. Thank you, President Maya. Commissioner Fourie were you done? Or not yet. Please proceed if you still have questions.

COMM Fourie: I will not pursue this question that I've asked you to the time factor but there is just one last question, Judge. In your questionnaire paragraph 19, there is a question; "is there any other relevant matter which you should bring to the attention of the commission?" You say yes, and it says if so please furnish particulars. And you say the following: "my introduction into the judicial administration office in my capacity as the ADJP and DJP and the experience acquired from it strengthened my belief that the judiciary is indeed a useful governance tool that contributes immensely towards the attainment of a democratic State". I have difficulty to graph this and I want to give you the opportunity to explain it and I want you to also indicate to me what, why you thought this was such a relevant matter that you should bring it to the attention of the Commission. Even if I follow and understand what you are trying to convey.

Judge Nhlangulela: Thank you, Commissioner. If you occupy an office of the DJP that I occupy you are sort of removed from the general public. You are high up there, if you like, you are the highness the difficulty which most people are not able to do, is to go back to consult the people about what they do up there. That's what I mean, my experience, the interaction, the healthy interaction, a listening ear, the response to problems is what has created bridges between the judiciary and our communities. I stand for that. I am an agent for that.

COMM Fourie: Is that what you mean by referring that the judiciary is under, is indeed a useful governance tool.

Judge Nhlangulela: Yes. May I expand?

COMM Fourie: And why did you have to become the DJP to get to that revolution?

Judge Nhlangulela: This is a circumstantial comment. I make it a particular time. Not necessarily that, it would not apply if I were in another post. It is not what I am saying. But I am being asked now, you are there. Tell us about your eyes, what do you see around you. I know that we had CLEAR, the court is very part of CLEAR. I know that there was ASKISA, the court is very much part of that National Project. I know that there is a National Development Plan the courts are part of that. If I remain at the towers of Johannesburg and not consult with our people what kind of a court will that be? That's where I, I am an agent for that.

COMM Fourie: Thank you, Judge. I won't pursue that. Thanks, Chief Justice.

CJ M. Mogoeng: I am sure you don't have me in mind as the one who is based in Johannesburg?

Judge Nhlangulela: No. CJ, the highest Building is in our commercial hub, that is Johannesburg. That is why I mentioned Johannesburg.

CJ M. Mogoeng: Thank you, Commissioner Notyesi.

COMM Notyesi: Thank you, CJ. Good afternoon Judge Nhlangulela.

Judge Nhlangulela: Good afternoon.

COMM Notyesi: In fact, there is this question I must, to be fair to Judge Makaula. I must explain it is actually me that actually put that question. In Mthatha, right now you have two rolls. Two motion court rolls which are serving in one court. Split into two, the first judge will come at 10 o'clock, finish his 25 matters or 30 matters, he leaves. And then the other judge will come later and complete. And this roll came about because Judges there said the roll was hard, they cannot cope. Whereas if you ask Judge Maya sitting there you ask yourself when you took over from, when you come to that office, you ask the JP here, that roll use to run up to 97 matters. Judges were doing it and this current roll, it resulted in some Judges once they complete their matters at 12 o'clock just not be seen around. We are saying, this is the question I was asking whilst debating with Judge Makaula, what is your view

about that? Is it the right thing to do? In fact, it is a matter what I've been raising, severally no only here.

Judge Nhlangulela: There is no problem with that system. Perhaps let me give you a little bit of background. The implementation of that policy was in line with the decisions taken in joint meetings of the division. The complaint raised having been that the motion court can be, can be too difficult to manage by one judge. I come from a tradition of the Honourable Justice Maya where we had that one motion court. I come from that tradition, I managed it, I had no problem with it, but at a different time in the history of the court, there was talk, the issue of the strain being put upon one judge as a result of which the system was changed a bit. By the way, this happens also in Port Elizabeth, and I think there was merit in making this suggestion. And I think the colleagues were also saying, for us to move around to work as judges in Mthatha coming from Port Elizabeth, Grahamstown would need to operate within one system of approaching the motion court roll and that was approved. I think the intentions were not bad ones, and I must further say its implementation is not bad just because of we, you know you have that split now. But the system can only be bad if the engagement of those two judges is not the same. Now, this is an issue for an individual judge. Your oath, what did you come to the court to do? Because for me it doesn't bend, you still must do your work in the same way that the other court is doing.

COMM Noyesi: My point, Judge, on this as you recall is that in terms of that practice which is creating a lot of inconveniences it must be the first judge who must start the court and you know for a fact that some of judges will just come to court after 11:00 am and the court does not start before you have to await the arrival of the single judge. That was the matter, that was there. You see people moving around the courtroom was that my point is, is that a working system does it not need to be improved?

Judge Nhlangulela: Well I wouldn't say it does not work. But I would say, I wouldn't say it does not work because we are managing the cases well. I have not seen a failure as such, but the decision to come into court as the second judge for the day, it is a decision which would have been taken by that Judge. It is not necessarily a

good one if that has happened. It will not be a good one because the court does not start 11:00 am in the first place. But when it comes to the cases themselves and the impact of this system on the turnaround of the cases I would submit that hasn't destroyed anything, everything remains intact. By the way, it applied in PE it is applied in Grahamstown as well and logically if it not working in Mthatha it must mean that it is not working elsewhere as well, which is not the case. Maybe this a matter for further engagement to the extent necessitated by the ears that you pick-up, which I probably would not have picked up. Tell me, and we sit down, we review everything.

CJ M. Mogoeng: But how can you not know whether your own system, as a leader, is working well or not? Why should outsiders be telling about your core responsibility?

Judge Nhlangulela: CJ, my answer is that the system is working well. I am not retracting.

CJ M. Mogoeng: Oh, okay.

Judge Nhlangulela: I am saying if perhaps, this matter is raised by way of saying we want another system. Then it will be a matter for discussion. But the practicability of this system emerges from the meetings we have had. Because it has been practised elsewhere and it is working and in my court, it is working as well.

CJ M. Mogoeng: Now did I hear that judges arrive at 11:00 am, or what was this about 11 o'clock?

Judge Nhlangulela: I'm, Commissioner Notyesi, I am not too sure if he is raising this as a fact or ... [interjects]

CJ M. Mogoeng: No, no but did he not say that they arrive at court at 11?

Judge Nhlangulela: I don't have that experience.

CJ M. Mogoeng: What do you mean?

Judge Nhlangulela: I mean I've not heard that there is a judge who supposed to be in court at a particular time, not arriving on time for the court.

CJ M. Mogoeng: You don't have to hear, you have to know.

Judge Nhlangulela: I don't know it, CJ.

CJ M. Mogoeng: All right.

Judge Nhlangulela: I don't know it. But I don't have, I only have two eyes, maybe it requires me to have 10 eyes maybe I would see it. But I can't know if I am not told.

CJ M. Mogoeng: If you are not told.

Judge Nhlangulela: But I see, and I and I am vigilant, and I look, I do everything.

CJ M. Mogoeng: Yes.

Judge Nhlangulela: I am doing my best. I can't be perfect.

CJ M. Mogoeng; Yes. Commissioner Msomi? I am sorry, I interrupted you Commissioner Notyesi, I really apologise.

COMM Notyesi: My last question is, in fact, if you read the motivations for you by NADEL. I am dating at the time when you took over as the ADJP that there was a crisis in that court, in the Mthatha High Court, in fact, this Chief Justice actually pointed to some two meeting where the Deputy Minister had to go there even the Chief Justice have to come having read some newspapers. There were things that were specifically pointed out. One of them was the question of the courts not starting in time and all these things, some of them which I have mentioned. If you can tell the Commission, because they say you have improved, those things have

improved since you've taken over. Can you be able to tell us how have you dealt with those things?

Judge Nhlangulela: Thank you, I've dealt with them this way because I was there when there was those difficulties. I started to introduce Monday meetings. Then I can see with my naked eye that all the judges are here, what is your problem judge so and so. I present the roll, this is what you are going to do this week. This is what I am doing, this is what so and so is doing. Not one of them has refused to listen to me. Now that is a turnaround. Then I started to be able to manage the roll effectively, then the pile leadership was doing. So that's really a generational gap. We are far away from those years now. And I am glad to report that personally, I am happy, even if you don't give me credit. I am happy, I can sleep with my family knowing that I am happy. I have achieved results. So it is no longer happening, CJ it use to happen.

CJ M. Mogoeng: No, I am worried you know DJP you seem to make light of very serious things. If it was brought to your attention that judges arrive at 11:00 am and it was even in the media in response to that here you say, no, no you don't know that to be the case. Commissioner Notyesi says, no but it was there. Then you don't dispute it but you are not telling us what you did to make sure that judges don't arrive late anymore and this after you'd had said, no you only have two eyes, if you had ten eyes you would have, you would have known that there are these judges that come late. That is the problem.

Judge Nhlangulela: I must ask for ... [interjects]

CJ M. Mogoeng: I am just making a statement in passing. I have a problem with the manner in which you seem to be making light of very serious things that affect the public that you are supposed to serve.

Judge Nhlangulela: I must apologise ... [interjects]

CJ M. Mogoeng: These are the things that discredit the judiciary. And you are there making jokes about ten eyes.

Judge Nhlangulela: I must apologise profusely to you CJ ... [interjects]

CJ M. Mogoeng: Yes.

Judge Nhlangulela: If I sounded like that but what I meant to say is that we once had that terrible period of time and having intervened I made everything possible to change things. And now I can confirm that we are out of the woods. I am sorry, and even to Commissioner Notyesi, if I think, perhaps I misunderstood you to be saying that that is what is happening now. I beg your pardon. It is no longer happening, that's my answer, straight answer to the question, it is not.

CJ M Mogoeng: Commissioner Msomi.

COMM S. Msomi: Thanks, Chief Justice. Good day, Judge Nhlangulela.

Judge Nhlangulela: Good day, Good day Sir.

COMM S. Msomi: I have three questions for you but the first one was adequately covered by Commissioner Fourie, so I'm just going to concentrate on one question which I will categorise as a question broadly on leadership. Leaders are required to come up with novel solutions to problems. I want you to take us through, if in throughout your career have you ever come up with a novel solution to a problem. What was the problem? What was the solution? Two, leaders are required to think strategically, you must be able to develop a strategy. Are you able to tell us whether in your entire career have you ever developed a strategy? What was the strategy, what was it responding to? So that we know here that if you become the Judge President of the Eastern Cape you are a man who can develop a strategy, come up with solutions to novel problems. Lastly on leadership, when Chief Justice posed a question about your successes, one of the issues you touched upon was that you have done well with regards to human resources. I may be wrong, but I think you rely too much on what I would call the power of persuasion to rally the troops behind your vision. What happens when the power of persuasion does not work? Have you been in a situation where you have had to crack the whip? Are you comfortable with

reading the riot act, as it were, to your colleagues if and when today when they don't tow the line? Perhaps is that the reason why with your two naked eyes you have not seen those who arrive at 11 o'clock, it is because perhaps you are not the kind of guy that will confront conflict and a little bit of indiscretion head on?

CJ M. Mogoeng: And as you respond DJP, so far as possible I know it is not always possible be as brief as you are able to be.

Judge Nhlangulela: Yes, pursuit is a tool, but for the court, you focus more on the roll. That I have done to give attention to the roll, how it is unpacked in order for solutions arising to be addressed. To the fact that we are able to resolve problems together makes me to think that because it was on my initiative it is yielding good results, because of my initiative. It didn't happen on its own, I had to stand up, I had to communicate. And I did so not for the purposes of just meetings, but because there were problems which were required to be addressed in meetings. So on that score, I was able to initiate the process which then gives us solutions to a lot of problems. And I insist, for an example; I've made mention of the fact that most of the colleagues would be waking up in East London coming to court to start their work for the week. That is no longer happening. I think Mr Notyesi, might have been referring to that. At that time colleagues to be lacks because there was no leadership and they would come even at 12 and so on. But that is no longer happening and that is because of what I said that this should be done. Because I can't lead people who are absent. And then that's the 11 o'clock story. That is how it comes in, that has been resolved. And then the issue of my being able to take decisions and follow them up is what I do as a matter of course. I do that every day without fail. And I think that I would say that my response in that area has, is visible and it is good enough for one to have hope for the future.

CJ M. Mogoeng: What? Is that follow-up Commissioner Notyesi? Oh, okay. Commissioner Schmidt?

COMM H. Schmidt: Thank you, Chief Justice. Two issues. You are the second candidate that have referred to a judge opting out, and I use the operative word in adverted commas, opting out of case flow management. How does it happen that a

judge opts out, out of case flow management, is there, aren't there judicial directive or practice and rules which regulate this? Or is it something that is applied haphazardly in various division or within various courts within divisions?

Judge Nhlangulela: There is a blueprint which is the rules governing case flow management and as it has been unpacked, we follow those rules as far as possible. But we know that they are under discussion by the relevant committee with a few of translating this to legislation to be applied countrywide. But there can be now denying at this point in time that case flow management is the way to go for all the courts. It is just a coordinating instrument. Now, for the fact that the system has been unpacked on the basis of piloting the project at particular places, that is particular courts, has in my view created somewhat a scapegoat for those who perhaps, for whatever reason don't see value in it. But objectively there is value in it. Because those who apply it have been successful, so it is just that opting-out it happens in that fashion. It is not something that really is official and so on. It is something that can be blocked, that can be sorted out as soon as possible.

COMM H. Schmidt: Can I just ask, is there a directive in the division that case flow management be followed?

Judge Nhlangulela: Yes not directive. It comes from the OCJ that the courts should, are encouraged to apply case flow management.

CJ M. Mogoeng: It is not OCJ, it is Norms and Standards they are binding. And they draw from the Superior Courts Act. How can it be optional?

Judge Nhlangulela: Thank you, yes. Thank for that correction OCJ, I mean CJ. That is the position, now what, where I am getting, let me also cite another reason which I regard as being an excuse enabling some of us to opt-out. The cry that looks there is not a sufficient number of secretaries to type this document and that document, you know emerging from the process. It is something I am sorry, it is just excuses.

COMM H. Schmidt: Can I just ask, there are two problems I have with your last statement. One is on the face of it you do not know the source of the obligation to instil case flow management. And secondly, you are allowing judges to opt-out from Norms and Standards that are not debatable. Am I correct in that statement?

Judge Nhlangulela: No, no let me. It is just a question of my presentation. Let it make is straight. There are three stations ... [interjects]

CJ M. Mogoeng: I am sorry DJP can you just please, I know it is not easy, but can you please just answer Commissioner Schmidt's question directly, please?

Judge Nhlangulela: I have not encouraged a judge to opt-out. I have instead led in its implementation.

COMM H. Schmidt: I have not used the word encouraged. I've said you've allowed. But let me move on to the second point. Did you in anticipation of this interview taken the opportunity of visiting some of the other divisions or the other offices such as Grahamstown, Bisho, PE to determine what the problems are and if they are similar to that in Mthatha and if so are they similarities in these issues?

Judge Nhlangulela: I'll speak for myself I had a problem doing that. Because we are 4 candidates who have applied for the same post, and we are located at various stations. So fearing that I might be seen as having ulterior, an ulterior motive in the journey leading us to being interviewed I did not think that it was wise to do that. I merely relied on the existing systems under the operation of the existing JP.

COMM H. Schmidt: Thank you, Chief Justice. Thank you very much, Commissioner Schmidt.

COMM J. Malema: Follow-up, follow-up.

CJ M. Mogoeng: Yes follow-up, Commissioner Malema.

COMM M. Malema: What stops you from visiting courts where other candidates come from? Cause that is not their homes. It is the public property and you are employed you can go anywhere, what is the reasoning behind except, what makes you to be uncomfortable going to where other judges come from? Because it is professional conduct, you will be doing. There is nothing personal about it.

Judge Nhlangulela: Commissioner Malema maybe it is a failure of judgement. but it is something that I can do, I will be prepared to do at any time. I appreciate, and I know that this is the peoples' property and if entrusted in me it is my obligation whatever I can do in order to resolve problems in the system.

CJ M. Mogoeng: Do you understand the question though? Because this what, its essence as I see it, as a person who is hoping to be judge president and who want to make sure that he hits the ground running, upon appointment why didn't you familiarise yourself with the problems, work out a strategy, through which you would address these problems, come and share that with us so that we can confidently say we have found a leader that will serve the people of the Eastern Cape well. How, how I, now if you, ja let me leave it at that. Why didn't you familiarise yourself with the challenges so that you know what is it that you are allowing yourself to be drawn into? Are you equal to task considering the magnitude of the problems? That's the essence of the question. You don't even know.

Judge Nhlangulela: No, maybe, maybe it is the comfort I derive from the fact that I know, I know what is happening on the ground from history. Maybe it is, that's the reason I, the only reason I can bring up. I am not a stranger, I am not for an example a candidate from outside the Eastern Cape wanting to go into the Eastern Cape to work there. I am alive to the nature of problems, I am alive to a lot that is going on in the Eastern Cape. I am not, I am no way trying to say I was right in not doing it, but I wished I could bring this background up. Maybe I fail there because of that comfort.

CJ M. Mogoeng: Thank you, thank you DJP. Professor Ntlama?

PROF M. Ntlama: [1:25:43 inaudible]

CJ M. Mogoeng: Thank you, Commissioner Norman?

COMM Norman: Thank you, Chief Justice. Good morning Deputy Judge President. That division that is the Easter Cape division as a whole from Mthatha right up, in fact, it is one division really, but what I want, am I correct that that division has never been headed by a female or a woman judge? Am I correct?

Judge Nhlangulela: That's correct.

COMM Norman: And am I also correct that currently there is no women judge who is a deputy president of that division?

Judge Nhlangulela: That's correct.

COMM Norman: Now in your plan then as, you want to be Judge President of that division, where do you see women judges playing a role in the management of that division?

Judge Nhlangulela: I have incidentally discussed this matter with women judges in Mthatha. Insofar as they are women being representative of the bigger number of women and who are advantaged by reason that they are already judges, they are there. And I spoke to one of them in exactly the same terms, and I said how I wish you could improve your work and be involved in the processes of leadership with a view of taking over as the Deputy to start with at some stage in the near future. I am not sure if I am allowed to mention the name, but I know that that lady I spoke to directly and she approved of this and that remains my intention. It is my intention to give effect to because of the obvious reason that the matter of men occupying leadership position alone to the exclusion of women, I lack the term to use in describing it, but it is just scandalous, and it not born of out of any natural reason problem with women, there is just nothing. It is just a question of planning but it is a matter that lies in my vision moving forward that it will be best to have a person like that. May I go a few paces back to reflect on something, we use to talk a lot with the lady judge who is now a judge in the Supreme Court of appeal about this matter.

COMM Norman: Yes, in other words, it is receiving attention?

Judge Nhlangulela: It is receiving attention.

COMM Norman: Thank you very much.

Judge Nhlangulela: It is receiving attention in a serious way.

COMM Norman: Yes, thank you, Chief Justice, thank you.

CJ M. Mogoeng: Thank you, Commissioner Norman. Thank you, Deputy Judge President Nhlangulela you are excused.

Judge Nhlangulela: Thank you.