



JUDGES MATTER

**Judicial Services Commission interviews
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**Gauteng Division of the High Court
Interview of Adv M J Mosopa**

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Adv M. J. Mosopa: Good morning, Commissioner.

CJ M. Mogoeng: Are you well and relaxed?

Adv M. J. Mosopa: A little bit nervous, but I think with time it will ease.

CJ M. Mogoeng: Alright. Where did you obtain your degrees? Your B Juris and LLB?

Adv M. J. Mosopa: I obtained my B Juris at the University of the North.

CJ M. Mogoeng: When was that?

Adv M. J. Mosopa: That was in 1993.

CJ M. Mogoeng: Yes.

Adv M. J. Mosopa: And I did my LLB, which I completed in 1995 at the same university.

CJ M. Mogoeng: Did you then immediately go to practice?

Adv M. J. Mosopa: The following year, 1996, I made an application to the Pretoria Bar for Pupillage and I did my pupillage in 1996.

CJ M. Mogoeng: Yes and when did you begin practice?

Adv M. J. Mosopa: Chief Justice, I did my pupillage in 1996 and 1997 and from there I immediately went into practice. In 1999 I joined the Criminal Law Bar, where we specialised in criminal matters, but members were not restricted to take work in other fields of law, but our speciality was criminal law.

CJ M. Mogoeng: Is that the Bar known as the Church Square Society of Advocates? I forgot the name.

Adv M. J. Mosopa: No, the Criminal Law Bar is...

CJ M. Mogoeng: It's a different one?

Adv M. J. Mosopa: It's a different entity.

CJ M. Mogoeng: Then I'm confusing you with another candidate.

Adv M. J. Mosopa: Yes.

CJ M. Mogoeng: I'm sorry. Yes?

Adv M. J. Mosopa: No, I'm a member of the Church Square Bar.

CJ M. Mogoeng: Oh, okay.

Adv M. J. Mosopa: Yes.

CJ M. Mogoeng: So, it's a different Bar altogether?

Adv M. J. Mosopa: It's a different one. I had the liberty of being in the same Bar with the late Judge (indistinct) [00:01:53] in the Criminal Law Bar and in 2001 I joined the Church Square Bar.

CJ M. Mogoeng: Okay. So, if you add up your total period of your practice as an Advocate, how long have you been practising as such?

Adv M. J. Mosopa: Up to now, it's been 21 years, Chief Justice.

CJ M. Mogoeng: 21 years?

Adv M. J. Mosopa: Yes.

CJ M. Mogoeng: And for how long have you acted as a Judge?

Adv M. J. Mosopa: I started acting as a Judge on the 10th of October 2016 and I did seven terms, which is...

CJ M. Mogoeng: Yes.

Adv M. J. Mosopa: ...which is 66 weeks.

CJ M. Mogoeng: Six weeks?

Adv M. J. Mosopa: 66 weeks.

CJ M. Mogoeng: 66 weeks?

Adv M. J. Mosopa: Yes, Chief Justice.

CJ M. Mogoeng: Was it difficult, very difficult or easy to cope with?

Adv M. J. Mosopa: I cannot say it was difficult or easy, but the transition for me, it was not that difficult in the sense that when I started acting, I was given criminal work to do and that's basically my field of speciality and it was even – I'm exposed to Court attendance. I do appear in Court on many occasions. So, it was not a difficult thing for me to do.

CJ M. Mogoeng: A few colleagues struggle with reserved judgments. Was it your problem as well or not?

Adv M. J. Mosopa: With regards to criminal trials, I can't say I picked up a reserved judgment, because normally after hearing evidence I summarise. I summarise the evidence on a daily basis and then immediately after argument I'll deliver my judgement with a civil matters it's something different.

CJ M. Mogoeng: It is?

Adv M. J. Mosopa: Something different. There are complex matters which you cannot deal with them immediately and then you have to reserve judgment, but I make it a point that I deliver my judgments timeously.

CJ M. Mogoeng: Well, how or what is the longest period you've kept a judgment reserved for?

Adv M. J. Mosopa: I cannot remember reserving a judgment for more than three months, CJ.

CJ M. Mogoeng: You have never reserved it for eight months or one year?

Adv M. J. Mosopa: No, no.

CJ M. Mogoeng: Yes. Very well. JP?

JP Mlambo: Thank you, Chief Justice. Advocate Mosopa, good morning.

Adv M. J. Mosopa: Good morning, JP.

JP Mlambo: You've acted for a total of 66 weeks and you confirm that the bulk of your acting time has been in the Criminal Trial Court?

Adv M. J. Mosopa: That's correct, JP.

JP Mlambo: But you have been put in other work areas? You've mentioned the Opposed Motions Court, where you've spent five weeks there?

Adv M. J. Mosopa: That's correct, JP.

JP Mlambo: How did you find acting in that Court?

Adv M. J. Mosopa: Opposed Motions Court is a very challenging Court, JP, to say, but you are given files timeously too before the hearing of the matter and with counsel having prepared their heads of argument, that makes work easier for you. You read your files, you read your heads of argument, you do your own research and as a result I didn't find it so much difficult, but it's a challenging Court.

JP Mlambo: Right and I note that you sat in about five full Court appeals.

Adv M. J. Mosopa: That's correct.

JP Mlambo: Did you write any of them, the judgments?

Adv M. J. Mosopa: I wrote some judgments in those matters.

JP Mlambo: Okay. Thank you, Chief Justice. No further questions.

CJ M. Mogoeng: Thank you, JP. MEC Lesufi?

Mr Lesufi: Thank you so much, Chief Justice. Can I just catch my breath? I'll come later (indistinct) [00:05:42].

CJ M. Mogoeng: Commissioners? Yes, you may catch your breath. So, you'll come later?

Mr Lesufi: If you don't mind, Chief Justice.

CJ M. Mogoeng: No, it's fine.

Mr Lesufi: I really have several questions, so I just want to order them.

CJ M. Mogoeng: No, it's okay.

Mr Lesufi: Thank you so much.

CJ M. Mogoeng: Commissioner, any of you? Commissioner Cane?

Ms Cane: Good morning.

Adv M. J. Mosopa: Good morning, Commissioner.

Ms Cane: There's an overview of your application and some of your judgments before us, prepared by the JCB and the issue pertaining to the manner in which you dealt with an 11-year-old girl's case...

Adv M. J. Mosopa: I'm sorry, Commissioner. I can't hear you properly.

Ms Cane: Is that better?

Adv M. J. Mosopa: Yes, it's better for me.

Ms Cane: Thank you. I'd like to raise with you the GCB's presentation, an overview relating to a case in which you were dealing with a rape victim or an alleged rape victim, who was 11 years old. The matter came on appeal before you and you overturned the conviction and the sentence. Are you aware of the case I'm referring to?

Adv M. J. Mosopa: I'm aware. I've seen the GCB comments on that matter.

Ms Cane: Now, the cogent criticism or most cogent criticism from the GCB appears to be that the evidence of the Forensic Nurse that examined the 11-year-old after the incident confirmed the kind of injuries one would expect to find for a girl that had been raped. How did you deal with that in your judgment?

Adv M. J. Mosopa: Yes, before I answer the question, I would just want to give the overall picture what happened in that matter. That matter came before myself and another Judge as an appeal matter from the lower Court. I had the benefit of dealing with a more senior Judge in this division, who is also experienced, well experienced in criminal law. We had an opportunity of reading into the record of the lower Court proceedings. We discussed the matter and in our view we were of the opinion that the evidence doesn't confirm or support the conviction. We had a – we looked at the evidence of the Forensic Nurse. The Forensic Nurse confirmed that the child was sexually assaulted, but unfortunately due to the delay in the report in the matter, there were no DNA conducted to prove who's the actual perpetrator. The child might have been sexually assaulted, but the question is, was it the accused, who's the one who actually assaulted the child? But we couldn't find that evidence on record. That is why and based on the fact that there were so many contradictions in the evidence of the child and the fact that the reports she made to the Forensic Nurse, who actually testified under oath, differs completely with what was said by the child and it was upon those that we said that the evidence doesn't support the conviction and we set it aside, but I'd like to further add and I've dealt with that in my judgment, after the conviction of the accused, the accused requested a pre-sentence report. A social worker was assigned to interview both the victim and the accused. The victim, the child, said to the social worker that the accused didn't rape her, but the aunt is the one who said to her that she must tell the police that the accused raped her. The matter was brought to the attention of the prosecutor in the lower court and the prosecutor assigned the Investigation Officer to obtain the statement from this child. The child confirmed what she said to the social worker, that the accused never raped her. That is before the Court in a lower Court and it was handed in as exhibits, that is the pre-sentence report and the statement obtained from the

child. After those exhibits were handed in, the prosecutor wanted to withdraw the conviction, but because the (indistinct) [00:10:29] was (indistinct) [00:10:30] officio and there's no provision in the Criminal Procedure Act, which provides for the withdrawal of the conviction. The Magistrate refused that application, but he proceeded in sentencing the accused to life imprisonment and as a result – it is not because of the developments that happened after the conviction, it is because of the evidence itself that we've decided that the Magistrate was wrong and we need to set aside that conviction.

Ms Cane: Could you also inform the Commission whether the complainant had given evidence in the lower Court and describe the manner in which she was raped and identified that it was the complainant that had raped her during her evidence and how did you deal with that issue?

Adv M. J. Mosopa: Sorry, can you please repeat?

Ms Cane: Yes.

Adv M. J. Mosopa: Sorry, I didn't (indistinct) [00:11:24].

Ms Cane: Sorry, entirely my fault for being unclear.

Adv M. J. Mosopa: Yes.

Ms Cane: I would like you to explain to the commission how you dealt with the fact that the complainant testified during the Magistrate Court trial of the manner in which she had been raped, that it had been the complainant that had raped her and that he'd given her R50.00 at the end of the ordeal.

Adv M. J. Mosopa: Yes.

Ms Cane: How did you deal with that evidence?

Adv M. J. Mosopa: Yes, you must remember that evidence didn't come out of examination in chief. It was cross-examined that it was put to her that she'd informed the Forensic Nurse that the accused raped her and after that gave her R50.00 and she confirmed. She never mentioned about the issue of the R50 .00 in her examination in chief and the further aspect is that she said she informed her cousin about this rape ordeal. The cousin was called by the Court as a witness, not the state, but by the Court as a witness. She came and explained and said no, this child never informed her about this rape incident.

Ms Cane: Are you satisfied that the fact that an 11-year-old doesn't inform close relatives and here I'm speaking more generally, just to understand the method of analysis. If an 11-year-old child doesn't inform family members at the time of the rape, that that necessarily indicates that the rape did not occur?

Adv M. J. Mosopa: No. And even in my judgment I didn't say that.

Ms Cane: No, I'm just asking for your comment on that view. How would you approach that issue of a young girl not disclosing a rape at the time it occurred and perhaps only doing so many years later. Would that affect her credibility in your view?

Adv M. J. Mosopa: Not at all. If you look at Section 59 of the Sexual Offences and Related Matters Act, it says that the delay in reporting the matter, the Court cannot draw any inference with regards to the delay in reporting the matter of young children in sexual offences cases.

Ms Cane: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Cane. MEC, are you now ready or should I proceed with others in the meantime?

Mr Lesufi: No, that's the same matter that I wanted to raise, CJ. I just want to raise this question, maybe if you're comfortable, Advocate Mosopa.

Adv M. J. Mosopa: Yes.

Mr Lesufi: Do you think your conscience is clear in this matter of the 11-year-old?

Adv M. J. Mosopa: My conscience is clear, MEC.

Mr Lesufi: Clear, clear, clear?

Adv M. J. Mosopa: It's clear.

Mr Lesufi: You really believe there was no miscarriage of justice on – when you take into consideration the kind of cases that are now happening in the country concerning children and sexual assault and the emphasis and the line that you took and the questioning more of this 11-year-old than the perpetrator. You really feel your conscience is clear on this one?

Adv M. J. Mosopa: My conscience is clear, MEC and I'll tell you why I'm saying this. The social worker who was assigned to compile a pre-sentence report is an independent person, who was not involved in this matter at all. She went there to interview the child. She didn't even have any interest in this matter. The child was clear. She volunteered this information to her, but what I'm saying is that despite the development the evidence itself – I had the benefit of reading the record and I've read the record once, twice, I'm satisfied and my conscience is clear on that fact that the conviction was wrong.

Mr Lesufi: Compare this case with the speed and the manner that you handed that case of the people that were thrown in the lake and all the evidence that was presented before you, if you compare the work that you have done with that particular case that many felt that you have done extremely well, taking into consideration the time, the evidence and the difficulty of that particular matter, and this 121-year-old, what would you want to share with us, concerning those two cases?

Adv M. J. Mosopa: My starting point, MEC, will be this, cases and circumstances differ. With the (indistinct) [00:16:06] matter that you are referring to, there was an overwhelming evidence against the accused. There was also DNA evidence, which linked one of the accused to the commission of the offence and with regards to this case of that child, I'm not saying I'm insensitive to the rights of the young children in sexual offences matters, but you see, one thing, I've taken an oath of office that I'm going to administer justice, without fear, favour and prejudice. That's actually what I've done in that and I think I've done it with upholding my mandate. This is the constitutional mandate and my accountability to the constitution and the law.

Mr Lesufi: Thank you, CJ. Thank you.

CJ M. Mogoeng: Thank you, MEC. Any follow-ups? The first by Commissioner Duduza?

Ms Didiza: Thank you, CJ and good morning, Advocate.

Adv M. J. Mosopa: Good morning, Commissioner.

Ms Didiza: Having listened to you and your perspectives on how you believe you've dealt with that matter, if I may ask, have you had any reflection on how such matters in the future, particularly when it involves children could be dealt with better by our judiciary?

Adv M. J. Mosopa: Thank you, Commissioner. I think the problem starts with the National Prosecuting Authority, because the onus rests with them. If they can be afforded a proper and adequate training, especially in relation to this sexual offences cases, I think that will better the position and that the problem with the judiciary, they should (indistinct) [00:18:02] us with evidence. It deals with evidence and if it's in the mind of a Judge who's presiding over that matter that the evidence is not adequate enough to secure conviction, then the person has to be acquitted irrespective of the fact that an 11-year-old or a five-year-old child has been raped.

Ms Didiza: Thank you, CJ. Do you think our Court system, as it stands today, does facilitate for minors, particularly children to be able to express themselves in an environment that they can be able to give, you know, their evidence on what might have happened on such circumstances or maybe something else might have to be done to create that enabling environment where minors are concerned?

Adv M. J. Mosopa: Thank you, Commissioner, I think our Courts cater for that. We've got a situation where minor children below the age of 16 years testify for intermediaries. Those are trained social workers and we've got a situation again where these young children testified in offices separate from where the accused is sitting from, so where the child is testifying from, she doesn't see the accused and she can freely express whatever happened to her.

CJ M. Mogoeng: Isn't what you need the following though, the revival of the Tutusela centres and maybe doing what the French do, combining the police with the judiciary, having an investigating Magistrate, so that some of these sensitive

matters, you have the benefit of presiding officer, who will not sit involved to guide a sensitive investigation such as this at a very early stage.

Adv M. J. Mosopa: No, I believe that will be the correct approach, Chief Justice.

CJ M. Mogoeng: Minister?

Mr Masutha: Just on the Tutusela centres, I can confirm that we at least have 55 nationally running, but obviously it's a far cry compared to the need out there, but of course constraints is another factor. But just in terms of the intervention of the Court itself, you are saying that the cousin was called in by the Court – I don't know whether to say (indistinct) [00:20:53] or something. I do not hear you say the aunt, who is alleged to have briefed the child, if you like to make this "false accusation" against the accused was equally called in to testify. I didn't hear you say that. Did that actually happen and if it didn't, why wouldn't the aunt's testimony – I mean, this is a serious indictment on the part of the aunt, which should itself attract some kind of criminal action against the aunt.

Adv M. J. Mosopa: Thank you, Minister. The aunt was called as a state witness. She was not called as a Court witness. She did testify in the matter.

Mr Masutha: And how did you assess the – you mean in the Court (indistinct) [00:21:58] or in the appeal Court?

Adv M. J. Mosopa: No, in the Court (indistinct) [00:22:00].

Mr Masutha: No, I'm talking about the Appeal Court. You as the Appeal Court, if I understand correctly, took it upon yourself to call in the cousin to testify. Is that the correct understanding?

Adv M. J. Mosopa: No, (indistinct) [00:22:16].

Mr Masutha: So, this was all happening in the Court (indistinct) [00:22:19]?

Adv M. J. Mosopa: Yes. What I'm stating is what is based in the record of the lower Court.

Mr Masutha: I see. I suppose no evidence is led in Appeal.

Adv M. J. Mosopa: No, no.

Mr Masutha: Yes.

Adv M. J. Mosopa: They were notified from both the...

Mr Masutha: Yes. I just wanted to clarify that. Now, what was your assessment of the testimony of the aunt against the backdrop of the testimony of the child that in fact the child was prompted by the aunt to say this? Did the child simply say that the aunt told her to say so or did the child go further than that and say yes, the aunt told me to testify in this manner, but that that is not the true version of what

happened, according to your reading of the evidence. What really happened there? It's not entirely clear to me.

Adv M. J. Mosopa: *Ja*, let me try to explain it better for you, Minister. What happened, the child testified and said the accused raped her and she was cross-examined. The aunt was called as a witness and she testified and said the child told her that the accused raped her. Then the state closed its case. The accused testified. After the accused's testimony, he requested a pre-sentence report. The social worker was assigned. That is when the child told the social worker...

Mr Masutha: Okay, let's just leave the pre-sentence report aside for now.

Adv M. J. Mosopa: Yes.

Mr Masutha: Let's just focus on the record of the proceedings leading up to the conviction and not what transpires thereafter and just contain ourselves there. Now, the child, according to your reading of the record, testified even under cross-examination. Sorry, I mean the child testified – I thought the child was cross-examined. Wasn't the child cross-examined?

Adv M. J. Mosopa: She was cross-examined.

Mr Masutha: I thought somebody was saying no. Maybe I heard it in my (indistinct) [00:24:41]. Now, during cross-examination, according to your evaluation of the evidence, on the record, was there any discrepancy at that stage that was apparent that would've escaped the presiding officer to the extent that it could only be picked up during the pre-sentence examination?

Adv M. J. Mosopa: I'm now getting confused. You say I must leave the pre-sentence aside, but you are now bringing it in.

Mr Masutha: No, I'm just saying if we focus exclusively on the testimony of the child, both at the stage of evidence in chief and cross-examination, just there, was there anything that was apparently contradictory in the testimony of the child according to your own assessment, of the testimony of the child?

Adv M. J. Mosopa: Yes...

Mr Masutha: ...which the presiding officer might have missed in your opinion at that stage, before we get to the (indistinct) [00:26:03]...

Adv M. J. Mosopa: Yes, there were lots of contradictions and the Magistrate in his judgment acknowledged the fact that there were contradictions, but he said due to the age of the child and the time lapse after the incident and the time when the child was raped, that it could have maybe caused some kind of contradictions.

Mr Masutha: What kind of contradictions were of such a nature, you considered fatal enough and yet the Magistrate did not consider fatal enough to the case of

the prosecution, for example. I just want to understand how you did your own evaluation.

Adv M. J. Mosopa: The major contradiction relates to what she told the forensic nurse about this rape incident in her testimony. They completely differ.

Mr Masutha: Wait, I thought the forensic nurse comes after or at the time of the testimony.

Adv M. J. Mosopa: Yes, but under cross-examination what she told – the forensic nurse was put forward to her.

Mr Masutha: I see. Okay, thank you, Chief Justice.

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

Mr J. Malema: Thank you very much, CJ. Now, were you the only person who heard this matter on appeal?

Adv M. J. Mosopa: No. Thanks, Commissioner Malema. I was with a most senior and experienced Judge. We were two in that matter.

Mr J. Malema: Do you mind mentioning the Judge?

Adv M. J. Mosopa: I don't mind. It was Judge Rabie.

Mr J. Malema: Judge?

Adv M. J. Mosopa: Rabie.

Mr J. Malema: And then the two of you have agreed on the judgment?

Adv M. J. Mosopa: We agreed. Maybe to add, Commissioner Malema, if the senior Judge, in his capacity, if I was wrong in my judgment, he should have corrected me and said to me, no, I don't agree with you and that the JP should have constituted a full bench to deal with that matter.

Mr J. Malema: Yes, now given the sensitivity of the matter, should Judges be considerate of emotions or should Judges just consider the facts when dealing with matters?

Adv M. J. Mosopa: I think we should consider both, Commissioner Malema, but what counts most is the facts.

Mr J. Malema: Okay, let's leave the facts. Are you saying that Judges should consider emotions when dealing with matters?

Adv M. J. Mosopa: No, we must concentrate on facts.

Mr J. Malema: In this case, all what mattered were the facts before the Judges?

Adv M. J. Mosopa: That's correct, Commissioner.

Mr J. Malema: Thank you.

CJ M. Mogoeng: Commissioner Nyambe?

Mr J. Nyambi: Thank you, CJ. Morning, Advocate.

Adv M. J. Mosopa: Good morning, Commissioner.

Mr J. Nyambi: Do you believe in judicial activism?

Adv M. J. Mosopa: Yes, I do believe.

Mr J. Nyambi: Can you share with us your understanding of judicial accountability?

Adv M. J. Mosopa: Well, judicial accountability means that I must be accountable to the constitution and the rule of law. I must be open minded in dealing with the matters that come before me, as opposed to judicial restraint and I think in advocating my duties, I uphold the constitution, the mandate given by me and by the constitution and that I regard as judicial accountability.

Mr J. Nyambi: What might you regard as your weakness?

Adv M. J. Mosopa: Commissioner Nyambe, I'm easily disturbed my minor things. That is my weakness.

Mr J. Nyambi: Thank you, CJ.

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

Mr Singh: Nothing from my side, Chief Justice.

CJ M. Mogoeng: Are you covered?

Mr Singh: Yes, Chief Justice.

CJ M. Mogoeng: Thank you so much. Commissioner Moeketsi?

Mr Moeketsi: Thank you, Chief Justice. Commissioner Malema covered my question.

CJ M. Mogoeng: Thank you so much, Commissioner Fourie, tell me that you're also covered.

Mr Fourie: Thank you, Chief Justice. Good morning, Advocate.

Adv M. J. Mosopa: Good morning, Commissioner Fourie.

Mr Fourie: I just want to deal with a couple of issues raised by the General Council of the Bar in their comments.

Adv M. J. Mosopa: Yes.

Mr Fourie: And I think it's only fair that you get the opportunity to react to that and then secondly, I would like to deal with reserved judgments and the time periods for delivering judgments.

Adv M. J. Mosopa: Yes.

Mr Fourie: Firstly, the GCB, if I may refer you to paragraph 7.3 and 8.1 of the comments. In 7.3 they say "Although the candidate appears to be an experienced Advocate in the areas of criminal and labour law in particular, there appears to be somewhat of a lack of exposure and experience in the broader field of law required for the appointment of a Judge. The JSC may deem it necessary for the candidate to obtain further exposure and experience through further acting appointments in the High Court." And then 8.1 I'm going to read and then allow you to comment on that as well. "The candidate's judgments reveal that he has good linguistic skills in English, although he could benefit from proof reading his judgments beforehand." Would you like to comment on those two let's say perhaps criticisms against you?

Adv M. J. Mosopa: Yes, thank you, Commissioner Fourie. Let me start with what is stated in 7.3, lack of Court exposure. It's a fair comment, based on what I've submitted in my application and based on what they've reviewed, but I can add that since that time when I submitted this application, I was invited by the Judge President for a turn as an Acting Judge, which I accepted and I was doing civil work. I did two weeks of Unopposed Motion. I did two weeks of Opposed Motion. I did two weeks of civil trials and I had a week in civil and criminal appeals and further than that, I have been given an invitation to act again, which I've accepted for the whole term and I think their concern will be addressed or they've already been addressed in the meantime. With regards to the second...

Mr Fourie: Sorry, if I may just summarise, you think it's fair comment, but since you've acted continuously and you think it's been addressed. Is that how I understand your answer?

Adv M. J. Mosopa: Yes, I think it's fair comment, but since I've submitted this application, I was given an opportunity to act for the whole term, where I did civil work.

Mr Fourie: Okay.

Adv M. J. Mosopa: I've also been invited again next term to do civil work. That is for the whole term again.

Mr Fourie: Okay. 8.1?

Adv M. J. Mosopa: 8.1, it's also a fair comment that. I accept the criticism and I think that will help me in future with the judgment writing.

Mr Fourie: Thanks and then the second question, if I may then just turn to the time that you take to deliver judgments and I look at the document distributed by the Judge President, I'm sure you're in possession of that as well.

Adv M. J. Mosopa: Yes.

Mr Fourie: And I'm going to just refer you to some of the matters mentioned there. On the first page thereof the date of hearing of the matter was in October 2016 and judgment was delivered in April of 2017. On that same page, which is seriously concerning to me, the date of hearing is given as March 2016. Judgment only delivered in November 2017.

Adv M. J. Mosopa: Thank you, Commissioner Fourie. These are criminal trials. These are criminal trials which involve a lot of (indistinct) [00:35:15]. The date of hearing maybe might be misleading, because this matter, we had it for a very long time. I didn't write down all the dates when which this matter appeared, but it's a criminal matter, which took a very long time to finalise and then on that date where I – given the date of judgment, that is when I delivered my judgment.

Mr Fourie: So, can I just understand, you say the date of hearing is not necessarily the date on which the trial was concluded?

Adv M. J. Mosopa: No, it's basically the date when this trial started, when the trial started.

Mr Fourie: Okay and then, if I may just quickly go through the rest, there's a matter of Manzini on page 2, date of hearing, April 2017, date of judgment, October 2017. Page 3, June 2017 the matter of Sandani, December 2017 the judgment.

Adv M. J. Mosopa: Where are you, Commissioner?

Mr Fourie: I'm on page 3.

Adv M. J. Mosopa: Yes. Yes, Commissioner.

Mr Fourie: And then page 4, the matter of Mapiye, October 2017 and that must be a mistake, date of judgment, April 2017. I assume that's April 2018.

Adv M. J. Mosopa: Yes.

Mr Fourie: And then the matter of Maluleke, October 2016, date of judgment, December 2017?

Adv M. J. Mosopa: Yes.

Mr Fourie: And then, as you go along, it appears as if the situation does improve and I must say that to your credit, but there are a lot of matters that appear to be bordering on the three months – let's say a danger zone that you enter for example, on page 8, the matter of Royal Hascon something, May 2018, Judgment, August 2018. The same with Pretorius and RAF. And then there are further matters listed there, which I'm not going to specifically refer to. Do you have a difficulty with the preparing and delivering of judgments, sticking to the time periods that are set as acceptable time periods for that?

Adv M. J. Mosopa: No, I don't have a difficulty, Commissioner Fourie. If I have to explain with the criminal matters, we have situations where a matter is scheduled for maybe two weeks. In that two weeks we don't finalise evidence. We then have to postpone the matter to another date. Normally we'll do these matters during recess, because we cannot do it during the term as per the directive of the Judge President. So, it will take time. For example, this current recess, it's only two weeks and we've got a matter where it is involving a lot of evidence to deal with. We cannot even finalise that in two weeks. We have to postpone it to another term – recess. So, it will take time and it will appear as if I've taken time to deliver judgment. It's not like that. It's just to finalise the matter, it took time and with regards to the other matters, I don't think I've reserved judgment for a longer period of time.

Mr Fourie: Perhaps in future, in conclusion, when you prepare such a list, you should rather put the date of the finalisation of the matter and then the date of judgment.

Adv M. J. Mosopa: Thank you for the advice, Commissioner.

Mr Fourie: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Fourie. Commissioner Norman?

Ms T. Norman: Thank you, Chief Justice. Good morning, Advocate.

Adv M. J. Mosopa: Good morning, Commissioner.

Ms T. Norman: You've been asked about this criminal case of the 11-year-old and I thought in answering some of the questions at least you would make reference to a similar case of an 11-year-old – a rape case where you actually confirmed the conviction on appeal.

Adv M. J. Mosopa: Yes.

Ms T. Norman: And you've attached that and it appears at pages 118 and 119.

Adv M. J. Mosopa: Yes.

Ms T. Norman: And paragraph 51, at 1.30, you state that the accused raped a child who was 11 years old at the time of the commission of the offence in 2006, until such time that the complainant was 15 years old in 2009. Is it correct that this child, according to the judgment, reported this matter a year later?

Adv M. J. Mosopa: That's correct.

Ms T. Norman: In 2010?

Adv M. J. Mosopa: That's correct, Commissioner.

Ms T. Norman: But you still found that there was enough evidence and you confirmed the conviction and sentence on appeal?

Adv M. J. Mosopa: Yes.

Ms T. Norman: Thank you. Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Norman. Commissioner Msoni?

Mr Msoni: Thank you, Chief Justice. Good morning Advocate Mosopa.

Adv M. J. Mosopa: Good morning, Commissioner.

Mr Msoni: Advocate Mosopa, I've got just one question and it's really an opportunity now for you to sell yourself, given what the GSB says about the fact that – sorry, the GSB says you are the potential, you are the future. Perhaps you are not ready now. What do you say to that? Why should – that is the counsel that the GSB is giving to this commission and why should we appoint you, given the comments that they have made, *et cetera*? Thank you.

Adv M. J. Mosopa: Like I've said to Commissioner Fourie, it's a fair comment, based on what they have reviewed, but I've since that time done a lot in regard to civil work and I can say that I'm ready. I'm ready for the judicial appointment and I can bring energy to this profession.

CJ M. Mogoeng: Thank you so much, Mr Mosopa. You're excused, Sir.

Adv M. J. Mosopa: Thank you, CJ. Thank you, Commissioner.