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PROGRAM NAME: WOMANITY – WOMEN IN UNITY

GUEST NAME: JUDGE THOBA POYO-DLWATI – KWAZULU-NATAL DIVISION OF THE HIGH COURT

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 on the line today for our series on Women In The Judiciary is High Court Judge Thoba Poyo-Dlwati from the KwaZulu-Natal Division of the High Court. Welcome to the show!
JUDGE POYO-DLWATI	Thank Dr. Amaleya and good morning and good morning to all your listeners.
DR. MALKA	It's such a pleasure to have you here today!
JUDGE POYO-DLWATI	I thank you for having me on your show, I am humbled.
DR. MALKA	To begin with, you sit on the bench in the KwaZulu-Natal High Court; can you walk us through some of the key landmarks in your career to reach this point?
JUDGE POYO-DLWATI	Thank you, thank you Dr. Amaleya and again thank you for having me on your show. I am a judge of the High Court as you've correctly said, I am currently acting in the Supreme Court of Appeal in Bloemfontein, but Bloemfontein is home because of the Corona Virus so I am currently acting there as a judge in the Supreme Court but I still remain the judge of the High Court in KwaZulu-Natal. I was appointed on the 1st of June 2014; this was after having graduated from my BProc degree at the University of Transkei, it was called that then, but now it's called Walter Sisulu University. After graduating there I came to KwaZulu-Natal and I wanted to study, which I did, I studied my Postgrad diploma in tax and after finishing that I got a place to do my articles of clerkship so that I could be admitted as an attorney. Fortunately I was able to be exposed to conveyancing and then I was admitted in 1999 in February, I got admitted as an attorney and conveyancer of the High Court of South Africa and then I practiced as a professional assistant at the firm Hoskins Ngcobo at the time and in the year 2000 I became a partner of the firm and we changed the firm name to be Ngcobo Poyo and Diedricks Attorneys; that's where I practiced until I was appointed as a judge in in June 2014. I was a director, I practiced especially in conveyancing in estates and later commercial litigation.
DR. MALKA	You've got a very structured approach to all of these milestones; was becoming a High Court judge always on the agenda?
JUDGE POYO-DLWATI	It was, I always wanted to be a judge, but you don't become a judge because you want to; you get identified by the judge president to come and act. So you get approached to come and act as a judge, some of the things that they use is your experience and how you have fared in the legal profession and so I was approached by the judge president at the time, Judge Tshabalala, in 2009 to come and act and at the time I just felt I wasn't ready to be an acting judge or to be a judge, I thought I was still very young so I declined and three years later in 2012, Judge Patel who was also the judge president invited me to come and act and I thought, you know, let me just go and try this and at the time he managed to convince me that you actually can be a

	<p>good judge, you can do well. So and when I got advice, because when you're going to be a judge, for me it's like you are being put in some cage where you can't do most of the things that I have done, so I spoke to some of my senior colleagues and they said it's your dream, you better do it now because things change with time. So I took their advice and I made myself available and I got appointed.</p>
DR. MALKA	And never looked back since.
JUDGE POYO-DLWATI	I haven't looked back since; I enjoy my work.
DR. MALKA	And thinking about your career as a judge, can you share with us a couple of memorable cases that have stayed with you?
JUDGE POYO-DLWATI	<p>Yes definitely, some are, in fact most of them are sad, it's one or two that are not really sad. They're sad in the sense that they are all mostly violence. The one that I really had grappled with was a lady who was charged with murder of her boyfriend, she was pregnant, in fact previously they were in a relationship and the guy wanted it to be kept a secret and she fell pregnant and she got a miscarriage and then she knew that this guy was a playboy, so to say, she wanted to end things with him but he persuaded her to carry on with the relationship and even when she tried to terminate it and she fell into depression and what have you, but then she fell pregnant again and now she was about seven or eight months pregnant and she insisted that you needs to go and introduce me to your family and they were both police officers and on this day she insisted that you need to go and introduce me to your home and he refused, started pushing, she emptied her gun on him and then drove away about three hundred kilometres, handed herself to the police, the matter came before me, she wanted to plead guilty. At first appearance she was literally a size 32 but as time went on she was a size 38, size 40 and she was depressed, mental health affected and all of that, but the most challenging issue that I had to grapple with was the child, because the child now had been born, the father is dead because the mother killed the father and the child is two years, who is going to look after this child? This woman had history of abuse so she had been raped before and so she took this man, you know, as one person that she now could trust, another man that she could trust and then he does this to her and this I got from the psychologist report, that when he rejected her, that was a trigger to bring back everything and then that's why she acted in that way. But I had to balance, because the deceased's family was in court, not seeing anything much wrong from their son's point of view, almost even rejecting that this was the deceased's child. I remember, I had the argument and the lawyer said this lady told me that the child's birthday is on Monday, I think I heard the case on Thursday, in my mind and I think that was one of the few times I thought as a mother, let it go, you know, I said I will do the sentence and proceedings next Thursday because I need to...I really needed to apply my mind to the facts that were before me, but also to just allow this woman to spend the birthday of her child together for one last time and then sentence her because it was inevitable that she would go to prison. So it's one of those cases and another also a serial rapist killer, this guy would just go and kill, find partners, kill the husbands, rape the women and steal all their belongings, but in the end said he was sorry, you get to ask him why, are you sorry because you are caught or why did you do all this, we want to understand. It's something that they never really explain to you as to why are they doing what they did and I also was part of the panel in the Shemba matter about who is the actual head that was very interesting and I was also part of the panel in the former president's matter in his application for a</p>

	stay of prosecution and that was also very interesting, very challenging, ja, so I've had some quite memorable cases that I dealt with.
DR. MALKA	Listening to you really gets some insight into the scope and the complexity that no decision is black and white, clear-cut, there's so many factors that you have to take into consideration.
JUDGE POYO-DLWATI	There is definitely no decision that is clear-cut, as I said, in all of them you have to, especially in the criminal trials, you have to balance the interests of the accused, the interests of society, the seriousness of the crime, if there are children involved you have to make sure that the children's right come to the full and you consider them fit and so in all of this and you have to try to get to a balance, that is the most difficult thing that you have to do and they say a judge's job is lonely; it is so lonely when it comes to those issues because ultimately you've got to decide, it's you, nobody else, you can ask for your colleague's opinions on this and that, but you must then decide.
DR. MALKA	A lot of weight on your shoulders. And besides doing the day job, we also have the added complexity now of the Covid-19 Pandemic which has had massive social and economic impact on almost every sector of society; can you tell us what types of solutions are you seeing take place in the justice system to adapt to this reality?
JUDGE POYO-DLWATI	Ja, this pandemic has really disrupted life and many of us have been affected directly and indirectly. I remember in the first few weeks, in March that was the Level 5 one, I was supposed to be on duty and there was so much confusion at the time as to what are you going to be dealing with and what can we not deal with, but also trying to get people to understand that not everybody must come to work so that you reduce human interaction and all of that and it's not easy, especially in government because they have to adhere to so many protocols, red-tape, but in the end yes we managed to. So, some of the new things are Gauteng has been very fortunate because there's a pilot project on case-line systems that they have introduced and it started there because it's the biggest division in this country and so when the pandemic started and it so much [inaudible 0:11:46] in terms of the day-to-day work except for hearing the actual matters in court, you know, your trials, but with some of the matters they were able to deal with them as if nothing really much has happened, but we also have adapted, for instance in the Supreme Court of Appeal they use so much online, your emails, the case-line, especially when they're dealing with petitions. I understand that previously people used to post these petitions every week so that it can come to you and some of the judges or one of the judges was telling me that I reside in the rural areas, I didn't even know that there was a courier for me and one of the senior judges phoned and said I've been waiting to hear from you about this matter. So, everything now happens on email, you get sent an email, we're going to start with our virtual hearings, online hearings, and all the practitioners almost prefer it and because of the age on the bench, I laughed when they said people that are over sixty should stay at home, I'm like okay, how many of us for instance in KZN in Pietermaritzburg where my base is, will literally be at work and I think I couldn't reach five, because most of them are above the age of sixty and that was one of the biggest challenges, but yes we are improvising, we are hearing matters online, we are dealing with matters more online than before and of course this comes at a price because nobody was prepared for this, the practitioners were never prepared, they have to upgrade their systems because now everything is going to be online, even the members of the public, people want to see justice being done, they can't

	see justice being done because people are limited to come to court and it is quite unfortunate, it is one of those things that really have to be improvised.
DR. MALKA	It sounds as though the systems are revolutionising themselves and that there will come to a point where it will almost become more efficient and when we return to some form of normalcy, that doing things online in the virtual space will actually become the new normal.
JUDGE POYO-DLWATI	That seems to be, it will be the case. In fact it seems to me is that we're going to cut so much of some unnecessary costs, remember I said they were using the couriers and everything, that is everything is online, that cutting all those costs if somebody had to come to court to hear a particular matter, you cut down on all those costs because it's safer to now sit at home and hear the matter online, even if you are in the courthouse as a judge, you don't have to have counsel there, they can stay at home and you can continue some of the good things that the pandemic has brought to us, like the online virtual hearings and some of those things.
DR. MALKA	You seem to be very pioneering and one of the things that struck me when I was looking at your CV is the extent of your activity in various legal associations, for example you previously served as the President of the KwaZulu-Natal Law Society, the President of the Southern African Development Lawyers Association and a member of the South African Chapter of The International Association of Women Judges. The International Development Law Organisation believes that improving women's ability to work in justice institutions is essential, not only to ensure that women enjoy democratic freedoms and equality of opportunity in the work place, but also to ensure that specific interests of women are represented and advanced in justice institutions. Can you tell us more about these platforms and also how they promote entry of women into the sector?
JUDGE POYO-DLWATI	I was active in many of them, the president of the Law society, SADC and I am currently a member of the South African Chapter of the International Association of Women Judges. At SADC, in fact let me start by saying the legal profession is male dominated and I think we all know that and so it had to take a decision to say we need women to be represented in these structures, for instance at the SADC level there would be two members from each country that are part of the SADC that will represent the particular country and in most instances you would find that it's two males and when I started I put a proposal that it must be one man and one woman and I remember at the break during that meeting they said where must we get them, I said I don't know, you will get them I'm sure...
DR. MALKA	...did they really say that?
JUDGE POYO-DLWATI	...ja, ja, oh my ja, they do and I said you must find them, you must find women to come into this association and I'm proud to say that I was the first woman president of the SADC, that the person that succeeded me was also a woman and until today you will have most of the time the executives to be women. So you just have to be conscious of it and as a woman, with lots of support from other men I must say, you have to try to make sure that you instil the position that it is not normal to have a whole men board, it's abnormal, so they need to do something, once they, they must look at themselves then before a woman says something and say uhuh, there's something wrong here. So in those associations then I was able to have an influence and to ensure women who want to be judges make sure that they get a way. In South Africa we're fortunate in the sense that with the transformation and even the government policies, there is a very positive mood to have women to become judges, but it is still a very difficult task, hence you need progressive leaders that will make it their case that women

	get identified because there are women that are as equally capable, competent and fit and proper to be judges. The Women's Chapter of the Judges Association encourages and ensures that we get more women to become acting judges to become judges to become magistrates. So that what we are doing and where necessary we also lobby the various interest groups to ensure that these objectives are met.
DR. MALKA	And when you say that, I saw there were some 2017 statistics which indicated that only 37% of South African judges are women and I think that besides the gender imbalance, that there's also an ageism factor to this too; could you tell us more about your experiences?
JUDGE POYO-DLWATI	Oh ja, you know, in the past for a person to be appointed to the bench you needed to have been an advocate and have been practicing for quite a long time to attain the status of senior counsel and then I think it was seen as an elevation for you to get to the bench because of the status that you've had in the advocate profession, but because of our...after 1994 and the progression in our society, then judges could be appointed either from advocates, from attorney's, from magistrates and from academia. So that has opened doors for more females younger than before, because even though I have practiced for more than 15 years and I think at the time I was 39, I still had the question that was asked of me at the Judicial Services Commission that you seem to be young, do you think that you will be able to stay? And I'm like I've been an attorney for 15 years, but it's still such an issue because people still get asked you look young or you still look young, but I think to some extent yes, that question is said because some people believe that maybe you haven't seen it all in the legal profession, but once you have an experience of more than ten/fifteen years and you have all the qualities that are required of a judge, it shouldn't be a difficulty, and we need a political will, so to say, to make sure that women and younger people that are as capable get to be appointed as judges.
DR. MALKA	And I would also say that besides the years of experience, that given our world is so open and online and connected, that we are exposed to so much more, that we gain much more knowledge than we would have done in the past.
JUDGE POYO-DLWATI	Definitely, once you start any particular area in that particular practice, then you gain so much experience then that you don't need so much of the other experience that you had in the past.
	AD BREAK
DR. MALKA	Today we're talking to High Court Judge Thoba Poyo-Dlwati from the KwaZulu-Natal Division of the High Court. We would love to receive your comments on Twitter: @WomanityTalk.
DR. MALKA	In the previous segment of the show Judge Poyo-Dlwati shared with us some of the landmarks in her career on her route to becoming a high court judge, as well as some of her memorable cases that have stayed with her and we spoke about ways and mechanisms of trying to encourage more women into the judiciary system.
DR. MALKA	Judge Poyo-Dlwati, August is celebrated as Women's Month in South Africa and it's a period of being able to reflect on the gains as well looking towards future change and this year's theme is Generation Equality, Realising Women's Rights for An Equal Future. Thinking about the recent past; in your opinion, what would you say are some of the important equality gains that women have attained?
JUDGE POYO-DLWATI	Thank you, thank you Dr. Amaleya for that question. If you look at the law reports in particular before we even go to generally, there is so much that women have gained. There are so many cases that have allowed women to participate in areas where they were not able to participate before. If you

	<p>look at the case of the Constitutional Courts, it dealt with the Venda Chieftaincy, the ConCourt made it possible for women to be appointed as chiefs and if you look at the matter that was heard in Cape Town in 2018 and it also ended up in the Constitutional Court, it recognised the spouses in the Muslim marriages, the women in particular, of surviving spouses in terms of the Wills Act. So there are quite a few, even in the treatment action campaign matter, the women’s rights to access ARV medication was recognised and now in 2020 in the Constitutional Court again, before if you were gang raped, so to say, if one of the perpetrators was not in court and only one was in court, it would not be classified as a gang rape because the other ones were not there, but now the Constitutional Court has confirmed that in our modern society which is founded upon the Bill of Rights, some of the things really need to be discarded and especially because it founded that some of the doctrine of the common purpose were imbedded in the patriarchy system where women were treated as mere chattels and which ignored the fact that rape could be committed by more than one man as long as others had an intention of exacting power and dominance over such a woman, so by their presence there, in watching, they can be convicted of rape. So there are quite various gains that have been made by women. As I said again, our country because of the policies that we have, seems to promote that there should be 50/50 in all spheres of government, so there is quite a lot that I must say we have gained. In the judiciary itself we’ve got our first female president of the Supreme Court of Appeal, Judge Mandisa Maya, and I think she was appointed in 2017 I think or 2018, I’m not sure, she was the first black or even the first female president of the Supreme Court of Appeal. So, that’s quite a gain for women, so and we know that in parliament we’ve had our first speaker of the National Assembly is a woman, so there are quite various gains that we have got as women in this country.</p>
<p>DR. MALKA</p>	<p>All those points you mention are incredibly important and I think that it creates this visibility of demonstrating what women can achieve and their capabilities, so that provides examples to not just other women as opportunities, but also to men to show that we are perfectly capable and competent of holding these posts and the legislation that you’ve spoken about from the Triple Action Campaign with ARV’s to try alleviate aspects of gender based violence, that it’s all about developing on women’s rights. Thinking towards the future; what do you think we need to build a more egalitarian society where we are seeing greater efforts of equality and limits aren’t imposed on women?</p>
<p>JUDGE POYO-DLWATI</p>	<p>I think we need more activism, especially by women, and we need to educate even the men that are amongst us and we need to ensure that people at the leadership are conscious of the fact that women are as important. I have no doubt and I suppose because I am a woman, that there shouldn’t be any question mark in terms of the capabilities in terms of the competencies that are asked, but I think because of our past, especially in Africa, patriarchy is sort of imbedded in everybody’s minds and that’s why maybe we still don’t have a woman president of our country. So, I think by education, by mobilising advocacy, we should never stop, we should never stop to talk, we should never stop to make sure that our talent is seen, we should never stop to excel in what we do and maybe someday somebody will realise that, you know, there should be no limits, but the quotas also work, you know, for me, because once you’re saying if there are two positions, you say one should be a woman, people will see that wow, there are women that are capable, there are women that are competent, in fact there are more than men and in my view in most instances women excel in most of the management positions because of the nature of the person in a woman, who</p>

	is able to deal with a whole lot of issues, confront and deal with the issues there and then, unlike in some instances some male counterparts they are not able to confront issues, they want to play nice and all of those things. So we need to lobby, we need to do advocacy and we need to make sure that we excel all the time.
DR. MALKA	Well, let's use this platform to do exactly that.
JUDGE POYO-DLWATI	Yes.
DR. MALKA	Women are multi-dimensional, they have to address several components simultaneously and apart from looking at the work environment and career opportunities, by far and large, the responsibility of rearing children falls on women's shoulders and the juggle between career and motherhood is always controversial and sometimes challenging; how do you see this?
JUDGE POYO-DLWATI	It is always a juggle and it is always a struggle, but where there is a marriage where the children are born out of marriage, we need to try to educate our spouses, we need to try to make sure that we are equal in this thing, that I brought this child in my womb, doesn't really matter when the child is out it's both our responsibility. But I am glad that the number of paternity day's leave has now been increased because at that early time you should be able to make sure that you educate your husband that it is your responsibility. But I think also women strive to be superhero's you know, supermom's, super wife, super whatever. We are moms, we are wives, we are the neck in the family I always say, that I am the neck, I am not the head, so we should just do our job and let the men be able to do the same job that we do. Sometimes we do things that people can be able to do themselves but we take it over upon ourselves and for me one of the most important things is to make sure that you have a support structure so that you can be able to balance in your career, in your role as a mother and in your role as a wife, if you are a wife.
DR. MALKA	Thinking about the balance aspect, someone once told me you can have it all, but not necessarily at the same time.
JUDGE POYO-DLWATI	Yes, not necessarily at the same time, hence you should be able to balance and to fit in yourself. I think you can actually probably have it all at the same time. By God's grace I have been able to have it all and at the time when I wanted to have it. I can share you a brief story when I was pregnant with my second girl, I was the president of the Law Society of KwaZulu-Natal, so my first child had been born through a C Section and so the second one had to be born through a C Section and my gynae said we should operate on such and such a date, I said no, I have an AGM on that day which I will be presiding, in fact I had the council meeting, he says okay when, I said when the baby comes we will operate and he looked at me like wow! So, when the council meeting came, in the morning I felt that I had some pains here and there but I thought I'm going to ignore this, let me just go to this council meeting, I got there I chaired my meeting, I finished, I get into a committee, I finish that at half past twelve, I call my gynae I said listen I've got these pains, he said please can you just go to the hospital and then I went and they said you are in labour, I said oh really, can I go home and they said you are not going anywhere. So, I did my council meeting and I had my baby that afternoon and in the evening I sent everybody I had a baby born and what have you; they said but when? I said when I was chairing your meeting I was in labour.
DR. MALKA	You are...
JUDGE POYO-DLWATI	So it can happen.

DR. MALKA	You are the epitome of multi-tasking.
JUDGE POYO-DLWATI	Ja, it was true multi-tasking. Two weeks later I did the AGM, you know two weeks you haven't really healed but I made sure that I go there because I don't want the criticism that you see women want this and that but they can't. I was there, I chaired my AGM and I finished it, what they call smoke break for me was a feeding time break, so in the council they mean that smoke break is feeding time break. So you can try to have it all at the time when you want it.
DR. MALKA	A wonderful story and it must be a fantastic memory. One of the questions that I ask my guests on this show who've made tremendous achievements in their respective fields of expertise is about some of the factors they consider have contributed to their success; can you tell us in your opinion, what you think have been some of the key drivers to your success?
JUDGE POYO-DLWATI	So I come from a rural village in the Eastern Cape, the town is called [Ngcobo] and there are not so many educated people there, so I was determined to be a graduate in my own family, I was determined at the time to be a lawyer and when I told my dad that I wanted to be a lawyer he said but all the lawyers that I see have got white hair, are we going to wait for so long for you to be a lawyer? I said no, I can be, you know, whilst I am this age and I will, so I've always been at a very early age been convinced that I can do it, I can do it. So for me it has been determination, it has been focus and obviously perseverance and hard work, lots and lots of hard work because you have to prove yourself times three than your opponents most of the time. So ja, it's really been those.
DR. MALKA	And whilst you were growing up, what would you say have been some of the pivotal moments in your life?
JUDGE POYO-DLWATI	Some of the pivotal moments in my life, for instance, making sure that I graduate within the time that was there and being at the leadership of these societies that I would have done and seeing, because at least I am much younger than some of the women, seeing some of the women presiding in big cases and for me those were some of the quite important areas in my life to see some women judges in the Constitutional Court, to see some women judges in the Supreme Court of Appeal, to see some women appearing in court and getting to be judges, those are some of the key important aspects that I saw as influential in my life.
DR. MALKA	And because we're celebrating Women's Month, can you share with us who have been some of the strong women in your life?
JUDGE POYO-DLWATI	One of my strong women, she's actually my friend, is my friend Andiswa Ndoni], she was the first woman president of the Black Lawyers Association. The determination, the focus, the resilience that she showed played a very big role in my life, she's very honest. The president of the Supreme Court of Appeal, Justice Maya, also from the Eastern Cape, young, married, had children, they've showed me that it can actually be done. My mother who's an uneducated woman that was able to look after eleven children and make sure that all of them are graduates, she's one of my key role models in my life.
DR. MALKA	Thank you for sharing them with us today. What would you say has been the best lesson that you've learned or lessons that you've learned throughout your career?
JUDGE POYO-DLWATI	One of the best lessons is that nothing is really too much personal and when you lose it's okay, because you will win another and you must have...and when you say it's okay to lose, but make sure it doesn't become something that you do every day-to-day and when I say not personal, you need to direct every opposition that you have, not at person, but at what the person

	does. So I mustn't hate Dr. Amaleya but I must hate what she has said because once you hate people, once you become so focused on personalities you will lose focus and one of the best lessons is to always, always remember where you come from because if you know where you come from, then you will never forget how you got to be where you are.
DR. MALKA	And finally, in recognition of Women's Month, as we close out our conversation today, can you share a few words of inspiration that you'd like to pass onto girls and young women on the continent that are listening to the show?
JUDGE POYO-DLWATI	You know with young women in particular I would like to...there are some key things in a person's life that you should make sure that are always there no matter what. Your integrity, you know, like just like trust, once it's lost it's very hard to be gained again, so just make sure that your integrity is at its best at all times. Be humble because it's only when you open your mouth that people know about you. Have faith; have faith in what you believe in, I believe in God and all the time I do the best that God has given me to do and I always believe that he will do the rest, so I always do my best. Do your best, excel and give it your very, very best, whatever you are doing, because I always said from the time I started to work as a professional assistant after I qualified as an attorney, I always had the belief in me that whenever I leave this company, they must cry, not because of me as a person but because of the work of the hard work that I have done. Always be an asset in whatever you are doing, your presence must be felt and always be that shining star in the corner.
DR. MALKA	Thank you for those wonderful words of motivation and upliftment. It's been a pleasure having you on the programme today!
JUDGE POYO-DLWATI	Thank you so much and thanks again Dr. Amaleya for having me and I wish you all the very best, enjoy this wonderful month and don't forget God couldn't be everywhere; that is why he created women.
DR. MALKA	Love that statement; Happy Women's Day!
	PROGRAMME END