

Judicial Service Commission interviews

8 October 2015, morning session

Chairperson: Chief Justice Mogoeng Mogoeng

KwaZulu-Natal Division of the High Court Deputy Judge President vacancy

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Judge S Gyanda Interview

Chief Justice Mogoeng Mogoeng: I take this opportunity to welcome the Judge President of the KwaZulu-Natal (KZN) division of the High Court, Judge President Achmat Jappie, and the representative of the Premier of the Province, Member of the Executive Council, Mr Cyril Xaba, who is accompanied by Mr Willis who is a legal advisor. One of the candidates, Judge S Ndlovu will not be available to be interviewed.

He then proceeded to welcome Judge S Gyanda.

Mogoeng: For how long have you been a judge?

Judge Gyanda: For about 16 years.

Mogoeng: You have had the opportunity to act as a Judge President, is that correct?

Gyanda: Yes, that is true.

Mogoeng: The length of your services as a judge, coupled with the position of being acting Judge President must have equipped you for the position you are applying for, am I right?

Gyanda: Yes, you are right.

Mogoeng: In your own words, tell us what your vision for the division is and how prepared you are to assume this new responsibility if you are appointed.

Gyanda: My vision for the division is that we work together; harmoniously, efficiently and have a strong work ethic amongst some of the judges and acting judges who come there so that that work is done swiftly. This will streamline all the processes; putting into effect the case flow management and supervising to see that it works properly.

Mogoeng: We may come back to those questions, but let me rather give the Judge President an opportunity to explore.

Judge President Achmat Jappie: You and I have known each other from first year in university and we practiced together, so we know each other quite well. As it has already been pointed out you had the opportunity of being acting judge president in the beginning of the year. Now you know that the role of the Judge President and the Deputy Judge President is concerned with managing the civil trial grow from day to day. When you were the acting judge president; and you also assumed the role as the acting senior civil judge; what in your view are the main challenges in controlling the day-to-day activities of the division?

Gyanda: The main challenges are to getting some of the colleagues to do the work swiftly and efficiently. To give you an example; on Monday an acting judge was allocated a matter that was on trial and, as you know, we have a system that if the matter is settled the judges are to report to the judge president or the senior civil judge to inform him that the matter has been settled so that he could be allocated with something else. This happened that the judge did not do so, and these are some of the difficulties that have to be ironed out, to make sure that colleagues take responsibility for ensuring that they are complying with a traditional rule we have to ensure the swift and efficient disposal of cases.

Jappie: I do not know if you are aware of the latest statistics that was made available for the KZN high court that the completion rates in the division is somewhat lagging. How do we go about in improving that in particular?

Gyanda: The biggest problem that I have seen is that judges do not complete a trial within the time which it is allocated and judgements are reserved for a longer time, which has contributed to those statistics that you talk about. More judges should be influenced to deliver extemporary judgements to matters that are not that complicated; not every judgement has to be written like one would be doing when they are researching a topic for the first time.

Jappie: There are also physical challenges in the division, in a sense there is a shortage of support staff and space, amongst other things. How could the deputy judge president assist in that?

Gyanda: We try and manage the lack of space by requiring that it is reported as soon as matter is disposed of so you know that a certain court is available and then another judge can have his matter heard in that court. Essentially, we have to wait until another court is available and then direct another matter to proceed in that court.

Jappie: The other issue as the deputy judge president is that because we have a number of judges and the division operates in two areas, Pietermaritzburg and Durban, although the senior civil judge is the managing judge, he also has to deal with trials of post-motions and the work of an ordinary judge as-so-to-speak. What's your view on that?

Gyanda: As you know, traditionally, that was always the case in the division. The judge president and the deputy judge president lead from the front and took on the most difficult cases and we're always in court doing court work. This is one of the problems we have, as the senior civil judge, once you are called to the role and are busy in court; it is common that some judges to relax and do not report to senior civil judge that they have become available to take on another matter.

Mr Cyril Xaba, MEC for KZN: On the issue of the KZN division being understaffed, having a limited number of judges, and if you look at its total population and compare it to other courts and benches in the country. What measures would you propose to deal with the problems which I have just mentioned?

Gyanda: The lack of the required number of judges has been on-going since the time Judge Tshabalala was Judge President and we were always trying to get two or more judges for our division, but then we had a lack of chamber space and courts in both Durban and Pietermaritzburg. Even if we get the two judges, where are we to put them and which courts would they occupy? Hopefully, as we have discussed with the team that has undertaken the reconstruction which is scheduled to kick off next year, we will have more space and the problem of a lack of facilities and manpower would be overcome. In the meanwhile, the judge president has been getting acting judges to fill in and try to help out but we still have the problem of a lack of space.

Commissioner Narend Singh, Member of the National Assembly: I have to admit that I also know Judge Gyanda; we have met on several occasions and social functions. I note that from the documents given to us that you have been supported by a number of organisations. But I think you may have received this document where the Black Lawyers Association office has comment.

Gyanda: No, I have not received the document.

Singh: With your permission Chief Justice I will read the comment to the panel: "The Black Lawyers Association notes the assistance that Judge Gyanda is giving to young judges as indicated in this application. The concern of the Black Lawyers Association is that during the time when he acted as judge president he did not invite black attorneys and advocates to act as acting judges in the division."

Gyanda: That is incorrect. I invited the black attorney who acted in Durban and I invited another black attorney who's unfortunately had come up with the CV too late during my tenure. I gave her CV to judge Jappie and she was immediately acting in the next section. My belief is that we must try and get the best attorneys and advocates amongst the black community to be acting but the problem is that that there are too many black attorney who are senior, but will not make themselves available because of lucrative practices.

Singh: Thank you for clearing that up and giving your views on the matter. I see that you're very involved in mentoring and involved in the community in the Eastern Cape during the days of apartheid. I note that in one of your pages in your CV you are currently mentoring a Mr M Sabela who is acting as a judge in Durban high court since 25 May 2015 and Ms MBS Masipa who is expected to act as a judge in our division. Tell us in what form, and how does the mentoring take place?

Gyanda: Well, with Mr Sabela had appeared before me on several matters and I was impressed with the manner in which he dealt with the matters. He is an experienced man and comes from a background of being a police man and really inspired me in the manner of improving himself. I invited him to sit with me as an assessor; during this time I realised that he has the potential to act as a judge and therefore offered him the acting appointment. With Ms Masipa, she was a partner in a legal firm in which one of my other friends was a partner. She somehow disappeared from prominence and one day I asked about her whereabouts because I realised her potential a long time ago and I wanted to offer her an appointment during my time as acting judge resident. I got hold of her and she came and gave me her CV and I gave it to the Judge President; that is how she acted in our division. Attorney Sabela got her to assess with me during the period that he was acting and that is how she was exposed. I then advised her on which aspects she needs to do more and generally encouraged her in her pursuit of getting an appointment.

Singh: We've been hearing about some of the problems that you're having with infrastructure and one particular infrastructure of the Judge President. How would your appointment enhance the functioning of the deputy?

Gyanda: I do not like saying this but our Judge President is the softest man you can get and so people tend to take advantage of him. Therefore, I feel that I would provide the balance by being the enforcer or the bad cop and therefore get more out of our judges at present.

Mogoeng: Well my experience with him is that he may be soft but can be very tough when necessary.

Gyanda: Yes he can and he has.

Commissioner Julius Malema, Member of the National Assembly: It looks like you were you were in the university around the 70s and those were, politically, very eventful years. What is your experience and how involved were you?

Gyanda: We were involved with the student boycotts at university on several occasions with the leaders of that time such as Zack Jacob and Pravin Gordhan. We would organise stay-aways from lecturers.

Malema: So were you conscious of the injustices which took place at the time?

Gyanda: Yes I was aware.

Malema: Did those injustices influence your career path?

Gyanda: I don't think so. Originally my career path was distinct somewhere else and I found myself coming to the Bar.

Malema: What is the significance of writing a judgement?

Gyanda: One is to give the readings that the parties either seek or disputed and the other is to inform them as to why you're going in a certain direction.

Malema, Member of the National Assembly: Can you take us through the separation of powers of the judiciary, legislative and the executive.

Gyanda: All three spheres of government have their own set of laws to play, but there are some areas where they can draw the line. I've been following the questions to the people, who came before me about the separation of powers, and judges do not involve themselves in cases; cases are dropped to the judges. It will happen that in a case that is dropped before a judge the matter under investigation will involve issues of separation of powers; as to who's sphere of power is the case under. The case that it brought before the court is simply to provide relief to the complaint who complains; there will be some cases where the court will be able, in spite of the justice or injustice of the situation, to strictly adhere to the separation of powers leading to reach part of the government. There is a case which I have referred to in my submission; it is a case to which I sat as part of a full bench with Judges Madondo and Mhlangase and I delivered the majority judgement of the cases in the case of *State V Mbatha*. There will be cases where the court will have, because of the injustice to one party, interfere or bend the rules in such a way that it infringes upon what would be called the influence of one of the other organs to show that justice will be done. Eventually, there is the Constitutional court to reflect on what the legislature does.

Malema: You know I take a serious offense because the other time you were sitting there and you listened to us interviewing people and in all the candidates we have been talking to we have been asking them about the separation of powers. The answer you are giving is the role of the judiciary in the whole thing. All I am asking is that the acting judge president should know the separation of powers between the judiciary, legislature and executive. Now you're telling me about the cases which you have made - that is not what I am asking. Take us through the role of each branch of the state and possible conflict of interest between those branches of the state. You had the opportunity of knowing what is the way of questioning and should have prepared along those lines. You're clearly not prepared given by the answer you're giving me.

Gyanda: I was not here when you were interviewing, I was in Pietermaritzburg.

Malema: When we were interviewing the judge president you were here.

Gyanda: No, I was not. When you interviewed Judge Jappie for the position of Judge President I was here.

Malema: That is what I am saying.

Gyanda: Yes but he was not asked about the separation of powers.

Malema: All I am saying is when we were interviewing for the judge president of KZN the question of the separation of powers came up.

Gyanda: The question did not come up, not that I recall. In any event I thought you wanted to know how the separation of powers affects the judge.

Malema: That is what I want to know now.

Gyanda: The legislature is the arm of government that legislates the problem, proposes and promulgates democracy. The executive is the arm which enforces the law and the judiciary that applies it. Essentially in a nutshell those are the three independent spheres of the government.

Malema: So judges can make the law?

Gyanda: No.

Malema: Okay. Now the next question is; what is your take on the transformation of the judiciary?

Gyanda: The judiciary has to be transformed to have a balance membership that reflects our society by having equal representation of races and genders.

Malema: Are you done?

Gyanda: Yes.

Malema: In the context of KwaZulu-Natal where there is a major concern by the African population that the Indians are dominating every sphere of life, particularly; economically, judiciary etc. do you think that the appointment of an African as deputy judge president would be appropriate as it would be in line with the transformation of the judiciary, particularly in that province?

Gyanda: Well the appointment of any candidate is the privilege of this body; whether it would be an African or an Indian. I would have thought that 21 years down the line the race that is appointed would be one of the criteria but not be one of the criterions based on the perception that Indians are dominating the various fields. If Indians are progressing should they be penalised because of the progressiveness because I think that is wrong. Why should an Indian be penalised because he works harder and does more?

Mogoeng: Before we proceed, Judge Gyanda looks like you're chewing something. May I request that you put it aside?

Malema: You spoke of a race that should be balanced for transformation; now you come and say that the Indian works hard and should not be penalised. Now here is a white male who works hard and wants to be a deputy judge president and we as the Commission have got the responsibility to transform the judiciary through the appointment of judges. We shouldn't consider the race but rather the hard work of this white male, is that what you're saying?

Gyanda: That is not what I am saying. What I said is that we should not be penalised because we are hardworking. Indians are black people as well and have also been at the end of injustices and should benefit from transformation. The transformation is to bring a balance, and that balanced can be achieved by appointing Indians, Coloureds and Africans who never had the opportunity before.

Malema: My view is that blacks were oppressed but Africans were the most oppressed. In the KZN situation there is a reality that Indians are dominating and I am saying to you that in a situation where there are two people; an Indian and African, would I be advancing the agenda of transformation if I were to choose an African?

Gyanda: If you look at my CV I took a time to indicate that I am an Africa. I regard myself as an African as I am born in Africa; my parents were born in Africa. Why should I be treated differently because I am an Asian descent?

Malema: Let's not talk about you, which is why I left names out. We will debate some other time whether you're African or not, you know what I am talking about. I do not want to personalise it and I want you to be objective as possible. If two South Africans, one of Indian origin and the other of

African origin, are applying for the position, would I be wrong to prefer an African over the Indian for the sake of the transformation agenda?

Gyanda: No you won't be.

Malema: The last point I want to ask you is; what do you mean that you want the best blacks to act as judges? Because here is an attorney advocate who have both gone to school and have qualifications. What do you mean by 'you want the best blacks to act as judges'? Those who work against the transformation have argued that they can't find the best amongst black people and cannot therefore just take any black, they want the best. Perhaps if you could educate me as to what is the best black person you are looking for to act as judge?

Gyanda: We want people who are capable of doing the job, people who are serious about working hard and not people who think just because they are black they will be appointed. Even if it is a white, coloured, Indian or black person we will always want the best. To give you an example, there was a lady who was acting and three of our colleagues complained about the competence of this lady; quite clearly she was out of her depth as she did not have the experience. Then she was subsequently appointed again, but this time she was appointed in the civil sector and no longer in criminal. I was acting judge president and the senior civil judge in Pietermaritzburg and the senior judge in Durban phoned me and he wanted to know who appointed her cause she did not know what she was doing. She was clearly was not one of the best black candidates we appointed. Some people use their influence, whether it is political connections, to get acting appointments and come and go through the motions, in fact Judge Msimang called me and said that these men think that this a holiday resort and come here to retire; we cannot support their appointments as judge president. So then I said that these candidates, whether Black, Coloured, Indian or White, the people must come there and do the job as we want it to be done, and as you and it to be done.

Malema: So you've never seen that behaviour in White people?

Gyanda: We have seen that in White people and in Indian people too. We've seen that in white people even when they were not allowed to become judges.

Malema: What have you done with the lady who was slacking behind? She was made to be like that as she was denied the opportunities by the system. You were supposed to hold her hand and teach her the ropes; why did you conclude that because she was a black female she was not capable of doing the job?

Gyanda: No, that is not true. She did not simply want to do the job.

Malema: I rest my case.

Commissioner Archibald Nyambi, Member of the National Council of Provinces: I have gone through your responses of the questionnaire. Let me confirm that you have not done any publication in the field of law

Gyanda: No.

Nyambi: Do you have any specific reason?

Gyanda: No.

Nyambi: What is your understanding of judicial independence?

Gyanda: The judges must perform their duties without any fear or influence by any eternal force, or organisation.

Nyambi: Share with us your understanding of judicial accountability.

Gyanda: Judges are accounting to the society at large for the decisions they make. Their decisions must be based on law, must be fair and, as I said, they must be made without fear or prejudice.

Nyambi: How do they account to society?

Gyanda: By applying the law as they are supposed to without fear, favour or prejudice. That's their duty when judges are appointed.

Nyambi: Given the challenges of the division which you're in, can you take us through some of the things that we should consider that will make you the right person for this appointment.

Gyanda: In our division I am familiar with the problems, I am familiar with the people and I am familiar with the manner in which the judge president has been running the division. I am sure that I will be able to support him with the aims of the division – the judges in our division have agreed to advance the division as a whole.

Commissioner Andiswa Ndoni: The judiciary in attracting more young female judges; what do you think should be done to make sure that there are female judges who are attracted to joining the judiciary and staying on board as part of the judiciary?

Gyanda: It is for the judiciary to make sure that they promulgate the threshold that meets the requirements of young females with families.

Ndoni: What are the practical measures that you would put into place if you were to be appointed as the deputy judge president?

Gyanda: In regard to attracting young females?

Ndoni: Yes judge.

Gyanda: To give you an example; there is a female in our division. She was brought to my attention because of her young family she preferred to not go on circuit. I arranged that she serves only within Pietermaritzburg and Durban for that period; I had drawn up the roster to accommodate her. I mentioned this to the Judge President when he came back from the Constitutional Court when he took up the position as head at our division that a female had brought this matter to my attention, and this is how I accommodated her.

Ndoni: My last question. What are your unique administrative strengths that you will put into use if you are appointed as deputy judge president?

Gyanda: My only unique strength I can think of is my desire to work hard, to make sure that everything works according to our operative plan. I cannot think of any particular area which you could say I will be bringing that is unique.

Commissioner Mabunda: The first question relates to statistics on acting appointments during your tenure. What I want to establish is what the statistics of African acting judges were during your time as acting judge president?

Gyanda: During the time I was acting judge president the number of African acting judges I had to accommodate was about four or five, if I remember correctly. Some of them were indicated by the deputy judge president as being available for those acting positions.

Mabunda: In terms of race; how were the statistics?

Gyanda: There were three African judges that I appointed; one female and two males and one Indian judge. The other two judges that were appointed during my time had already been secured as acting judges by the judge president.

Mabunda: Looking at the demographics, or population of KZN, which is African dominated. Would you agree with me, and I ask this question with the clear understanding that all candidates are qualified, that it would send a positive message if we were to consider an African black candidate?

Gyanda: That is similar to the question asked by the Honourable Malema, and I answered it affirmatively when he asked it.

Advocate I Semenya SC: Heads of court do not employ the judges with whom they work and apart from seniority how do you remind those judges that are independent into bringing their wait to the fore, like delivery judgements on time and appearing in court on time.

Gyanda: You remind them regularly that they are lacking or falling behind on certain aspects. You tell the judge about the complaint and you go back to him a week later to find if any progress was made; you should apply pressure and remind him that this is something that should be taken care of.

Semenya: Do you find that to work?

Gyanda: Yes it works.

Gyanda: I think seniority is very important. Traditionally it has been the bases on which appointments have always been made for the simple reason that the judge who has been there in the division for a long time has got the experience and is familiar with the manner in which the division works.

Professor Nomthandazo Ntlama: There is a wide spread concern on the lack of women in leadership. If you were given this opportunity to lead the bench; how would you deal with the lack of gender transformation in relation to women in leadership? You make mention of the challenges that the division is facing; how are you going to make the best with what you have to appoint acting judges. You responded on how people get into the bench; like through political connections etc.; does it mean that the judges are easily influence. Should we be concerned that the people who are going to lead the bench are influence in one way or another?

Gyanda: On the question of female appointments in senior positions; that is an important aspect of transformation which should be attended to urgently. We have one female that has applied here, and unfortunately when I made the request of putting her name forward she was not interested, and only later in the day she decided to put her name forward. If she had indicated to me that she wanted to put her name forward I would have supported her and not put my own name forward. After Judge Jappie's appointment I realised that there was a strong desire from the community, as well also this body for women to be appointed into leadership positions.

Ntlama: Since coming to know of her putting her name forward, you still decided to compete with her until this point.

Gyanda: She decided to compete with me. I have not answered your second question and I forgot what it was. People come into the bench on acting appointments; the example that I gave was not prepared to work. Somebody phoned me whilst I was acting judge president to request that 'she' be given another acting appointment; I brought the attention to that person the complaints in relation to that candidate and I told them that I was not in any position to make any further appointments, or acting appointments and that was the duty of the judge president. Judges are independent and they are easily influenced by people cause of the political connections.

Mogoeng: Before you go on judge; who is that "somebody"? Is it member of the public or a politician, because we do not contextualise. You can't just say that there is political influence, which is a serious statement.

Gyanda: The person who asked for a further appointment was a presiding judge. I gathered from the manner in which the request was made and that because of this person's connection.

Mogoeng: How does political influence feature in that case?

Gyanda: I gathered that this person was well connected by virtue of the fact that she is the sister of a certain member of a royal family and that is why she was being head hunted.

Commissioner Thoko Didiza, member of the National Assembly: I was going to ask the judge to withdraw his statement because this is an inference based on perception. I do not think we should make such perceptions as though we are saying that such things are happening, unless there could be valid proof to prove that such things are happening. If so, this should be formally reported to the relevant structures.

Mogoeng: Judge, do you want to withdraw your statement or should there be follow up questions – will you be able to substantiate this question?

Gyanda: As I have said Chief Justice, it is an influenced idea from the manner in which the discussion went about by giving this person another chance. Not that it was political influence, but rather her background.

Malema: Can we get the judge to withdraw that dangerous statement, please. We gave you an opportunity to give reasons why you made such statements and he has got no reasons. You have not put any substantive argument to support that allegation, and therefore we request you to withdraw that statement and just say that you meant something different. If one judge influences another judge to appoint an acting judge, it cannot be a political influence.

Gyanda: I am prepared to withdraw the statement I made. When I made the statement referring to political or other contacts, I said it in a generic sense and not necessarily a political influence. I am prepared to withdraw the statement, in fact I withdraw it.

Ntlama: That means that Judge Gyanda does not withdraw his statement. My follow up was on your continuing with this influence of this appointment. You did not take your own operative stand and say that with the discussions that you had with a so-called judge that you cannot appoint this person as acting because of his/her failures.

Gyanda: That is what I exactly said to him; that I cannot appoint that person and in any event, I did not have the power to appoint any person to acts because that fell in the hands of the judge president.

Ntlama: I am talking about the recommendations that you are putting forward for this acting person.

Advocate Nkosi-Thomas: On the previous occasion when you were here giving the interview of your current judge president, you painted a rather gloom picture to us of the division. Firstly, the infrastructure – there was a media excerpt that was tabled before us. Do you remember that?

Gyanda: Yes.

Nkosi-Thomas: There was the infrastructure issue and there was an issue about the relationship between the judges; it was not a cohesive environment.

Gyanda: The non-cohesive relationship between the judges is not something which I recall.

Nkosi-Thomas: I am putting this to you in either to contextualise, perhaps the issues which you have had of judgements being handed late, judges not declaring their availability after their matters have settled. I want to suggest to you that maybe the issue is off low morale; would you agree with that? Is it possible that the judges are not sufficiently motivated because of the environment in which they function in?

Gyanda: I would agree with that.

Nkosi-Thomas: Now the question therefore becomes; once appointed what sort of measures would you put in place to get them motivated?

Gyanda: Try our best to be persistent in our examinations with these problems that we have to ensure that they do these things. The lack of morale that you speak about is not something that the judge president can change, the condition of the courts and lack of facilities has caused the morale to be low. There is nothing that us judge presidents can do – it is out of our hands. When the Minister came to the courts I had shown him the kind of environment which we were working in, and within the first few days we had people coming in to clean the windows etc.

Nkosi-Thomas: You answered a question asked by Commissioner Malema about separation of powers doctrine. I heard you say something along the lines that judges don't make the law, did I hear you correctly?

Gyanda: Yes, we do not have legislative powers.

Nkosi-Thomas: Is that what you meant?

Gyanda: Yes.

Nkosi-Thomas: I just needed you to contextualise that answer for me; I mean you do know that judges do develop the law.

Commissioner Thoko Didiza, member of the National Assembly: Do you think there is any value that women bring in the judiciary, and if so, what is it?

Gyanda: Women bring a balance, in my view, to what was previously a male dominated sector. They bring a balance and all of those attributes that our mothers had when they were raising us into the work - the compassion and ability to do alot more than one person can normally do. They go above and beyond the call of duty, and these are the contributions that women make.

Didiza: Would you agree with me that it perpetuates the stereotype in terms of understanding what gender equality is about. Women bring more than just a balance to the boardroom, or the motherly and nurturing aspects. If you were to reflect on the points made by Thozamile April writing about Charlotte Maxege that a number of people have always spoken about Maxege as the mother of the nation but they never contended with the theory that she brought in the liberation struggle about the gender dynamics that our struggle required. From your answer I gathered that we assume that women must be appointed so that we can fulfil the constitutional obligation to dealing with the issue of numbers. You have not contended with what women bring in public policy and in the judiciary, but I have heard you view and I am not saying you must answer further. The balancing which you are referring to does not deal with issues of legal framework. I was looking at one of your judgements dispute between the Learner Trust and Municipality, regarding the property rates. Reading that judgement I wondered if you would agree with me that it actually points to the attention that is in our property law that it does not contend with the issue of customary law in South Africa and in Africa. Would you agree with me that whether the Ngonyama Trust is a state land or not brings again to the centre the issue of property rights in the country that it still has not been dealt with properly?

Gyanda: I agree with that.

Justice Mandisa Maya, Deputy President of Supreme Court of Appeal: I must say that it was a pleasure going through your CV. I just wanted to raise something that you said in one of your questions where the judge president asked your view on ways of resolving slow production of judgements, and the solution you proposed was that judges should be encouraged to produce judgements on the spot. Do you remember that?

Gyanda: Yes.

Maya: My concern with that approach is that; firstly I accept there are simple cases which can be resolved on the spot, but I think that some cases require careful thought and preparation and we all know that in the high court judges don't get time to prepare for hearings in advance. It would happen, for example, that you get your records before the actual hearing which gives you time to sit, read and research. do you agree with me so far?

Gyanda: Yes.

Maya: My concern is that it happens frequently after the hearing fresh perspectives come to mind and it becomes too late to change your mind once the judgement has been made. My other concern is that, in any cases, if the judges are not given enough time to write correct judgments the judges are deprived of the right to duty and jurisprudence of this country. Am I off the mark?

Gyanda: No you're not. When I spoke about giving judgements on the spot I was merely raising the point you were making where there are a lot of cases which are simple and straight forward which do not require much research. Even with a well-reasoned and researched case one still often finds themselves finding new information which they did not see the first time and it affects.

Maya: I accept your answer judge. I just wanted to find out if the manner in which the work is allocated in your division allows the judges adequate time to write judgements if there is a need to.

Gyanda: Yes, the judges had adequate time to write judgements. They reserve judgements during their recess. I have encouraged lots of judges to come early in the morning because I find that is the ideal time to do research; this is also before courts start.

Advocate Hellens SC: Can you tell me what your judicial philosophy is?

Gyanda: My philosophy would be to apply the law in a fair manner and ensure that my functions are fulfilled swiftly and efficiently.

Hellens: Can you tell me whether you have recognised within yourself any particular major premise which you have to confront when approaching your judicial functions as a whole?

Gyanda: I am not too clear about what you want to know.

Hellens: Are you not familiar with the jurisprudence concept of particular major premise?

Gyanda: Not that I have encountered such a particular major premise.

Mr CP Fourie, Practising Attorney: I noted with interest that your nomination as deputy judge president is supported by the South African Women's Lawyers Association. We spoke a lot about women today and I want to quote what they said in their nomination letter "Justice Gyanda is an approachable person, especially with our female members who have approached him in his professional capacity to seek guidance and direction. It would be right for us to describe our relationship with Justice Gyanda much of a father figure; he is always understanding and forthcoming with direction and support to our members and organisation". Have you read this?

Gyanda: Yes.

Fourie, Practising Attorney: Do you want to comment on that or take it as it is said?

Gyanda: I will take it as it is said.

Fourie: Thank you. I just wanted to make that point.

Mogoeng: Judge Gyanda, just to round up. If a judgement has been reserved for over three months, what else should be done to ensure that the service of delivering judgements is rendered to the parties? What needs to be done to encourage that?

Gyanda: I can answer that with an example Chief Justice. In our division we have one judge that was lagging behind with judgements; one call was to find out what the problem was. Once I ascertain what the problem was I found that I could assist with that in delivering the judgements or trying to keep that judge out of court as much as possible. With this being done, earlier on the judge would probably have not been in the predicament that she was, or he was.

Mogoeng: What else needs to be done to avoid the embarrassment of the judiciary looking like it is not being accountable as it ought to be?

Gyanda: The one thing that I can think of is to give the judge who has pending judgements assistance to give the judgements out by accommodating or taking over some of their other responsibilities.

Mogoeng: Should the manner in which the judges take advantage of recess not be looked into, and the manner in which they go into long leave when they qualify and circumstances when there are judgements outstanding?

Gyanda: To prevent the judges from going on long leave will have more adversary precautions than beneficial ones because that judge will come back with more disregard and the work will never be done on time. He recess has to be looked into because the recess periods are for doing research.

Mogoeng: So if a judgement has been pending for six months and sometimes 24 months; should that judge be given leave without finalising judgements?

Gyanda: I think it's unfair for the judge to have outstanding judgements for such a long time.

Mogoeng: What mechanisms can be put in place for trials that forever under circumstances can't justify that length of period? What should be done to avoid this endless postponement without justification?

Gyanda: It is to penalise the application for postponement and that postponements are not there for the sake of asking. There will be costs involved when applying for it unnecessarily, and to refuse postponements when it becomes apparent that the system is being abused.

Mogoeng: What could be done to discourage applications? Let me tell you. I knew a judge some years back and every Wednesday there was postponement because he played golf. If you are faced with the same problem what would you have done so that the judiciary is not embarrassed intentionally?

Gyanda: Taking the judge by the hand and showing him the error of his way and then threatening him with being reported to the Office of the Chief Justice if he persists. What else can be done?

Mogoeng: The Western Cape High Court does this, many courts in America and Malaysia do this as well, and that is to publish the list of all the judges who have not finalised their judgements, or take forever to finalise their trials due to circumstances which cannot be defended. Do you think we should move into that direction or is it too early?

Gyanda: If it helps then that should be done.

Mogoeng: My question to you is; do you think we should do that or have you not had the opportunity to digest it?

Gyanda: I think it should be done if it is becoming an embarrassment to the judiciary that judgements have been long outstanding and not delivered.



Mogoeng: Okay Judge. Given the case backlog at the magistrates' level; do you have some plans which you can share with the judge president as to how to 'peace manage' in a better way than before?

Gyanda: The problem I encountered as a practitioner at the magistrates court is that the dockets are only brought to the court on the day of trial which they have to be attended to. The trial dockets are never brought to the judge in an advanced time for them to be dealt with. I was advocating that a system where you have a prosecutor in court for the one day and out of court for the next day on two days shifts so that the one would work on the dockets and be able to deal with them in court. Nobody seems to think that the idea had any merit because what happens in practice is that the prosecutor is working alone – if he or she encounters a problem the court will be able to let them stand down to take care of the problem and come back. There will be an avoidance of the delay.

Mogoeng: Thank you very much judge Gyanda. We have taken very long on you, almost an hour – we tend to enjoy the first candidate even more.

