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PROGRAM NAME: WOMANITY - WOMEN IN UNITY

GUEST NAME: JUDGE PORTIA NKUTHA NKONTWANA – LABOUR APPEAL COURT

	TRANSCRIPTION
DR. MALKA	Hello, I'm Dr. Amaleya Goneos-Malka, welcome to 'Womanity– Women in Unity'. The show that celebrates women's milestone achievements in their struggle for liberation, self-emancipation, human rights, democracy and much more.
DR. MALKA	Joining us today for our series on women in the judiciary is Judge Portia Nkutha Nkontwana from the Labour Appeal Court. The judiciary is an important component of the justice system, it safeguards and protects the constitution, its values, and in doing so upholds democracy by applying the law impartially and to adjudicate disputes. Welcome to the show!
JUDGE PORTIA	**Thank you Dr. Amaleya, thank you for having me.**
DR. MALKA	Judge Portia, you hold a Juris LLB from the University of Zululand, you also have certificates in industrial relations and leadership from Wits Business School and the Gordon Institute of Business Sciences. You began your career as a Commission for the Conciliation and Mediation (CCMA), and thereafter you were a labour consultant for a number of different companies in diverse sectors, from chemical to food and beverages, communications, municipalities, provincial and national government departments. Labour seems to be a core area of interest for you, did you always envisage a legal career and eventually being part of the judiciary with a focus on labour?
JUDGE PORTIA	**I think the profession chose me. My dad gave me the name Portia, so when he named me Portia and he made it a point that I know that Portia is a character in the play by Shakespear, The Merchant of Venice, and I think she was a lawyer. So, I grew up knowing that I am a lawyer, and I am going to be a lawyer, and I embraced being a lawyer, but I was always upfront in terms of confronting issues and in terms of dealing with justice issues. You know my dad, I mean he was just a postmaster, he was not having degrees or whatever, but he was very wise. I remember he introduced me to dispute resolution and just justice, because in my family discipline was collective, so we had what we called "The Table", if there was a problem at home we would be called to "The Table" and the table was where we discussed challenges, from adolescents dating, playing truant at school, you know, whatever challenges that faced, to financial challenges as well. So, I am the last born in my family and I mistook that for telling on my senior siblings, so you can imagine, I was a star witness, so bringing evidence against them, but it only dawned on me later on that I was introduced to dispute resolution, because there were no pronouncements in terms of finding somebody guilty, it was just trying to resolve conflict, encouraging better behaviour and I think that is how maybe I was also introduced to dispute resolution and hence then the career in labour law.**
DR. MALKA	It is so interesting hearing your story and I'm getting reminiscent images of the Williams sisters, Venus and Serena, and how their dad had this utmost belief in them and in a way he manufactured them to become the tennis professionals

	that they are and I think people cannot underestimate the impact that parents have on shaping the trajectory, actually, the responsibility that parents have to guide and help navigate their children's career paths.
JUDGE PORTIA	**Indeed, indeed and I think it has to be deliberate because as a parent you are given an opportunity to observe. I think in other communities they say they look at how you conduct yourself, they know the career you have to follow and I think most probably it may not maybe behaviour, but it could be the wiring, you know, when you look at this child and say the way they are wired, I think they need to be channeled to pursue this particular career and I think in South Africa, our country has invested in early childhood development, which was part of social development and moved to education. Understanding that, I think there must be deliberate efforts to impress children at that age, your pre-school, and I think the teachers they play a very important role at that because we are impressionable when we are children and it is important that the teachers are taught how to nurture and how to also encourage the talents, the natural talents that children display. And I think also coming to mind is my grade one teacher who also did that, she was one of my sponsors as well, who sponsored my career because if you look back you know that you were supported, and it is unfortunate that all women and especially girl children have that kind of support.**
DR. MALKA	I can't tell you the number of people who have spoken about a teacher being instrumental in helping them make decisions, in helping them navigate their career paths. So, the teaching profession I think is fantastic in terms of what it does. So, moving from "The Table" at home, the dispute resolutions, to the bench; can you share a couple of memorable cases that you have presided over?
JUDGE PORTIA	**Yes, I think one that comes to mind, it has to do with racial harassment. A female supervisor who happened to be white, I mean in South Africa you know there is racial tension, because obviously of apartheid. So, this particular supervisor was enforcing discipline, the perpetrators are the subordinates whom she had just disciplined and then they accused her of racial harassment, of using your "kaffir" word, we know it is derogatory South Africa because of apartheid and how Africans were called. So, it is serious, I mean when you use that term, obviously it is a serious allegation and so instead of investigating holistically and testing both cases, the employer proceeded to charge this supervisor and then she was charged with racial harassment, using the 'K' word as we would call it and then she was found not guilty in the disciplinary hearing. So, thereafter then she lost the grievance and she was expecting that the subordinates be dealt with, because obviously that was serious, I mean it went to newspapers and she was labelled a racist and the employer refused and they played hide and seek up until she involved her union and then the union decided that if you are not going to charge these people, we are going to have to go to court, because this is unfair discrimination, it is racial harassment, but because also she is a female, obviously it is gender harassment or discrimination and then they referred then that case. So, it sat before me and what was amazing, in the manner in which the employer presented its case, it just showed a lack of sensitivity and understanding of gender equality, because the counsel that they briefed, I mean he went out of his way to vilify the victim, in protection of the government, because at that stage it was no longer about the perpetrators because she was suing the**

	department for damages in that they did not eliminate discrimination, they did not protect her. But their defense was indicative of a stage we are at where, even if you have policies, but if there is no understanding of those policies sensitization, then you get the type of lawyers that will even abuse the justice system to protect the patriarchal system so to speak, because there was no reason why they were targeting her and if it was a good lawyer he ought to have advised the employer to either settle that case, instead of going to court. It is just one of those issues that strike me that in this time and age we still have I think lawyers who are insensitive because maybe of a lack of training, I am not sure, but also a lack of understanding of the seriousness of gender equality and the constitutional imperatives, not only on institutions, but also on lawyers themselves, because they need to assist in the enforcement and protection of constitutional rights.
DR. MALKA	Thank you for sharing that case with us and it does lead me to my next question, which is focusing on women's rights and two years ago I did a talk, where we were talking about women's rights and what we can do and how far we had come and it really gave me an appreciation of the law and legislation as a powerful tool to advance women's rights and sometimes it's hard to think that 28 years ago, when the Bill of Rights was introduced, that only at that point in time all women in South Africa were officially recognized as equal citizens. In your views, what are some of the important equality gains that women have attained?
JUDGE PORTIA	**I think it is access, you know, there were challenges with access. I think when I started my career it would seem as if there was no acceptance that you can have female lawyers and I say that because my professor in my first year did not understand that there must be diversity in the legal practice and he was shocked to see that there were more female students than male students and I mean his comment, I am not sure whether he was alive to the impact of that, was that well there is semester coming, in the next semester I think we will have correct numbers. Which meant that those women would fail and drop out, but maybe to his amusement was that not only the end of the semester, the next day, half of the women that had registered, they deregistered and pursued other fields. So, I am saying that was access then, but the gains now, my niece who is studying law as well, who is finalizing her LLB, tells me that those are not issues anymore, so which means then we have made progress and she said even the tone in class is sensitive to gender equality, the debates are informed by the understanding of equality. So, I think that is a gain when it comes to institutions of higher learning, but also when we look at the judiciary itself, I mean the fact that we have the president of the Supreme Court of Appeal, who is a female, President Molemela, so you know that we have made progress, but the Deputy Chief Justice is Justice Maya, who is a female and I think with the retirement of the Chief Justice, she is going to take the reins. So, I think those are gains because we have positive mentors and positive role models and that is very important for women, that they see you starting at ground zero like me I normally say, but because the platforms were levelled, then we could build careers and then people can see us progressing. I think that is important, role modelling is important, I think we have gained that, but policy changes I think they also assisted, because you have deliberate legislations, obviously they are informed by international protocols, but we have the rights and the constitutional right**

	to equality, we have employment equity. I am talking about employment equity because I am in the labour field, which is applicable in the workplaces and I think because of that we have seen a change in the representation on the boards, at executive levels and I think that is a gain. We have not arrived yet, but I think if numbers were anything to go with, I mean even in parliament we have about 42% women representation and I think in corporate we have about 17 to 20%, I think it varies. So, those are the gains, that we have people who are occupying positions where decisions are made and because they are there, then they represent diversity of thoughts, of views and then they shape the policies, and it is very important that they are there. So, I think those are the main ones.
DR. MALKA	Those are important gains and very tangible, I am very glad that your niece is experiencing a different world to the world that you went into when you were doing your education. Thinking about the idea of gains, one of the things which concerns me is about regression and when I was preparing for our interview I happened to come across an article on the prohibitions that the Taliban has enforced on women in Afghanistan from 2021, which impacts on their right to education, they can't attend a secondary school or pursue tertiary education, their rights to paid employment, freedom of movement and more, and to be honest I really didn't think that this could be something that could happen in the 2020's. So, given your experience in the field, the judiciary, as a lawyer, as a judge, what do you think we can do as women to ensure that our hard-earned rights are never taken away from us?
JUDGE PORTIA	**Yes, that's the reality of our time. I think one of our former chief justices, Justice Edwin Cameron, recently delivered a paper where he was dealing with almost issues that impact on what we are saying and I think the topic that he addressed was about lawyers, you know, the caliber of lawyers that we see emerging and their role in eradicating the gains in terms of protection of constitutional rights and he makes a very important point, he says, what do we do, I mean we have seen lawyers defending people who really were obviously guilty of corruption or violation of women's rights, I mean somebody who is abusing a domestic worker as a parliamentarian and then they are defended and then that case doesn't go anywhere and they are still in public office, I think he was just raising that those are problems that we are facing, but he makes an important point, he says we must commit ourselves to the struggle for a just legal dispensation that does not benefit only ourselves and a small privileged elite, but advances the interests of those whom our society continues to marginalize. If we don't succeed in this, we risk cynical mobilization of forces of populism against the rule of law. So I think that is the challenge now, when you look at those governments, our populace governments that are enforcing those rules and I think it is a global phenomenon because you see even in other countries where governments that are being elected now are populist and because they are populist, obviously they will want to appease those who have voted them into power and then the first thing they do is policy changes. So, I think this is very important, that it will start with formations, I think women groups, we need to understand that there is a role that we need to play and that role it will start with maybe judicial activism, but also professional bodies themselves. The lawyers must deal with the laws that are abusing the processes of laws and that are violating rights in turn, but also we have civil society that needs to play a**

	role and I think in Afghanistan that is basically what is happening now, the civil society activism, law being international organizations and institutions, to say something, to pronounce on what is happening in Afghanistan and I think I read where they said they would also want to have a gender discrimination and violation of women's rights be criminalized, the same way that apartheid was criminalized. So, I think then those bodies would have to come to party to assist. So, what I am saying is, I think when you look at the whole legal justice chain, is that you need everybody, you need the judges, you need the civil society, you need the professional bodies, the lawyers, you need community itself, because these rights are community rights as well. So, we need everybody to decide how you vote, whom are you going to vote for, I mean elections all over the world they have shown us it is populism, nothing else, and those populists they get into power and the first thing they do, most probably because they think women's rights are soft rights, they target the rights of women. So, when we are in a constitutional democracy, I think activism is also about interpretation, where people understand where is the discourse, where are we taking the society and what are the issues that are pertinent. I mean when we deal with rape of young children, it is serious, so the sentences must indicate that the judiciary frowns upon that. So, that is why I am saying that you need to, at whatever stage you are involved, to understand, if it is about labour issues in the workplace, we need to make sure that the employer's understand because also it is education, you know, that judgement you say it must be served on the minister, so the minister must understand that policy must be enforced and most of the time what I have realized is that even those who are in the highest offices, they do not know what is happening at the shop floor level and that is where abuses are. So, it is important that one of the pronouncements would be let it be served on parliament, let it be served on the minister, so that those who are in legislation, as in parliament and executive ministers who are entrusted to protect and enforce, they must implement and protect, must know that there is abuse and it is against the policy.
DR. MALKA	Thank you very much for that explanation and expanding on the ideal that we all effectively play a role in this, whether it is civil society, whether it is the public sector and even the private sector. Judge Portia, when we were talking earlier about some of the women within the judiciary who have made significant gains and were looking at aspects of equality, you spoke about Justice Molomela as well as Justice Maya and I looked at some data of statistics in terms of the proportion of female judges in South Africa, and as of 2020 there were 42% of female judges in South Africa, and over the course of the years of doing this conversation with your, or this series rather, with your colleagues, we have learned about various professional networking bodies such as the South African Chapter of the International Association of Women Judges, which is a capability and capacity building mechanism to develop female judges. In your view, what else do you think needs to be done to increase the representation of female judges in the country?
JUDGE PORTIA	**Yes, we have achieved a lot in our country, what we need to do now is to look at policies and make sure that the policies they assist us to sustain and retain. I am talking about … let me backtrack and say we have women who could be joining us now who can't because we know that most of the households are led by women. So, you have got senior qualified counsel**

	that are eligible for appointment, but they don't avail themselves because of the conditions of employment. I am saying that because I remember when I announced to my colleagues when I was still an advocate, that I had accepted appointment, one of them said wow, you have committed an act of insolvency. So, meaning that because people would not come to the bench because I mean it is this drastic reduction in income. So, in a sense it is discriminatory to women, because most of them are running households by design or by default and I think it dissuades them from joining the bench. So that is important to me, that they need to address the conditions of employment of the judges, because they are indirectly affecting diversity because women will not avail themselves to. But also another thing that is happening recently is that the way the JSC, which is the Judicial Service Commission that appoints judges, interviews and appoints or recommends to the president, conducts those interviews, you know, even if you can ask a colleague can you apply maybe for a higher or to go to another court, people will say what, why must I go and expose myself to such torture, so that the tone and the manner in which those interviews are conducted, I think it needs to change, because women would not, most women would not subject themselves to that and to those who did, you come back wounded basically. Wounded if you get appointed, wounded if you don't.
DR. MALKA	I have seen a couple of those interviews, and it does look like a torturous process, and I also think that half the people asking the questions are not qualified to even be in the room.
JUDGE PORTIA	**Indeed. So, Justice Cameron says they are there to perpetuate this harassment towards the judiciary, there is no reason they are there some of them, because even the questions are irrelevant.**
DR. MALKA	Exactly.
JUDGE PORTIA	**They are not about capabilities and that is why I am saying then you need to change the tone and change the way they conduct those interviews and make sure that you get people who understand that part of what they are doing is to engender diversity and you need to attract qualified, but more women as well. So, the way it is happening, I do not know whether they have an agenda, which is a constitutional agenda because the constitution enjoins them to make sure that when they appoint, they promote the diversity of the judiciary. So, I don't know where they lose it, but most probably it is because of politicians, I am not sure, but I think because now we are talking about equality, we are talking about getting more women in the judiciary, so we need to look at that. We need to look at what are the obstacles, I think that is the major obstacle and then it is conditions of employment and the third one maybe is also training of lawyers, because you source your judges from those lawyers, they must be trained, they must be exposed, they must be given briefs of quality so that they get exposed to different fields of law, but if they are skewed towards briefing males, how are you going to empower every time you see a female counsellor, I mean we see it on the bench, where every time you see a female counsellor she is a junior and if they are alone, it is just work of no value in terms of their profession and come time for them maybe to be appointed as SILK, they are opposed because they haven't done exciting and interesting work of value and then they will get the same narrative**

	when they go to apply to become judges. So, I think briefing patterns are very important, because you need to be exposed in whatever you do.
DR. MALKA	Thanks for giving us some insights into your value chain of the journey from lawyers to judges and all of the interventions that need to happen along that route. Judge Portia, we are coming towards the end of the programme and taking more of a kind of reflective and personal view, I wanted to ask you about your juggle between career, because you really do have a demanding role, and motherhood; how have you managed to do this?
JUDGE PORTIA	**You know, work life balance is never easy and that is why most people say maybe it is a nebulous concept, especially in the life of a judge, but also maybe it is so in all other professions, with the platforms like this that we get access to people 24/7 so to speak and the way engage has changed, you know, we don't have your conservative work hours. So, it would seem as if work is following us home or work is at home more than in the place where we used to call a workplace, our workplaces are at home, it makes it even more difficult to do that. However, in my career I decided early that I am going to involve my family and the reason being I did not want to progress in life and leave them behind and then they don't support you in turn because they were excluded. So, I made sure that if I am dealing with matters my family knows what matters I am dealing with, at what level, which court, if it is soft processes like dispute resolution, and they will understand all the legal processes in a sense and I will ask them for advice, I mean if it is just for them to know that at least they contributed and I say that because I know my daughter then who quickly picked up the legal jargon and took it to school and got into trouble for using some of the jargon at school and in one particular instance I think I was dealing with a matter that involved rape, but it was a constitutional matter of a three-year-old who was raped, but then the perpetrator was charged before the transition, there was a new legislation that was implemented, so there was a gap in law in terms of which act of parliament was going to be applicable, because one was appealed, one was just promulgated. So then they challenged the constitutionality, obviously it ended up at the constitutional court and so I was trying to explain to her that this is what I am dealing with and then she takes it to school to relate to the teacher and then I was told by the teacher that rape, it is a big concept for a seven-year-old, you know, but I mean I think that is it, but I am happy that I did that, that I have support, I have people like would say tell me what do you think about this, well they would tell me whatever they think based on facts, but at least they are involved and they are engaged and as a result they are my support system, they don't look at my career as having robbed them time to spend with them.**
DR. MALKA	That is a great approach and one which I think really demonstrates integration of family into your life. I wanted to ask you about some of the factors that you feel have contributed to your success.
JUDGE PORTIA	**You know for me I think success is just trying all the time and an understanding that we are products of support. So, the mentors that we have, the role models that we have, as I said earlier on, they assist us to be who we are, but also for me because I am a Christian I think my journey, my journey, my faith journey has assisted me, because I look at where I am and I know that it is because of my spirituality that I could connect,**

	that I could remain grounded and as I said earlier on, it is also that the support system that you create, I think you create your own support system and the helpers that you have. Everybody has to understand that you need them for you to succeed and so I think that is basically what helped me to create a support system and some of it I think it was because of "The Table", because all the time, everything has to go to the table, I think even involving my family is just a continuation of "The Table", you know.
DR. MALKA	I love that concept, I really do and using that as a bit of a reflection, can you tell us about some of the pivotal moments in your life growing up?
JUDGE PORTIA	**When I was growing up, like any teenager, high school teenager, grade 11, we decided to miss a class and then, so the teacher was incensed by that. So it was the last I think on the day and then the next day the first period was going to be his and he came back still angry, so he punished us and out of that punishment obviously there was a backlash and then the student body, there was protests, there was this and they were calling for his dismissal and then we were called by the principal. So, there was this student body representing us, the principal, the teachers and then so we had to explain what happened and then obviously with the militants of the student body, like this teacher must go, and I was sitting there thinking but we were wrong. We missed the class and we were correctly punished and I don't understand why somebody must lose their job and so I raised my hand and I said, principal, could I say something and he said yes, yes, and Mr I said I think we are wrong here and we need to apologize to the teacher, because really we missed the class and I am not condoning the way he punished us, but we are wrong and so we need to apologize and the principal jumped at it, like that's it, that's how we resolve the issue. And then the teacher also apologized and said now that we are dealing with having reflected, I think maybe I went overboard and apologized. So, that resolved that conflict and built a meaningful relationship with that teacher, even today he still tells people you see this girl saved my job. So, I think that is basically that.**
DR. MALKA	Wow, what a story, but it speaks to your integrity as character, because if you hadn't raised your hand, he could have been fired.
JUDGE PORTIA	**Yes. Indeed, and I think in this generation I tell my daughter that there is a balance I think, because when we are talking about gender equality, we need to understand that we also have male sponsors, like my dad, my husband, my son is also a big sponsor, but I also had powerful mentors who are men. I mean my current acting JP, my former JP, so people who encourage us who are men, you know, so that then you are not clouded to say you see a violation of rights even where there is no violation of rights, because obviously it was turned into a gender issue when there was no gender issue, it was just simple discipline and maybe that went overboard, but he meant no ill or evil in disciplining us and I tell him that we need to have a balance so that then we don't vilify our supporters, we will end up not having those supporters, there are few maybe, but they are there and we need to be grateful that there are men who are supporting women's cause and we need them anyway.**

DR. MALKA	That is so true. Lastly, as we close out today's conversation, in recognition of women's month, can you share a few words of inspiration that you'd like to pass onto women and girls who are listening to us?
JUDGE PORTIA	**Yes, I do. Michele Obama is quoted to have said that success is about hard work, choices and persistence. I agree with that, but it doesn't matter where you find yourself, I started from I call it ground zero, which means I could represent a rural girl who has no resources. A township girl who has never had access to a lot of resources, you know, I represent that so to say it doesn't matter where you find yourself, just work hard, have a goal, choose what you want to be and access help that is going to be offered to grow in a particular area or field that you have chosen for yourself. It is very important that people also embrace their mistakes, we are not perfect beings and sometimes we are over critical to a level where we doubt ourselves and therefore, we are immobilized by our failures, yet we should be able to embrace our mistakes and learn from them and move on. So, you could have dropped out because you had a teenage child, yes, come back, you have a dream, let that dream pull you back and pursue it and it is important because you look at role models, we all have our share of misfortunes, regrets, but still you have to focus on where you want to go and obviously role modelling and mentorship is very important. I believe in mentorship because as I said, we are products of success, find good mentors who will see what you can't see in you and steer you in the right direction.**
DR. MALKA	That is a very powerful, practical message. Thank you so much for joining us today, it's been a real pleasure hosting you and I wish that we had more time.
JUDGE PORTIA	**Thank you Dr. Amaleya, thank you for having me, thank you to your listeners as well.**
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