

## Judicial Services Commission Interviews

Friday 09 October 2015

Eastern Cape Division of the High Court (Bhisho and Mthatha)

**Chairperson: Chief Justice Mogoeng Mogoeng**

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### Interview of Judge ZM Nhlangulela

Judge Nhlangulela: ...The complaints raised there, that is in the Mpangeni newspapers, a matter which is well known, related to infrastructure of the court. The complaint on proper assessment would not have been genuine, in other words not a complaint that is foreign to our cause, but as to why the complaints were raised in that manner became a matter of concern to all of us and another problem related to management of the court roll, and as I have already stated, when management is not in place, when the incumbent is not visible he cannot manage the court file. Decisions started to be taken in the corners without consultation with the judges and the stakeholders.

Chief Justice Mogoeng: Are you sure you are not being too hard on your colleague? I just thought I must caution you because, it does become necessary to be hard at times but as long as you have reflected on exactly how you want to communicate your concern about your colleague and that is how you want to communicate it, that is fine.

Nhlangulela: The intervention of the JP by way of introducing me into the system had a positive effect in the sense that I was then able to communicate in a way that would show respect to all the stakeholders including colleagues. We were able to contain the situation. We were able to make reportings properly to the office the chief justice and the minister for justice, and that engagement, it contained the complaints as they were, until we got to the top of them. To the top of them meaning we could then sit down and map out a plan as to how to approach or respond to the challenges as presented and I am confident to announce to the house that all the structures are in place, communication is good, everyone knows what the court is doing, everyone knows what the Minister's office is doing and the Office of the Chief Justice is doing. One has hope that going forward we are going to triumph.

Mogoeng: Let us take it in stages, but with a matter of specificity. Are the cases flowing better than what was reported when I was there and if so then what explains that?

Nhlangulela: Definitely. Case flow management as a programme is being run in this manner now, everyone having bought into the system of case flow management. As I have said, though proper communication, we were then able to ensure that all the files that have collected dust, we were able to ensure that all of them were distributed to colleagues to manage and ensure that all of them get dates for trial. Involving stakeholders, I repeat. From that period right up to now there have been gains in that we also do not experience problems of practitioners not getting dates, we are able also to engage in cases without disruptions being caused by postponements which are unnecessary and moving to criminal cases.

Mogoeng: Before you do, do you remember how shocked by the quality of filing in your filing, I saw some files on the floor and I was shocked at the manner in which the file were kept in your, I do not know whether you call it a store room, close to where there was some construction happening on the side. Has that been addressed?

Nhlangulela: It was addressed, in fact at the time the Honourable Chief Justice came, I had already asked the Registrar and staff of the Registrar, being led by the librarian, to ensure that the archival room was cleared up and all the files which were found most lying on the floors be collected and put in boxes.

Mogoeng: So proper filing has since taken place?

Nhlangulela: It has taken place.

Mogoeng: What about the appeals? There was a concern that appeals were no longer being heard at you court.

Nhlangulela: An attempt has been made by us at the court to correct the situation, but what remains now is the question of setting down of hearing of the appeal matters, a matter which has also been discussed openly with the stake holders who have also bought into it, that the Office of the DPP must now endeavour to ensure that the files, that is before we have set down the cases, by the way, we still have a system there whereby Office of the DPP sends us notification that this particular matter will be heard on such and such a date and us merely delegating the judges.

Mogoeng: Why do you not take control of enrolment of the matter or the setting down of the matter?

Nhlangulela: It is a matter which I have already presented at the joint meeting of the judges of my division, as early as the 5<sup>th</sup> of this month and alluded to the fact, with us not being to set down the cases, we will have problems. But having engaged prior, that is the Wednesday before, I had asked the stakeholders to ensure that they set down cases in conjunction with us, the Registrar and Head of Court, to ensure that when matters get set down, they definitely proceed. When I say they will definitely proceed., you do not have a situation where page one or two is missing, or this or that is missing.

Mogoeng: That I understand, what I do not understand is why the Deputy Judge President or senior judge, a designated senior judge, is setting down matters for hearing, particularly appeals. Why has it taken this long to do that?

Nhlangulela: I think the problem is systemic. If you are dealing with a system, something that many years ago, even before you were a members of the court, it would be difficult to just get in and change things. It is part of the process of communication, subject of that communication with a view of achieving positive results.

Mogoeng: When was I there, with the JP and yourself? Just the month. OK, you do not remember, it is fine. From then until now, why has the issues of appeals not been resolved, considering that it was one of the key issues that caused us to come together at your court, to see how best to resolve it. Are the appeals not being heard there? Remember the concern was that we did not want Mthatha appeals to be heard away from Mthatha court, the appeals of Mthatha court must be heard at Mthatha court. Why has that not happened?

Nhlangulela: I beg your pardon, I was conflating one aspect of case flow management with regard to criminal case flow management at that point. What happened there was before the Chief Justice came, we had taken a decision whilst consultations were underway, by way of persuading practitioners to upgrade to not all the appeals, but the full bench appeals, being shifted to headquarters in Grahamstown. The purpose was because there are not so many, there are few in number, so it would be convenient and easy for the court to handle them. That had not been opposed. We still settled for the system to be helped in Mthatha, I am referring to the full bench matters arising from that court. The ordinary appeals continued, we never tampered with that system, it was never tampered with. When I was trying to give account of what happened with those matters, it was just a question of speed and the necessary improvements in order to ensure that matters get set down and happen as promptly as possible, without the court being confronted by cases which I supposed to be on the roll not being on the role. Insofar as the appeals are concerned, nothing has changed as we are running those appeals smoothly together with the ordinary appeals. It is just that there is still a need for improvements in order to inject speed into the process.

Mogoeng: That notice that was the subject-matter of complain, the notice that apparently sought to direct where matters would be heard, has it since been recalled or does it still operate?

Nhlangulela: I will start answering that question by saying that, immediately the Chief Justice, as well as the Honourable Minister and the deputy and we spoke about this matter, I was able and duly mandated and it was obvious that we had to do something about the notice. The notice, by the way, had said that the motion court, and the number of motion court matters must be slashed by 50%. That is from 100 unopposed to 50. The opposed matters were cut from 8 matters per week to 4 per week.

Mogoeng: Let us be economical with time. Has that notice been done away with or does it still operate?

Nhlangulela: Immediately when you turned your back from that court and gave us the mandate, I emphasise mandate, because at that time, I did not really have power to do this or that, but it became clear that that process had not unfolded, and the JP having given me power to effect changes, immediately we changed, immediately, and went back to our system and we were able to respond to all the complaints, to the extent that today we have not entertained a single complaint. In fact the confidence of the members of the public, in fact it came from those representing them, the practitioners, came back and we are on course.

Mogoeng: Now, very briefly, has court performance improved now at Mthatha High Court?

Nhlangulela: I would venture an answer short of producing statistics, that is has, in both civil and criminal matters.

Mogoeng: What are the longest reserved judgements you have? Judgments that have been reserved for a very long period of time, What is the longest?

Nhlangulela: I think that is founded on history.

Mogoeng: No, please. What are the longest and how many are there?

Nhlangulela: I would not be able to answer that because we have a system whereby the reporting on the number of outstanding judgments, that information gets sent directly to the Office of the JP. Consequently I would be dishonest in venturing a definitely answer to that.

Mogoeng: Even an estimate. I am sitting here, I have a sense of the reserved judgments in the Constitutional Court, I have a sense of the reserved judgment in the country. So you have got to be able to tell me whether you remember two or three, and how many of them have given you reason to be worried, because you are the leader there.

Nhlangulela: There are two which became a thorn.

Mogoeng: How long?

Nhlangulela: As long as six or seven years, and I addressed them positively and there was a responses after that.

Mogoeng: And the judgments have not been delivered?

Nhlangulela: They have been delivered.

Mogoeng: When?

Nhlangulela: I think it should be two weeks from sitting today.

Mogoeng: Have those people been reported to the Judicial Services Commission at any point?

Nhlangulela: No.

Mogoeng: Are there others longer than one year that have still not been finalised?

Nhlangulela: Not to my knowledge because there is greater communication now.

Mogoeng: I would definitely like to have more definite information about all the reserved judgements in Mthatha.

Nhlangulela: I will do that, and I may add, I may a statement during that process of communication with the Office of the Chief Justice and the Minister, I was not making that statement in private, but I was being honest. I said as soon as the issues of mandate to the head of court is sorted out, I mean to say, if you are Acting Deputy Judge President, I was speaking for myself, I was immediately confronted with the situation of what is it that I must do, what is it that I must not do. Far from the matters that are obvious, there are those that are hidden but which rob the system of good result. And I said as soon as we had mandate I should be

able, personally, to report better, to the Office of the Chief Justice, because that is where I understand to myself to be reporting to at the end of the day. So I am trying to say there will be no chance, at least for the past months which I have been acting, the acknowledgement that I am acting has been great, I have been able to speak to colleagues much more closely than in the past and going forward I think that we are in a better position to deliver more.

Mogoeng: Just in passing, I got a very distinct impression that, you were keenly interested in what was happening in the court, it is just the finer details that I may have to come to grips with. I may have to come back to this at some stage, let us move on. The security of the court, particularly as a result of that incident that resulted in shots being fired. The detector does not work and there was no security there whatsoever, and there was no security, no there was some security personnel. Has that been attended to, what about that garden that looks like a place where cattle could enjoy themselves. Has it since been attended to? Because the court looked bad. Has public works helped? Some of us are not always lucky.

Nhlangulela: The answer is yes. I think loud talking at times does help. The positive communication, strong communication with the department concerned, has yielded a positive response. Our yard looks better now than before, and with regard to infrastructural problems mentioned those have been reported to the department public works and the department of the Minister for Justice and there is collaboration, there is a plan in place. If I recall, the details of the plan were discussed when we had the blessings of the presence of the Minister, with whom I attended a meeting of stakeholders at the Magistrate's Court. There were experts at that meeting from the Department of Public Works who indeed confirmed that they have plan of improving infrastructure holistically of our court. If I recall, the plan was that from March this year, the work itself would start.

Mogoeng: Please keep an eye on that court on behalf of me DJP, if you get appointed, because I was shocked at the risks to which the magistrates were exposed. The accused is here, the Magistrate is sitting here, and he can just grab him and deal with him or her. The dilapidated furniture, I mean really, it was shocking, so please keep an eye because the Judge President is supposed to keep an eye on the functioning but he is not precluded from ensuring that the Magistrates are fairly comfortable. Now let me raise my concern before I pass the baton to the JP. The statistics from your court as at the 5<sup>th</sup> of September 2015 tell me that judgments reserved for 3-6 months were three. And there is no other reference to these other reserved judgements of seven years. Why was that crucial information not included here? Or you did not send the statistics yourself to the Chief Justice?

Nhlangulela: I have already mentioned the point that once I can respond to pertinent questions, I will not be able to deal with statistics because I am of course aware that the process of compilation of statistics has started, that is stock taking of files and so on. I have yet to meet with the Secretary-General, whom I have asked, when she comes, give me notice, so that I assemble the colleagues with the purpose of discussing the statistics.

Mogoeng: Please, you have already told me, you have told us that you have two judgments that have given you cause to be concerned because they have been reserved for about seven years. Why are they not here? Do you know or do you not know?

Nhlangulela: I do not know. The reason is this, when the report is compiled it is not done at my Office.

Mogoeng: You pass the information on to the JP?

Nhlangulela: Yes, that is what we normally do.

Judge President Sangoni: Perhaps we should start with that last point. Does the JP know of these judgments that have been outstanding for six or seven years? Or perhaps let me get to the second question to give you perspective. These judgments you are talking about, do you know them specifically? That the case of so-and-so and so-and-so has been outstanding for so many years? Do you have a clear idea of those matters? Or you misunderstood the question. No you could not have, because the CJ started talking about outstanding judgments.

Nhlagulela: No.

Sangoni: But are you able to say there are outstanding judgments for six or seven years?

Nhlangulela: Let me answer the question this way, there has been talking that some of the judgments outstanding in court would have taken that long.

Sangoni: I do not think this should be a secret. Whose judgments are those? Who is the judge? I suppose I could ask that question?

Mogoeng: It is a legitimate question, if he was worried he would remember who the judges are and would have spoken to them.

Nhlangulela: The information I received, which I must concede was not formal information by way of a letter written to me, that Judge Makaula has judgments outstanding for many years.

Sangoni: From Mthatha? It does not really matter whether it is Mthatha or wherever, but you are able to say as a fact that Judge Makaula has a judgment outstanding for however many years?

Nhlangulela: Yes. In fact I also remember, when I was in Bhisho, receiving a letter which mentioned him. That matter would not have been outstanding for a few months.

Sangoni: But six or seven years is just guesswork, is it fact?

Nhlangulela: If it is 2005 up to now?

Mogoeng: Yes, it is a decade if it is 2005.

Sangoni: Anyway, apart from what is happening here, you would be able to rake up those judgments and formally take them over to the JP?

Nhlangulela: I will endeavour to do that. In fact I seem to recall now, there is a letter I received from the Registrar, which I did not send to you JP but I sent it to Judge Makaula himself.

Mogoeng: You know I do not understand. As the Head of Court, even as a Deputy, your responsibility is to ensure that things happen the way they should. Judges produce judgments on time. Within a month you should be able to say to so-and-so where is the judgment, is there a problem? That is how you monitor the progress relating to judgments because you have your own register, you have your eye on the ball. You do not wait for letters of complaints to come, before you know there is a problem. I do not understand this about receiving letters and the inability to answer the JP's questions with clarity. What is the problem?

Nhlangulela: The problem is that the system is that judgements that are outstanding are sent to a point other than the point at which I sit, in other words, they do not get sent to me first and then getting transferred to the Office of the JP.

Mogoeng: It is the Deputy Judge President who would allocate cases in Mthatha, is that correct?

Nhlangulela: Yes.

Mogoeng: So as judges go to work this week you know which judge will be hearing which matters when during the course of the week, is that not so?

Nhlangulela: Yes.

Mogoeng: So you note that down that that should be your responsibility, so that if there is a reserved judgment you are able to indicate, if judgment was delivered ex tempore, then you can just tick the box, you do not have to worry about that, because it is done. How is it that you do not have a record of reserved judgments? Based purely on the fact that you know which cases were heard today, which cases will be heard next week, which cases will be heard next month. You ought to be having that roll with you and be able to determine whether any judgments were reserved in any of the matters and track down progress in a particular matter.

Nhlangulela: It is a systemic problem which is, if there is no system which says that reportings on outstanding judgements come to me then I would not know.

Mogoeng: You cannot insist as a person in charge that information about reserved judgments come to you, just so that you are in charge of the situation when the JP comes to you and says give me a report on what has been happening here as the Deputy Judge President, you should be having information readily available to present to him, and not say I am still going to ask people.

Nhlangulela: It is indeed so that things should work that way. If the system favoured me to demand reportings there and then I would have done so. My answer should be looked against this background, we had a position in that court where the exercise of authority would never be told whether it lies with the acting Deputy President, actually the Chief Justice asked me not to be specific, but I am sorry I will have to be.

Mogoeng: If you have to be specific, be specific. By the way, you do not have to say Honourable.

Nhlangulela: It should not be understood that I am a person who is up and about attack persons. I do not live that life. What happened is that my predecessor does not report to me, I am a judge, but does not report to me what is happening in his office, what is going to happen next week, what is going to happen in a month's time, what is going to happen six months down the line and so on, that communication cut out. That authority being accountable to other persons other than me, I would not have known what is happening. To get things back into place would have required time naturally. As I have indicated, with proper mandate given, I will then have been able, if I knew and it would have been easy I would have done it. I concede this is a very simple matter. My answers should not be seen or understood as me not appreciating the simple nature of how the system should work. It should work exactly like that. Given power to do that, I would do it, I will tell you the story every week that so-and-so has not done his work. I have endeavoured to do that to the best of my ability, by utilising structures, by reporting to the JP, short of things maybe I would not deliberately, as well as the joint meeting of judges. I have been reporting things that I would regard as thorny or affecting the position of leadership in that court.

Sangoni: It is correct that the first day of term, every term, we hold a meeting of all the judges of that division, you agree? I am going to ask you short questions so that I just get straight answers. You agree we hold every first day of term. And that is where discuss these matters. Now the matter of outstanding judgments, is that not an item that is always on the agenda, so that we say something about outstanding judgments?

Nhlangulela: It is.

Sangoni: I am going to leave it at that. This question of appeals by the DPP, we also touched on that in the meetings. In fact I think that question was facing you. Because it was an issue raised by you. Why are we still allowing DPP to set down appeals? Because they are also interested parties when it comes to criminal matters.

Nhlangulela: If you tell me to do so, from next week things will change. As I have said, the problem around that aspect, is that or has been it is a system which has been practiced over a long time.

Sangoni: Those appeals where there was a complaint, full bench appeals, what was the position, is the position not that practitioners in Mthatha, that part of the country, they believed that those full bench appeals would be removed from Mthatha to Grahamstown.

Nhlangulela: Yes.

Sangoni: And it was never really a serious threat that we are taking them by a certain date, it was a process of consultation. And the media kept saying that we had taken appeals had been taken, of course, being advised by the practitioners.

Nhlangulela: Which was not correct.

Sangoni: We had a problem in Mthatha that appeal records were not ready. You would get them and find that there were mistakes and what was required by the DJP, was to say these appeals, the transcript, must be sent under the hand of the DJP, so that even if he is not going through them physically each transcript, but he will be as a person able to say have you checked these things. Then if the answer is yes then at least we can sign. There were a number of pages and we had asked the DJP to do that.

Nhlangulela: That is correct JP, you asked me to do that. I did it. Before it did not happen although you asked that it be done.

Sangoni: Is it correct or not correct, the Mthatha where you want to take responsibility, is a place which is giving us a number of challenges when it comes to the practitioners?

Nhlangulela: Unnecessary challenges, based on failure of communication.

Sangoni: I thought then, when took over, you were on top. What is the position?

Nhlangulela: That is the position. I would like to confirm.

Sangoni: But we saw in the press, they were complaining about certain things in Mthatha, even those things which had been dealt with, which required them to see the Deputy Minister of Justice, the CJ and so on.

Nhlangulela: Yes. For a mistake that was not yours, JP, what prevailed which was unnecessary caused us those problems, but they are behind us now.

Sangoni: You have been asked about statistics. Have they been verified? Because I know there was a first run of checking on statistic and secondly those statistics were verified. People were engaged in the process of verifying?

Nhlangulela: Yes.

Sangoni: Now at the time you saw them, had they been verified?

Nhlangulela: They could not, because so information was lacking. This has been the discussion between me and the Secretary-General, and she is about to address that and then come back to me, on which occasion, and I intend to do it, involve colleagues as well.

Sangoni: Is it correct that you have been asked at the meeting to check on whether when Mthatha is falling in line with the system that is applicable elsewhere? In other words, insofar as having motion court unopposed on a Tuesday, opposed on a Wednesday, like elsewhere?

Nhlangulela: Indeed, that matter had been discussed some time ago, it could not immediately be attended to because we had a system that did not favour the implementation of that system. May I explain this for the benefit of the house? In PE, they have a system, or they had a system, whereby motion court is structured in such a way that unopposed matters are heard on a Tuesday and then only unopposed matters are heard on a Wednesday. In Mthatha we had a different system, whereby opposed matters are heard on a Tuesday, a Thursday and a Friday. It was suggested that we follow the PE format, informed by the reason, which I support, that it would be easy when rotating judges for judges to come in and not be subjected to a different system. We could not implement that system immediately, that is the PE system, because we did not have two judges assigned to the motion court. When ultimately the JP helped us we were able then to have relief as a result of which, in terms of the recent mandate, I have discussed with colleagues as well as stakeholders, that we intend to implement that system so that there is uniformity between the stations. The plan now in terms of the report I received from the Registrar is that this PE system can at best be feasible if started next year. Because already there has been set down of opposed motion court through the old system and it would disrupt the court if we just chop the old system and introduce the new one.

Sangoni: But the whole point, in a very brief way is that matter is being attended to.

Nhlangulela: It is being implemented. That is an understatement, we are on top of it.

Mogoeng: I get a sense, tell me if I am wrong, you afraid to say some things, you are not free to do some things, is there a problem or would you like to note the question and do nothing about it? I do not get a sense that you are free to do what needs to be done.

Nhlangulela: I am very free to do whatever authority says.

Sangoni: I hear you say, if I am allowed, if I am permitted, but anyway it is ok.

Minister Masutha: Maybe this may clarify some of your concerns about limitation. Let me start by confirming that I did visit the Eastern Cape no less than three times, not only for the challenges but also as part of the meet and greet with all the High Courts in the country with the concurrence of the Chief Justice, in part to look at the problems and see which ones require our attention as the Ministry. Having said so, when we visited Grahamstown and subsequently Mthatha, what were the specific issues, for the judiciary which you considered together with the JP, that you considered to be of utmost importance and required our intervention and for what intervention if any has since been effected and to what outcome of effect?

Nhlangulela: The problem lay with the motion court role. May I go back to the mandate. On that occasion, although I had just been asked by the JP to lead, my predecessor had not come back from leave and the hope was that then when he comes he would then give the baton to me and then I move forward. But the presence that is, your visit, to our court, helped us in this respect. It gave the court and me, power immediately, to then change things. It is because the stakeholders were forcing a system which was impossible for it to be implemented. They wanted us to operate motion court on one judge. The reason why there had been cutting of matters from the roll was attributable to the fact that it was an overloading of one judge for the motion court. Then we were able to then get two judges to run a makeshift process, even there, and hang hope it would be met with a response of which I am confident that judges would be added to our court. But to be straight we were able immediately after you had intervened to then remove the problem.

Minister Masutha: Following my subsequent visit in June, the President has since established the two positions, of DJP for Mthatha and Bhisho, for which you are being interviewed now and the other was interviewed earlier, and this would be the first two DJPs under the new superior acts with the intention to roll out in the rest of the high court divisions in the country. How do you find that making a difference, hopefully positive, in resolving issues of certainty and clarity with regards to authority to effect certain improvements in the system?

Nhlagulela: It helps us a great deal. Firstly, it will remove uncertainty as to what the Deputy must do and must not do, because that power is important. If exercised by the leader, that Deputy, surely he would also be doing so being confident that I can control the system entirely without any unnecessary interruptions. Secondly, it helps us in that we are lightly guided, I use the term lightly because I am not sure, to then solve the problem of understaffing, we are more than likely to have another judge added to our court. That would address another very big challenge for our court, that is the second court. If we have that additional judge at least we would be doing our work being confident that at least we will be able to have a judge available to do circuits regularly than we are currently doing. So it is a big plus for the court.

Minister Masutha: In my recent subsequent visit, specifically to Mthatha magistrate's court and thereafter to the high court of Mthatha, the matters alluded to by CJ, were the subject of those interactions and as you correctly said I made sure that all key stakeholders participate. Can you just confirm what improvements if any have since been effected, be it from public works, are there any plans going forward?

Nhlagulela: Yes, our grounds look better, and the plan then came up that the infrastructural problems that require high expenditure are also going to be addressed on a clear plan and we received promises from the Department of Public Works that there would be implementation. That is a positive gain, but we are still waiting for them to come in March. I am confident that we are soon going to be turning a corner and burying our old problems.

Minister Masutha: I can confirm that I have since, in the third visit a few weeks ago, again demanded assurances in that regard. But moving on to another area, in March this year, I reconstituted the National Correctional Services Council, with you appointed as a Deputy. To what extent has the new appointment impacted on your availability to continue your leadership role at the Mthatha role, or as acting DJP?

Nhlagulela: To the extent that when the invitation was first made and to which I responded positively, I was already a DJP, and having been able to assess past myself questions and answer them regarding my availability and my load of work and the manner in which I would cope with this extra responsibility of having to be the Chairperson of the NCCS, I was able to come up with the answer that I can engage. But let me say this, because I am a hard worker, I always do not fail to find time to do work. As a result I have been able to balance my work at court as well as in the NCCS.



Minister Masutha: I can just, for your information, confirm that since the new NCCS was established some seven months ago, my approval rate of recommendations from that body has improved significantly, so there is some additive improvement there. I do not know if I should attribute that to yourself or any of the members there, but going forward and given the added responsibility I have imposed on the NCCS to provide advice on the improvements to the parole system and generally to the correctional system do you believe that with those added responsibilities as deputy chair of the NCCS, you would still be able to effectively discharge your responsibilities as DJP, if awarded that position?

Nhlangulela: Yes, I think so. As I have said, I have made a proper assessment. Even before being appointed I discussed the matter with the JP and with his assistance in terms of position, because the role is drawn by the JP for the entire division. So he has been made aware from time to time, I will need to sneak away for a day or two to attend to NCCS activities.

Mogoeng: Maybe you want to leave it there, let us just seek clarity.

Minister Masutha: Let me put it to you this way, I put it to you that you come across, and this is my personal impression of you, as somebody with a lot of humility, who does not seem readily tempted to ruffle any feathers, could this be creating an impression that you do not have what it takes to be assertive and actually assert your authority, which is critical for a leadership position.

Nhlangulela: My belief on the question is that you should lead without being a monster. You do not bully people. You can lead people and people clap hands, or things are happening, you are pulling people. But things do not end there. The system will suffer badly if you are monster. You have to engage with people at the level of utmost respect. We have come from very far, we were being hedged as back people. So as a leader you do not need to hurt people more. So humility comes in there, you have to respect, it is an imperative. You have to be that person who is seen to be honest, who is seen to be considerate and respectful. You cannot bulldoze human beings. Perhaps it is because I have spent most of my life being on the receiving end, at some point I told myself that this must stop. Especially when it comes from my own, it just is not tenable. We do not want monsters in our society, that is the reason why I am what I am.

Judge President Kgomo: Just enlighten us, for the Mthatha high court, is there a statistician appointed for that court? It is the statistician who compiles and collates the information, and have you been provided with a template that is being used and has been devised? Do you use that template?

Nhlangulela: What has happened, we are a huge division. The introduction of the statistician, he was placed elsewhere than at our station. I know there is a template and that is a matter we are still going to engage with with the Secretary-General. How it is related to us, is because there is now a statistician who is going to take a seat near our court and will be performing his business. The answer is yes, but I have not seen the template itself, besides knowing that we have acquired some statistics which we are going to discuss and which will help us greatly.

Kgomo: The point I was going to make is that it is a useful mechanism to monitor pending cases. It keeps the statistics, transmit those to the JP and/or to the Office of the Secretary-General. Take it up with the JP, and with the SG when she comes around, take that up with her too please.

Nhlangulela: The combination process has started in our court, I am not saying it has not, it has. May I mention one point, CJ?

Mogoeng: You have to be allowed to say anything that may be of help.

Nhlangulela: There is a matter that remains and it is important. Somewhere in the profile you will see that I used to manage a supermarket. There is one thing that I learnt there, you have to account for the work that you do. If you say you are selling Vaseline, you must write that you are selling one Vaseline. If you have bought two Vaseline containers, you must know when the first was taken by the customer, when the second was taken by the customer, was it stolen, does it show in the till. These statistics are not different from this, and it will help us because this is a bit technical. Also as a judge, it is not your core business, you are busy, our business is to race when it comes to judgment writing. With the help of the statistician, I will not stand on next time we meet, in whatever forum and you ask me what judgments are written, I can tell you exactly what happened.

Mogoeng: For your own sake, you may wish to have your own register. So that you do not rely on the statistician for information that is so crucial to the leadership role that you fulfil. In that way you can satisfy yourself of the correctness of the information on the basis of which you have to account for what you do.

Advocate Hellens SC: When you were an acting judge, you acted as if you were a properly appointed judge because that is your function. You are no less a judge because you are acting. Is that so?

Nhlangulela: It is so.

Hellens: When you are an acting Deputy judge President, is it not the same?

Nhlangulela: It is not the same.

Hellens: In what way? If you are given the same functions as Deputy Judge President?

Nhlangulela: If you are a judge, you do not control the court.

Hellens: But you are acting Deputy Judge President.

Nhlangulela: If you are acting as Judge President then you have to look at the context, I have said. A lot of rumblings had taken place by the time entered. I did not enter the office whereby I was given a seat and my predecessor is sitting here and we are handing over, this is what we used to do a month ago, this is what we did two months ago, which is what must have happened, by the way, in any management, that is what you need to do, that is what is called continuity. If you enter the office, as Nelson Mandela said it was empty, in the Union Buildings, with all the files having been removed, the start is going to be very hard.

Hellens: It seems to me that if you are given the function of Deputy Judge President, and in brackets it happened to be acting, then you have to perform the function of Deputy Judge President, and then you put in place the systems that are necessary for example to monitor reserved judgments. You cannot just sit back and say there is not a system and so therefore it was not my fault. It seems to be a very lame explanation.

Nhlangulela: It is not lame. If you go into an office where the system has collapsed, the first thing you have to do is organise it. You have to clean up and put everything in order. If the table is standing in a direction which should be north, you have to put it there. If you have to ask a question of the predecessor, you ask it and demand you are given an answer. If all that is not in place, you have to start preparing your office. It was more preparatory for me because of circumstances.

Hellens: Is that what you did? You were given the post, acting, and you set about fixing, is that what you did?

Nhlangulela: I would say yes.

Hellens: And where is the method of monitoring the reserved judgments? You did not put that in place?

Nhlangulela: I did not and for that I apologise. And my explanation lies here. The system, again. I have been attending meetings for many years, at no point did I ever figure out, and in practice it did not happen as a matter of course, that the reporting on reserved judgments comes directly to me. It is not a question of recklessness, negligence, abdicating, throwing your duties away. The circumstances were far more complex than the manner in which, perhaps I have explained. This I can promise you, given the time that I have had, sorting out the system, straightening out things as I have, as I think I have done, with the support of the JP, for which I am thankful, the division will be thankful one day.

Mogoeng: Before I forget, you know some people, let me use an example that may be considered inappropriate. In political circles, before you can be a provincial leadership, I suppose you must have demonstrated your leadership capacity at the branch level, and then maybe regional level and then you go to the province. The disadvantage with judges is you move from a position of attorney or advocate, you become a judge, you may not have learnt anything, but because of seniority or because you write judgements well, you become a leader, and there is hardly any leadership or management training. Do you think DJPs and JPs would benefit from leadership training programme of sorts?

Nhlangulela: Definitely.



Mogoeng: I tried it by the way and I was accused of trying to evangelise by outsiders, though not my colleagues. We have run one, maybe we should run more. People assume that because you were a judge for so many years, you will know how to lead, but that does not follow automatically, correct?

Nhlangulela: That is correct.

Advocate Nkosi – Thomas SC: One does not have the benefit of the background that the Chief Justice and the Minister appear to have, so I just want to make sure I understand your situation. You are saying you are the way in which you are because of the circumstances you find yourself in. When you were approached by the Minister about you not being assertive, you then referred to a monster and then you said you would do the work if I am told to do the work. I am not sure what picture you are painting there, you are speaking in parables, I am afraid. Are you saying that the environment in which you were functioning was not sufficiently enabling to allow you to flourish as assertively as the minister suggested to you ought to have been?

Nhlangulela: Yes.

### **Deliberations**

