PROGRAM DATE: 2025-08-14

PROGRAM NAME: WOMANITY - WOMEN IN UNITY

GUEST NAME: JUDGE ESTHER STEYN – PERMANENT JUDGE OF THE KWAZULU-NATAL DIVISION OF THE HIGH 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 annual series on women in the judiciary is Judge Esther Steyn. She is a permanent judge of the KwaZulu-Natal Division of the High Court, acting judge of the Electoral Court, and acting judge of appeal for the Supreme Court of Appeal. Welcome to the show!
JUDGE STEYN	**Thank you, Dr. Goneos-Malka, and thank you for having me here, it is a great privilege and an honour.**
DR. MALKA	Welcome Judge Steyn. To begin with, over a decade ago you were appointed as judge in the KZN Division of the High Court and before serving the bench, you were actually involved in academia, lecturing at the University of the Western Cape, as well as the University of Cape Town. To start with, what triggered your interest into law to follow this passion?
JUDGE STEYN	**Well, I think I need to start right at the beginning. I literally exchanged my school uniform to start working behind a counter in the Cape Town Magistrates Court because I had a scholarship of the then Department of Justice, and in doing so it meant that I could work six months at the Magistrates Court and six months I had to be working and studying at the then Justice College. So, I have worked then at that time, doing my B Juris and the reason why I really, really wanted to become a lawyer was because of what I had experienced in my own home. I did not grow up and I do not come from an affluent family; it was quite a struggle. my mom was a nursing sister, my father had an administrative work, but in the early hours of the morning 03h00 AM, our house was surrounded by the sheriff and his staff, and they were there to arrest my father for a debt that was not paid. Now, we all know the background of Section 65 of the Magistrates Court Act and I don't want to bore anyone with that, but what I can say is that that moment was like a lightbulb moment where I realized I don't want anyone to suffer the abuse that my father had to suffer for simply being poor and I'm going to make it my mission to know about people's rights, and one day I'm going to make a difference. Not knowing how I'm going to do it because despite the fact that in my matric year that I was the Head Girl of my school and the Dux Pupil, there was no money to go to university, but here was the Department of Justice giving scholarships to people who were prepared to work and study at the same time and fortunately with my academic results I got that scholarship. So that was the reason why I wanted to study law, is to make that difference in peoples lives, and later on when I did my LLB part-time at the University of the Western Cape, going to the University of Cape Town, it was a no brainer when I knew that I want to make a difference for people who are victims of crime. So I was asked by the university, since I was**

	working there and studying, that I wasn't allowed to do a masters by short dissertation, I was allowed to do a masters by dissertation and the title of my topic was 'Witnesses - The Step Children of the Criminal Justice System' and what inspired me was during my time as a prosecutor and also as a magistrate, when I saw how they have to endure all these obstacles of our criminal justice system, and I was hoping that in writing about it and drawing the attention to it, that it will make a difference. At the time of writing my dissertation there was no Victims Charter. I can look back today and say wow, in South Africa we have a Victims Charter, and we are much more focused on the rights of victims of crime now, post 1994, than what we were at that time. I also at the same time think that the right to liberty is one of the most important rights that any individual in this country can have, and accordingly that inspired me to write about bail and pre-trial detention, and as a young academic at UCT I was very starry-eyed and I thought okay, I will make representations to parliament on this issue, because at that stage the new bail legislation was on the books and it was the 1997 bail legislation, and I said that cannot be constitutional because in pre 1994 a person arrested for crime, even serious crime, have the right to approach the court and apply for bail. Now you want to make it more difficult and certain in instances not allow the person to apply for about seven days, and eventually I submitted the memorandum to parliament and I was still of the view that it will not be constitutional and then myself and two other academics wrote on pre-trial detention, because we were convinced that the constitutional court will not let this legislation pass, but eventually we were wrong. So the 1997 legislation went in and sometimes I think it causes some problems, but ultimately there is a perception out there where the public think that granting bail means that the courts are just setting people free, forgetting the balancing act of also the person's right to liberty, and I think at the moment in this country where we have a serious crime problem, more and more you will open any newspaper wherever you go and someone will say courts need to be more tough on offenders, but what they are forgetting about is that that person has not yet been convicted. The crime has not yet been proved and sometimes you are removing that person for a very long time from his or her family. So yes, those are things that really shaped and formed my ideas about justice and what kind of justice I wanted to deliver one day, should I get an opportunity to be appointed as a judge. My school friend, [Corlien], which I have been friends with since the age of 10 years old, always reminded me, in 2009 when I was appointed, she reminded me, do you remember when we in Kenhardt, we were about 10 years old and you said, one day I will be a judge in this country, and I forgot about that dream, but yes, somewhere there might be a little girl in a small time place like Kenhardt who says I want to be a judge, and thinking that she can't be because it will never happen. It did.
DR. MALKA	How does that make you feel that your dream has come to fruition, because everyone has a dream, but sometimes they don't follow the steps or sometimes circumstances are just too overwhelming; how does that make you feel?
JUDGE STEYN	**I think I am immensely proud of the achievement to be a judge in this country, but at the same time I also think that it's just a lot of hard work and there are opportunities for each and everyone. In other words, women previously before 1994, I remember going to a talk where Judge Leonora**

	Van der Heever was delivering a speech to us women who were then in the lower judiciary, I was a magistrate, and I was thinking wow, how is it possible. Well, that has changed completely, every woman does not have to think that she will not be able to do it because of her gender. We are equal and we have the same rights, and we need to just be motivated to exercise our rights, and of course nothing comes without a lot of hard work Amaleya.
DR. MALKA	Thinking about the hard work piece and the obstacles, because you've been in this industry for 45 years, what were some of the areas and let's say potentially the issues and the challenges, that you encountered as you were building your career, and importantly, how did you overcome them?
JUDGE STEYN	**With a lot of patience, but one of the things for example, in 1987 and maybe later on we can talk about legislation that has changed things for women who want to terminate pregnancies, my story is quite sad about that, but I realized then, so I didn't go through the entire pregnancy in 1989 when my child was born, there was no maternity benefits for example. In fact, what happened is that I had to take all of my unpaid leave, I had to make sure that I can move forward and accommodate and also take my child to a daycare at the age of six weeks. So today things have changed for mothers, not only in doing law, but in public service, they have a right to maternity benefits, which are really great and which I think is a big achievement post 1994. And the other thing I had to overcome is I had good friends that worked with me, and one friend in particular said you know, we are equal, and I just think that one is not a strong woman if you start fighting only for a certain group of rights, you have to exercise your rights and if you start saying that then men start perceiving you as an inferior group, and that inspired me not to stand back, but ultimately to assert myself. At times it could be quite volatile, because your opinion was not always valued. I have been a magistrate in a small town called Worcester, where I had just sentenced someone on drunken driving, who was by then the third time that he was convicted, so it was a severe sentence, and the Chief Magistrate, because I was a woman and my prosecutor was a woman and you had to walk through a particular passage going to the then common room/tea room, and he said, did you appear in front of these chickens in court? This was the person that was in charge of my career and my movement, and so you have to ultimately then decide how do I approach this, because this is absolute discrimination, but you know what, you go back, you reflect, and what you do then is by ultimately working harder and in the end achieve more, and this very same person, when I was an acting judge, suggested, well you can always make use of my services as an assessor, because judges particularly in 2007 and 2008 were sitting much more with assessors in criminal courts than today, and I just thought you know, the audacity, and I just never called upon the person to come and work for me. But it took a while, I could either decide well, I can't deal with this and lay a public charge, yes.**
DR. MALKA	It's a real challenge and I don't think there's ever a right answer when you're dealing with sensitivities like this and the choices you make and the choice you made was to work harder and prove who you are, but do you ever think that sometimes people need to be called out publicly because they have been almost indoctrinated into this type of thinking, and that is their view of who women are based on whatever reasons, but it was pure discrimination.

JUDGE STEYN	**It was, but I think if we go back in time and we look at the time then, in 1990 visa vie the year 2025, I can tell you that things have changed tremendously. Today no-one will tolerate that. I mean I am very proud to say that our Chief Justice, who is a woman, has just passed the sexual harassment policy that has been accepted, and that in itself shows you that there is a change and it's a change for the good, because no woman, in fact no person should endure such discrimination from anyone, but it is also the power thing. We have seen it recently also, when women do not have the power and someone in power says that to you, you're left with a sense of injustice, but I am very positive about the changes that have come about and I think that today women will stand up and they will report that immediately. Back then things were very different, you also had to think that I'm a working mother, I have a career, what will I achieve at the end of the day should I now lay any complaint, and the complaint is going to be investigated by whom? By men, at that time, it was that imbalance of too many men employed by the Department of Justice and only a few women. So, I think the way you deal with it is, my prosector I have called in and I have said to her you are welcome to lay any complaint, and her attitude was don't make it more difficult for me than it already is Esther, but yes, because no-one should say that to anyone, I mean just simply today we would say it's a criminal offense, it's crimen injuria.**
DR. MALKA	Reflecting on your career, can you tell us about let's say one of the most impactful issues or cases that you've been involved with?
JUDGE STEYN	**It is difficult to pick a specific one because I think there are so many of them, and I will start off with criminal cases, because we as judges do a whole range of cases where to pick one rape case above the other would be extremely unfair, but I think in the early years in KwaZulu-Natal I dealt with a policeman, State vs [Cruso], who murdered his wife, but said it was an intruder, and the police, when they arrived at the scene of the crime, he had a huge breadknife in the visceral area of his stomach, and his defence was, even I was stabbed by this intruder. And eventually it was through a lot of hard work, blood spatter, the investigation of the police was very good, and he was then convicted, and Morne Cruso then appealed against the conviction and the sentence, and I sentenced him to 23 years. The two young children were then without a mother and a father, and my colleagues who were sitting as the full court then confirmed the conviction but reduced his sentence from 23 years to 18 years, but be that as it may, that was one of those cases which was where the woman, the only crime she committed was one of her brother, she had a twin brother, the twin brother came to testify, he looked like the deceased, which you could see on all the photos because she was stabbed in the neck a couple of times, and then you realize when you look at that, the impact of the crime on the family, and so two young children were now without a mother and a father simply because dad killed mom and who came to testify in mitigation? Well, the person he had an affair with, who was a teacher, and I was just thinking as I'm sitting there on the bench, I mean do you know who you care and love, because here explicitly one can see the absolute violence towards his wife, and that was his wife's crime, he already had someone else. And today he has I think a major turnaround, he has been on parole for a long time and the only way I know is one of my acting colleagues, who was then the advocate in front of me defending him had**

	said that he made a difference and has changed his life around after he came out of prison. The other matter is State vs Zuma. It was a full court decision, myself, Judge Mnguni, and JP, we decided on the Zuma matter in 2019, and we thought since our finding is that there should be no stay of the prosecution, that the matter will be finalized. Well, Amaleya I am sitting here today, and it is 2025 and not one bit of evidence has been led in the matter that we thought we had dealt with in 2019. There are various matters, one thing I could say is how unfortunate is it for a judge who has never done social media to deliver the first judgement about Facebook in this country, and many people constantly refer me to that in court and say, oh but in CMC which working place the court allowed that one can serve by Facebook, and then I can't help sometimes to grin a bit and say yes, and did you look at who was the judge in that matter because that is not quite what the decision had said, the only thing was it made a huge difference because there was a change in the rules, and particularly Rule 4, and in this instance I said you can't institute proceedings through Facebook, but if there are any other process documents you can, but I have never been on Facebook, I don't know how Facebook works, so can you imagine the dilemma you have when you have to write a judgement about something that you now have to start learning about.
DR. MALKA	Your world is fascinating, because there is always something happening, there is always a development and there's a lot of hard work that goes into the things that you do and one of the elements that I'd like you to share with us a little bit about is, when you were involved in the first Presidential Commission on Corruption and just share with us some of the outcomes and your feelings about this, because it was four years of your life.
JUDGE STEYN	**Yes, thank you for asking that. The Jali Commission was a very difficult time in my life because on a Monday morning, because I was outside the province, I was the only person from another province, all the other members of the commission team were from KwaZulu-Natal, I came from the Western Cape, and so on a Monday morning six o'clock you get on a plane and Friday night at 22h00 you land back at, and it really came at the cost of my family, but besides that, what is important about this commission, it was the first commission to investigate corruption and maladministration in a public department like correctional services, and what was so amazing is that we uncovered so much corruption and it started off small with tenders for a nail that you can use in doing maintenance in the prison that costs R7.00 and that will escalate to an amount of R27.00, and so you can see the same theme that we've heard during the Zondo Commission, how tenders and how certain things were inflated. Well, we had looked at all of that, but more importantly what we looked at is also the treatment of prisoners and that led to what was called the Grootvlei 4. Grootvlei is a prison here in Bloemfontein where I am presently, but that wasn't part of our terms of reference. It was four prisoners that made a video of juveniles that are being abused sexually, wardens selling firearms in the prison, distributing drugs in the prison, and the person that was in charge of making the videos was the now Minister of Sport, Gayton McKenzie, he was one of the Grootvlei 4. Most importantly in the Commission what we learned, we have requested the then President, Thabo Mbeki, whether he would expand our terms of reference so that we can investigate this, and we've made**

	recommendations on how to combat the abuse of prisoners inside prison, how to deal with the sexual offenses. You will hear that someone whose sexual orientation, in fact, and today when we know so much more on the LGBTQIA+ and more, who want's to be a woman, who gets then placed inside the male section, and I think again, the abuse that he/she had to endure was severe, but we had made recommendations to parliament as to what should and should not happen, and I can only tell you that after that report, which was about 1,800 pages submitted to parliament by Minister Balfour, I can only say that when I visited the correctional centres, because the term has also changed over the years, in 2015 until 2019 when I was Deputy Chair of the National Council of Correctional Services, that it was clear to me that our recommendations were not followed and we really grappled with the idea of how can we make sure that it won't just gather dust on the shelf, so we said well, we will entrust the portfolio committee to look at whether these recommendations have been ultimately followed. I sometimes listen to the now Minister Groenewald on Correctional Services, because I'm also a news junkie, I read all newspapers early in the morning, very early and I wish someone could just say to him but Minister, have you just opened, you don't even have to read the 1,800 pages, just read the executive summary of the Jali Commission and then ask your department, which one of these things have we followed. So yes, it has been really a commission where I have learned a lot, I have learned about mediation, I have learned about consultation and conflict resolution, and the thing that I've gained from it is that Thabani Jali, who has been the chair of that commission, has been really a mentor to me throughout my legal career. So even when I had to think whether I can as a Capetonian go to KwaZulu-Natal to be a judge there, he supported me and he said yes of course you can do it, don't worry. My fear was I can't speak isiZulu so what will happen. Well, I am very happy in KwaZulu-Natal Division.
DR. MALKA	Thanks for sharing those impactful moments, Judge Steyn, which not only touched your life, but also meaningful impact in other areas. Given that we are in the month of August, which is obviously a period where South Africa celebrates our National Women's Day and National Women's Month and I always find it's a time where we've got an opportunity to think about where we've made gains and also importantly, what still needs to be changed. This year's theme is "Building Resilient Economies for All." Women leading the future of trade, and I wanted to ask you as a Judge, how do you interpret the theme?
JUDGE STEYN	**Well, I thought that the person best suited to interpret that will be an economist, so unfortunately my husband is the one who studied economy and not me, but as judges we have very limited power in changing certain policies. So, what I see is how can women be empowered and can one do that through the system as we sit as judges in court and decide upon matters. So we deal with our matters impartially, but each one of us can make a difference, because I do think that we need to be very sound and knowledgeable on a number of things, and when one looks at the theme I think that the way we can make a difference is, ordinarily if you decide on matters, I think we've all read the Vodacom vs Makata matter, which is really something about business, and so economics and business are intertwined, the one to the other. So, we all have a duty to research more,**

	do more. Whether we can change the lives of other women, I think that's more in the line of whether one can assist where there are vendors and people who want to gain knowledge, but that doesn't fall within our ambit, and I will tell you why Amaleya, we as judges are taught by our training that we should have judicial restraint, and judicial restraint means that we should be cautious not to stray into the terrain of any other sphere which divides the separation of powers. So yes, my judicial code limits me and particularly by Article 11, as to do that.
DR. MALKA	But I also think, and this is perhaps a little bit more abstractly interpreting the theme, when we were talking earlier, you have actually developed a lot of young women from your academic days, trained them up, and they're serving as judges now. So, in effect you have built part of the generation of resilience that are going out to serve, thinking the market in broader terms.
JUDGE STEYN	**Yes, I think it touches on the thing of age. It is immensely important that we should always remember that the achievements of those that we have taught at varsity and those that we have assisted during our time as academics, that their achievements are their own achievements, and I am very mindful of not taking credit for any of that, but what is really very, for me, it gives me great pleasure when I see them achieve, or when I go to conferences and they are the lead speakers at these conferences, then you feel yes, I have made a difference, but it is like when we look at we consider as being achievements, then everyone in our life, whether it is that teacher that couldn't teach you to speak English properly, but taught you about the life lessons, those are the people that form and shape us. So, as I woman I always think that we need to really, and I'm sure you've heard this so many times, the PHD thing of pull her down instead of always trying to pull other women up. For me it is very important to empower those that come behind me, so I've invested in judges who come and act in my division, to sit with them, help them and teach them to be better judges and for that matter I am still involved in training of aspirant judges, have been busy with training of newly appointed judges, but the Bridgette Mabandla training thing is a brilliant thing, because when you look at the women there, it's women that would never have had the opportunity to enter the judiciary. So yes, I think that is in a small scale ploughing back in what you have received and I like to try and do that, because if I didn't get the opportunities, I would never have been sitting here and been able to talk to you about the judiciary, I would have still most probably been a teacher, because that was the one thing, you either become a teacher or a doctor and I didn't like a lot of blood, so I would have been a teacher and I have great admiration for teachers, but in comparison, I love law. So yes, that is why I ended up being a law teacher.**
DR. MALKA	Well, you found your path, you found your calling, and lastly as we close out today's show, in celebration of women's month, please share a few words of inspiration or motivation you'd like to pass onto women and girls that are listening to us.
JUDGE STEYN	**Definitely. I think if there is some young woman thinking that she's sitting at a law school not knowing whether she would be able to even qualify her degree, I have been there. I have been there in my first years of studies and I did not want to finish it because I was far away from home and I was 18 years old and I said to my mom I'm going to come home, and mom said**

	to me, my girl, we never quit, and that inspired me because my mom's words were, if you start something, you finish it. And that's really what I would like them to do, if you start a law degree, even if you think law is not for you, it will be a good tool to use later on, whether you want to enter business, it's always a good tool and I've always taught my students this is what you should do. And the second thing that I firmly believe in is that, and I said to you I love reading, there's only one thing that I want them to know, that you must keep on dreaming, because the only thing that will make your dream impossible is your fear of not achieving that dream. So don't be fearful. If you have a dream, make that your reality, but that reality comes with a lot of hard work and a lot of time and I will be definitely the first to tell them that we've heard that from all of our law lecturers when we were young, that the law is a jealous mistress. Well, I can tell you, it is a reality, many Saturdays and Sundays when your friends and everyone will be socializing, you will be sitting reading and preparing for your cases and you will be writing, because judges also owe a duty to the public to deliver judgements timeously and for that matter, that's why we took an oath of office, is to do that in a proper fashion and to do that in every matter that we touch, because one matter may appear to be more important than the other, but for the litigant it is his or her most important matter and may be their only time that they will litigate in the High Court. So, never give up, that is my belief.
DR. MALKA	Thank you so much for sharing your journey with us, your passion for the law and imparting that special message that we're actually responsible for writing our own story. So go and live your dreams, take ownership of the ups and the downs and see it through. Thank you very much.
JUDGE STEYN	**Thank you Amaleya, I really enjoyed this talk, thank you very much.**
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