

PROGRAM DATE: 2018-11-29

PROGRAM NAME: WOMANITY – WOMEN IN UNITY

GUEST NAME: JUDGE WENDY HUGHES - HIGH COURT – GAUTENG DIVISION

SPEAKER	TRANSCRIPTION
DR. MALKA	Hello, I'm Dr. Amaleya Goneos-Malka, welcome to 'Womanity – Women in Unity'. The show that celebrates prominent and ordinary African Women's milestone achievements in their struggles for liberation, self-emancipation, human rights, democracy, racism, socio-economic class division and gender based violence.
DR. MALKA	Joining us in studio today for our series on Women in the Judiciary is Judge Wendy Hughes from the Gauteng Division of the High Court. Welcome to the show!
JUDGE HUGHES	Ah, thank you for having me!
DR. MALKA	Judge Hughes, in 2001 you established your own legal practice; Hughes-Madondo Incorporated, initially as a sole practitioner which you ran until you were appointed to Judge of the North Gauteng High Court in 2013; to begin with, what prompted you to follow a career in law?
JUDGE HUGHES	Well it was purely by accident, I must say. I had completed my matric and I had attended at the Wentworth Senior Secondary School, it's a school in the district of Wentworth which was in KZN and from our school, incidentally, we were only three eligible candidates to proceed to university and in that era my dad; of course in those days your parents normally chose your career path and my dad was of the view that, you know, it's either a doctor or a pharmacist or anybody in the medical field and that would be the most promising of careers. So I went off to then the University of Durban Westville and I registered for pharmacy. I think I was there for like a month attending lectures and I was like no, this is just not for me and the two gentlemen who also qualified, it was myself as the only female and the two gentlemen from our school that also qualified, they had registered for law. So one day I just said you know what I'm going to bunk lectures and I'll just go and see what they are doing because mines was now totally boring and I was just not keen on continuing, and I attended lectures for the day with them and I was like this is actually where I'm supposed to be and being a first year student it's not too difficult to basically catch on to what the topics are and it so happened that in one of the lectures I was also having a debate with the lecturers and the lecturer asked me, he said I didn't see your name on the list and I said no my name is not actually on the list, I'm actually registered for pharmacy and he said, you know, maybe you should reconsider, and that is how I ended up doing law.
DR. MALKA	It's a great recruitment.
JUDGE HUGHES	Totally! At the end of the year there comes the results, and of course it's addressed to your parents in those days....
DR. MALKA	...oh so they didn't know..
JUDGE HUGHES	...yes...I changed my curriculum; there's that period that I think it's just after February or thereabout where you're allowed to change your curriculum and in that period I changed my curriculum and now I was doing law and come the end of the year, here are the results, of course they're sent off to the sponsor and the sponsor was my dad and here is Wendy registered for law and he said "who is registered for BProc; they must have made a mistake" and there it comes out that yes, I was

	registered for BProc, I changed over from Pharmacy to BProc and this is how I got to do law.
DR. MALKA	That's a wonderful story and so good that you found your calling at the right time.
JUDGE HUGHES	Yes, yes, well I always said to myself that it was just God's will that I went to that lecture because that basically turned my whole focus and my life around into what I do today.
DR. MALKA	And often I think that as young people, most people don't know what they want to be and you look at these choices and you try and experiment but we've got limited resources to experiment with; finance; time, that when you do find the bell that triggers, it is a wonderful thing to happen.
JUDGE HUGHES	No it is, or sometimes it's just a bit too late you know, if you leave it too long so I...in that sense I was a bit fortunate.
DR. MALKA	And moving on from your practice, you then became a judge in South Africa; can you tell us a bit about the process and also the weight of the role because your judgements have got life-changing consequences and they also set future precedents?
JUDGE HUGHES	Well speaking for myself, you know, each judge I would presume goes through a different path in attaining ultimately the position of a judge, with me being in...I was in private practice as an attorney, so I was basically headhunted by my peers to attend an aspirant judicial women's training that was then fostered by the Swiss and it was held and/or careered in South Africa by the then Chief Justice Pius Langa. So there were two sets of schools at that stage, the one stemmed from the 1st January to June and the second school was from July to the end of December that he basically careered in that period, it was in 2008, so I was part of the second group. What we did was we then got to...it was...I think it's the law schools right here in Auckland Park or close to Auckland Park that we attended on a daily basis where we had judges come through and try and impart what we should look for when we go into those positions in terms of acting. We did that for six months and thereafter we went into our different divisions because it was a host of women, in my team it was about sixteen of us, after we had the theory sort of portion, we then went into our respective divisions and we shadowed a judge. So the judges of Gauteng would come through and lecture now and then but we had a constant mentor and that was Judge Schwartzman and he would career us on the path of judgement writing, how to handle the court in terms of court ethics, how to deal with issues while sitting on the bench and thereafter we went into our respective divisions and we shadowed a judge. So we'd sit with a judge in a matter, not on the bench per se, but in the gallery, we'd take notes, we'd then meet after we've presided over the matter, we discussed the matter, that judge would discuss the matter with you; what would be your view, how would you see this case, was it correct that I objected, you know, that sort of interaction and thereafter he would say okay Wendy you write the judgement, let me see what comes out from your view of the matter. So I'd write my specimen judgement, he'd write his judgement and then we'll confer as to whether I'm on the right path, whether I'm on the wrong path, what did I do wrong, what could I improve on and in some instances, you know, if you work hard you actually come up with a solution that he didn't even think of, you know, in those instances, so that we call the mentorship phase of that programme. After the mentorship phase we then we came back for an exit interview; after your exit interview your mentors would have reported on your progress and of course Schwartzman would have reported on your theory progress and how you fared and then they would

	<p>then say okay you're eligible to be appointed as an acting judge. Come your acting stints you now allocated matters as a judge would be. So you do crime, you do civil, you do urgency in terms of civil, you'll do oppose, you'll do all matters that a judge would do, basically on your own, because of course a judge is independent and a judge needs to make his or her mind up on their own and in my case I acted in...'cause I'm originally from KZN, I acted in KZN, in Maritzburg High Court and also Durban High Court, I was then also invited to go through to Kimberley and that was by way of an invitation from one of the chairpersons of that programme who basically interviewed me during the exit interview and he felt that I'd gain from his experience in his court and exposure in respect of that court, so I did a stint in Kimberley....</p>
DR. MALKA	...so you are rotated then within....
JUDGE HUGHES	...yes...
DR. MALKA	...within your acting capacity, you have a rotation...
JUDGE HUGHES	<p>...you can, you can, you can be invited by the judge president of that specific court, so it might be in Cape Town, it might be in East London, it just depends on the JP of that specific court and after I'd done a stint in Kimberly I was then invited to Gauteng, Pretoria by my now JP Judge Mlambo and he then had me over for a term and he invited me to apply and that's where I am today.</p>
DR. MALKA	Well thanks for taking us through that evolution and the involvement and the strong mentorship component on the route to becoming a judge and in your role now, what would you say have been some of the cases that have stayed with you the most; had the biggest impact?
JUDGE HUGHES	<p>Oh gee, I've done so many cases, but let me start at the beginning. You know when I was an acting judge in KZN I did a criminal case; I must just say that, you know, I didn't come from a criminal background in terms of my practice, it was more civil than anything else and I did this criminal case and it really, really....it stayed with me because it was so horrific. I had this very young female accuse, she was 22 and this male accuse, I think he was just around about 18, so she basically had an influence over him. What transpired is they indulged in alcohol and drugs on one specific night and she encouraged him to capture her father's friend who was drinking that evening with her father on the pretext that he had been abusing her, so she encouraged him to do so, they bound him up, they took him to the back yard, drove away with him, back yard into the car, drove away with him and at a point they eventually tried to drown him. Weren't successful, they brought him back. In the back yard again, it was at night and he took a spade and he basically decapitated him with a spade. They buried him under the Mango tree in the yard. A day goes by, they then uproot him, put him in black plastics and they took him to a river and they threw him into the river. It was so traumatic because the family of the deceased could only identify him by way of a tattoo on his thigh. Because the femur bone is so long and strong, they could not basically break that with the spade and that's how his brother was able to identify him as being the deceased. So imagine going through the photographs that you have to look at as exhibits and dealing with the trauma of the evidence that is produced by the doctors, the medical doctors and the investigating officer, painting the scenario of what could have happened because initially they pleaded not guilty but when it came to the date of the trial they pleaded guilty and then they gave an account of how it transpired. But the investigating officer was called, just to elaborate on the little issues which they felt would jeopardise</p>

	their case; that would be of a strong indicator to say that the court should definitely find that they are guilty. So that case stays with me and I had to then sentence a young woman of 22 because their trials were separated because he was still younger...
DR. MALKA	...he's a minor....
JUDGE HUGHES	...ja, he was younger so his trial was separated from hers. So I had to sentence her, at 22, to 25 years imprisonment because of the role that she played in that case. Another case that comes to mind, well the most recent one, is the one on everybody's lips is the State Capture Case. I was involved in the State Capture Case together with Judge Brockovich and the JP, that's JP Mlambo where we dealt with the review of the decision of the Public Protector in calling for state capture to be investigated. I was involved in that case and it basically has, as you are well aware, an ongoing effect on all South African's lives. So those two are the cases that I can say have, top of my head now, that have basically stood out.
DR. MALKA	They're both very poignant and in the first one that you spoke about, hearing you speak gives a completely different perspective on what you have to go through on providing rational argument but also dealing with the emotional components and the implications that...and the repercussions that have long-term effects both on the individual that has now gone into prison; the families of the deceased because no one ever gets over a death,...
JUDGE HUGHES	...yes...
DR. MALKA	...especially something....
JUDGE HUGHES	...horrific...
DR. MALKA	...as horrific as that and then State Capture, I mean that has got massive, massive implications on everybody and is going to go on for a good time to come.
JUDGE HUGHES	Yes, I don't even want to add.
DR. MALKA	But looking at your position now and thinking about where we've come from, would you say that our legal system has developed over time according to your expectations?
JUDGE HUGHES	Yes it has, I mean from...if we look at the situation that was prevalent in the apartheid era to the situation that we have today, yes it has evolved, you know, the judicial system of course it's...we know it's based on Roman Dutch law and Customary law, but now we have to take into account that which basically embraces all of us and that is Customary law; traditional values, traditional ideas, traditional courts, environmental law, social law, civil, criminal; it has totally evolved from that...from that stringent civil type of Roman Dutch Law and Customary Law. It has now evolved to being a hybrid judicial system with different aspects being adopted from the constitution into the judicial system, which has basically enhanced it to be hybrid. Before, we didn't have equity law; before, we didn't have employment law, it was either a common law or Roman Dutch law, so that in a sense has evolved. To my expectations thus far? I think we've got a long way to go in terms of interpreting all the different facets of the law, I mean one example is Traditional Law and Customary Law, it is still not recognised or hasn't received the recognition that it should in our judicial system and in our society, you know, and that's why we have the different interpretation of customs and/or judges interpreting customs differently. So we still...that in itself is still evolving, you know, when there are different interpretations it's clear that there's that evolution that's still going about,

	until of course, the apex court says well this is what the custom says and that's the ConCourt.
DR. MALKA	And how does that impact on decisioning because I could come into court as being a plaintiff/defendant, whatever the case may be, and my interpretation is one view, the opposing has a different interpretation and the judge, yet again, has a different interpretation?
JUDGE HUGHES	Well with us judges we are guided by the Statute, we're guided by the constitution of course, first and foremost, and we are guided by case law; first and foremost of our peers, right, that would be of my division and then of course by the SCA, but the SCA, that's the Supreme Court of Appeal, their determination on that issue will override my peers because it's an apex court and then of course, likewise, the Constitutional Court's interpretation on that issue will override the SCA and my peers. So that is how a judge or two look at an issue and deal with the two different views from either an applicant or a respondent because of course as an applicant you would feel strongly on your view and likewise would a respondent in an application feel strongly on their view and they would have case law to back it up and likewise would the applicant have case law to back it up and I must be the arbiter and the objective arbiter to come to a conclusion as to, in my view, sitting there, listening to those issues, having had cognizance of the argument by both council, the law, Statutes, decided cases; which route would I take? Normally in issues of just legal issues, it's always on the nub, you either get it in the sense that you interpret it correctly or you don't get it and you've basically you've just lost the boat, as they would say, in the sense that you didn't get the nub of what the issue was so you went on a tangent. But in terms of constitutional issues now, if you are faced with a case with a constitution issue, because the constitution is still evolving and the interpretation, is still evolving, your interpretation as a presiding officer or a judge might be right; it might be wrong, there might be other facets that you hadn't considered so in those cases of course they will move on further to the SCA and then also to the ConCourt, unless of course you just grant right direct to the Constitutional Court.
DR. MALKA	So there's lots of components on context and I mean this also provides the reasons of when appeals are made....
JUDGE HUGHES	...yes, yes, yes, yes. In my long explanation thanks for putting it like that.
DR. MALKA	You are listening to 'Womanity – Women in Unity' on Channel Africa, the African Perspective, on frequency 9625 KHz, on the 31 meter band, also available on DSTV, Channel 802.
DR. MALKA	Today we're talking to Judge Wendy Hughes from the Gauteng Division of the High Court and we would love to receive your comments on Twitter: @WomanityTalk.
DR. MALKA	Judge Hughes, we were talking a little bit about the evolution of legislation and one of the things that I noted previously was there was a call for the South African Women's Empowerment and Gender Equality Bill, which lapsed, and it's principle aim was about being able to promote and achieve equality for women across the board and in response to the lapsed bill the minister of women at the time, Susan Shabangu, said; <i>"there is an equality act which covers all matters of equality and our responsibility now is to monitor the act to see if it is being effective. The bill was a duplication of existing legislation and we must now review these laws to see if they are delivering. We do not need more legislation."</i> end quote. What do you think about legislation in terms of being able to close gender gaps, whether it is about equal pay for work of equal value, or promotional aspects and position?

JUDGE HUGHES	Well you know in respect of the equality act, I think I agree with Shabangu that you know we had legislation left, right and centre and then we centralised it and said in terms of dealing with issues, the Bill of Rights says everybody should be treated equal; take it from that point and let's see how we work it into our systems and as she says, let's see how the systems are working or are they delivering and in this instance, especially so with promotions, discriminations and the like, pay differences, legislation is necessary to guide the different institutions, socially, economically and of course on a humanitarian level, you know, that you cannot ill-treat a worker - humanitarian level, you cannot discriminate two applicants because of their skin colour or the fact that they are of African descent and one is of European descent, right, that's...you cannot discriminate because I'm female and you're male and you, in terms of pay structure, you're paid more than what I'm paid but we do the same job. So that in a sense is what I see happening in terms of her saying let's concentrate on the one act which encompasses all the other acts that we've had, let's see if it is working in our society, so yes of course, legislation is necessary, but we have the legislation on hand, all that we need to do is utilise it and interpret it correctly in line with the Bill of Rights and the Constitution. That's my view.
DR. MALKA	It keeps coming back to those key points of where you're saying implementation and interpretation.
JUDGE HUGHES	Yes because without implementing it...
DR. MALKA	...you can have as many laws as you like...
JUDGE HUGHES	...you can have...yes, you can have as many laws, and, if you have wrong interpretation, that in a sense also will hinder the development of that legislation in the judicial sphere.
DR. MALKA	And for it to achieve the objectives...
JUDGE HUGHES	...exactly...
DR. MALKA	...that it was designed for.
JUDGE HUGHES	Yes.
DR. MALKA	Now turning towards more of a personal perspective, one question that I ask all my guests who've made tremendous contributions in their respective fields is about some of the factors that they consider have contributed to their success, so if you could share with us what do you think some of those elements have been?
JUDGE HUGHES	For me it would be my parents, well my late parents now. Incidentally I lost my parents this year...
DR. MALKA	...oh I'm sorry to hear that...
JUDGE HUGHES	...but...yes but I had, you know I had such a strict dad. He made sure that he tried as best as he could to protect me from all the woes that occurred in my community, I mean I'm from a "coloured community" drugs, alcohol, teenage pregnancy is rife, but I made it out of that community to attain a degree in university and not because we had finances, no, but because he had the strong ethos that you will make something out of yourself, no matter what you will do that. So he was very, very strict, he was very straight...a straight talker and he was very work conscious so I think he basically assisted me on that vein and then I had my mom who was a nurse by profession so she had the humanitarian, she had this big heart, she had this open home. In our community if somebody was injured or somebody had taken an overdose or somebody had...was ill, they would come Mrs. Hughes can you help me and my mother would always open the door you

	<p>know for them, so her humanitarian warmth I think also balances my strong portfolio because I know that I come across as strong, but there is a mushy part in there. So those are the two people that have made a profound effect on me going forward, they instilled values, they instilled ethics, they instilled Ubuntu within me and they instilled a clear set of ambitious work ethics for me which I try as best as I can to emulate and follow every day in this career that I'm in. So I think the strong influence was my parents.</p>
DR. MALKA	<p>And almost when you're growing up and you've got those strong messages coming through, I know "brainwashing" is probably the wrong term to use, but you don't know any different, that's what you know and that's what you live out.</p>
JUDGE HUGHES	<p>Yes but it's not like you don't test the boundaries, you do test the boundaries but then you always come back to begin, you know, as they say you always come back to begin because if you want to measure your worth, you always come back to begin and say you know, in my home, was this right?</p>
DR. MALKA	<p>Your point of reference.</p>
JUDGE HUGHES	<p>Yes, yes, so that being said, ja they are my...my and were my influence and still are I should say.</p>
DR. MALKA	<p>Could you share with us a few of the pivotal moments in your life and I imagine there must be many?</p>
JUDGE HUGHES	<p>I think when I attained my degree, you know, my first degree. I've got a BProc and then an LLB so when I attained my first degree it was like...in that era it was like my word, I had achieved what many of my peers from my community could not achieve so going back into the community, you know, with a degree in those days was like oh my word, she's actually made it out of Wentworth, you know, there you are, somebody who we can say, a product of a community that was festured with drugs, alcohol and all the rest but here you are, this little flower amongst all these thorns makes it out of there. So ja that would be one of my pivotal moments, definitely.</p>
DR. MALKA	<p>And what would you say has had the biggest impact on you to make you the person you are today?</p>
JUDGE HUGHES	<p>I think the law, you know, and the love for the law. The love for everything right in the sense that you know I was in practice...I'm just going to deviate...I was in practice and I had a flourishing practice, a good practice but I had reached my ceiling, in my mind I had reached my ceiling. Yes I wasn't Werksmans or Adams and Adams you know, but in my field I had reached my ceiling and I was like this is the time that I need to now not use the law to assist but really use the law, interpret it so that it could be practiced by others in the correct...by virtue of the correct interpretation I should say. And that for me was why I say I had the calling to come to the bench because I had reached that ceiling and I said you know it's my time now to "give back", give back what I had earned and what I had gained and also educate others, if I could, along the way, enhance my understanding of the law and also make a difference in terms of jurisprudence going forward.</p>
DR. MALKA	<p>Those are really important factors and I love the effect that your parents have had, those rich values anchoring you and that your passion for your profession is consuming in such a positive way and...</p>
JUDGE HUGHES	<p>...thank you...</p>
DR. MALKA	<p>...to move onto different levels that...you know 'cause some people could leave a profession because it wasn't giving them what they wanted but you've chosen</p>

	to take the profession further.
JUDGE HUGHES	Yes, no, I am really fulfilled in what I do. Every day is a challenge, every day is a challenge, never rule that out, but a good challenge and every day you make a difference, you know, in people's lives and that's the profound effect that judgements have on lives and also meting out the law, interpreting the law without any fear and without any favour, you know, that's the most important thing, which is part of a judge's oath, you know, that you get in there, you do the job, you do it well and you do it with no outside influence but your objectivity.
DR. MALKA	Independent and integrity.
JUDGE HUGHES	Oh yes integrity; that it is.
DR. MALKA	And lastly as we close out the conversation today, could you please share a few words of inspiration that you'd like to impart to young ladies listening to us?
JUDGE HUGHES	You know at the end of...we do applications to admit attorneys and advocates as judges and at the end of the admissions we call the candidates forward and then we give a little talk to them going forward in respect of the career that they've chosen and the work that they will encounter, the people that they will encounter and the pitfalls that are there and the victories that are there. So, in saying that...actually this is what you're asking of me; that's what I want to get at. In saying that, you know, the legal profession is an honourable profession, it's an old profession, it's honourable and today we find that there are so many in the legal profession that have taken the short route instead of sticking along the long path that is riddled with every obstacle and in taking the short route you are sure and bound to fall off the cliff and by that I say there are many, many practitioners who come into the profession with good intentions but do not have the staying power, they do not have the tenacity to persevere, to work through the small hurdles first, then get to the larger hurdles, but eventually make it to the end or cross over the finishing line and that's the sad thing that we have in this profession is that we have many cases where we have to proceed with striking off attorneys, striking off advocates for transgressions, which they know they are not ethically bound to commit. So taking that as a starting point, my message out there to the young women out there, young girls out there, those who are thinking of embarking you know on a career in law, is to have the staying power, persevere, focus and know that it is not going to be an easy road. It is going to be riddled with potholes and all the rest but you will make it to the finishing line if you persevere in what you want to get ultimately and if you take that value and you marry it in your ...after you have qualified and you utilise that, then you would not fall off the cliff like many of the attorneys' and advocates that we find before our courts, who are being struck off and/or suspended for transgressions. So that's basically my word of inspiration and warning to those out there wishing to, or thinking of embarking on a career in law. Law is an honourable profession.
DR. MALKA	Thank you very much for both the cautionary aspect but the motivation and to keep it real.
JUDGE HUGHES	Thank you, thank you for listening.
DR. MALKA	Thank <i>you</i> .
	PROGRAMME END