

Retirement of CC justices

Tribute on behalf of the Constitutional Court of SA

Brief tribute to Chief Justice Langa and Justices Madala, Mokgoro, O'Regan and Sachs by Deputy Chief Justice Dikgang Moseneke on 30 September 2009 to mark their departure from the Constitutional Court of SA

Chief Justice of the Republic, Pius Langa, Justice Yvonne Mokgoro, Justice Kate O'Regan and Justice Albie Sachs will cease to hold office as justices and retire from the Constitutional Court of South Africa on 11 October 2009. I must instantly add that Justice Tholie Madala ceased to hold office as a justice of this court in October 2008. This is a formal sitting of this court to mark and pay tribute to each of our five most esteemed colleagues who have graced the judicial Bench of the highest court of the Republic for no less than a continuous period of 15 years.

A formal ceremony, such as the present is by now well etched in our judicial convention. The judiciary knows no better way of celebrating judicial excellence, service and fidelity than in the very forum in which they dispense justice as they are required by their oath of office. It is a time-honoured tradition that on an occasion as the present, fellow colleagues who hold judicial office would robe and be in attendance as a mark of homage to departing justices.

And that explains in part why this morning commenced with an actual court sitting in which our esteemed Chief Justice delivered a judgment as it were business as usual.

May I welcome all past justices of this court and in particular former Chief Justice Arthur Chaskalson. I also welcome the Judges President and in particular the esteemed President of the Supreme Court of Appeal, Justice Mpati. We are delighted by the presence of all other judges of the Supreme Court of Appeal who have made the trip all the way from Bloemfontein, in display of solidarity and respect. We are also graced by other judges from all divisions of the High Court of the Republic and all other judicial officers here present. I must add that we are honoured by the presence of the magistracy and in particular the Chief Magistrates of Randburg, Germiston and Johannesburg.

In a formal farewell, such as the present, representatives of the Bar would appear in formal robes. It is with gratitude that we welcome a representative of the General Council of the Bar, Adv W van der Linde, who in time will deliver the eulogy on behalf of the advocates of our country. Again, we welcome Mr H van Rooyen, co-chairperson of the Association of Law Societies, who is here to represent attorneys of the entire Republic.

In deep recognition, that in our constitutional arrangements, the judiciary is a part of and an arm of the state, a formal ceremony such as the present will be hardly complete without high representatives

and leaders of our legislative and our executive arms of the State. We are delighted and grateful to have in our midst the Honourable Speaker of the National Assembly, Mr M Sisulu MP. Together with him, we must welcome the chairperson of the Parliamentary Portfolio Committee for Justice, Adv Ramathlodi.

We are equally pleased to receive the Minister for Justice and Constitutional Development, Mr J Radebe, and the Deputy Minister, Mr A Nel. They are suitably accompanied by the Director General of the Department, Adv M Simelane, and the Acting National Director of Public Prosecutions, Adv Mpshe.

Several members of the Judicial Services Commission have found it befitting to share with us this special tribute. We thank them for coming. It is my privilege to receive and welcome heads of missions and ambassadors from no fewer than ten countries. We are suitably honoured by your presence.

This court is also honoured by the presence of formations in the legal profession and these include the General Council of the Bar, the constituent Pretoria and Johannesburg Bars, Advocates for Transformation, the Law Society of South Africa, Black Lawyers Association and the National Association of Democratic Lawyers. Also we welcome public interest law entities, which include Aids Law Project, South African Institute for Advances Constitutional, Public, Human Rights and International Law, Centre for Human Rights, the Legal Resources Centre and the National Movement of Rural Women.

We are grateful that we have also been graced by the presence of principals and deans of law schools. Equally, we are pleased to acknowledge the presence of leaders of Chapter 9 and other institutions which are charged with the protection and advancement of our constitutional democracy. These include the Human Rights Commission, the Public Protector and the Independent Electoral Commission. We have also in our midst many attorneys, advocates, and social activists who have kindly agreed to join us, who are all most welcome.

These acknowledgments cannot possibly be ended without acknowledging with appropriate warmth, the family members and friends of our retiring colleagues.

My seven remaining colleagues have asked me to pay a brief, but deeply felt, tribute to our Chief Justice, Justice Madala, Justice Mokgoro, Justice O'Regan and Justice Sachs. Each of them, but for time, would have been well placed to relate their own personal and collegial relationships with our retiring colleagues. Each is well suited to recount, at the serious end of our work, the truly rigorous but respectful debates they shared in the search for legal truth. This is so because in his or her very essence, a judge must have an unquenchable thirst for arriving at an outcome that is just and equitable. In the course of doing so, each individual judge owes to himself or herself, owes to each litigant and owes to the public at large the highest level of fidelity. With unflinching industry and sense of duty, a judge must

dig deep to ensure that only justice flows from his or her determinations. This is not a collective duty; it is an individual duty. However, where judges sit together, they are indeed duty bound, to make clear their own stances in order to ensure optimal outcomes.

The colleagues who are about to leave us more than surpass these qualities. For an unbroken seven years, I have had the privilege of working with them, but for an unbroken 15 years, they enjoyed each other's collegial company. I say without any fear of contradiction, that their integrity is beyond question. Their determination to defend and protect the gains of our hard won struggle for liberation, freedom and democracy, is unsurpassed. Each time there were storms that swelled around our institution all five of them stood firmly. Unpopular decisions they never flinched from making provided that they were consistent with their honest judicial judgment.

We need to do no more than to go and read and ponder over what our departing colleagues have written. I commend to you, seminal judgments that each of them have written, which have laid a firm foundation for the further development of our democratic project. They knew that in a country, such as ours, where want, poverty, illness and inequality abound they have to be a pro-poor court. They unflinchingly supported and protected worker rights. They were the first out of the blocks, each time to have to consider disputes relating to the vulnerable sitting on the margins of society.

They understood that everybody exercising public power had to do so within the constraints of the law. They knew well that, uncomfortable as it often was, executive and legislative excesses had to be curbed. In short, they were true to their oath of office. That is, they acted without fear, favour or prejudice. They kept the highest standards and tradition of judicial excellence. We thank them dearly for this.

Lastly, we seven who remain know that we're standing on the shoulders of giants. We promise that we shall remain true and faithful to all that you have been, as colleagues. We promise to defend fearlessly the independence of the judiciary, the rule of law and the full realisation of the basic rights our Constitution affords to each of our people. We will be very much part of the transformation project, to make our country reflect the text and living spirit of our Constitution.

Fidelity to our oath of office is important, not because we are, but because without it, not we, but our people will suffer. By our people, I mean the full diversity, poor and rich, white and black, female and male, urban and rural, the marginalised and the powerful all deserve our unwavering protection, which our Constitution demands we provide. After all, we are the ultimate guardians of our Constitution.

Farewell; we know that you will remain useful to our country wherever you may be after this assignment.

Again farewell and God Bless.

Tribute on behalf of the General Council of the Bar of SA

Extracts from the tribute to the retiring justices of the Constitutional Court by Willem van der Linde SC on behalf of the General Council of the Bar of South Africa

The Bar is represented here today to pay tribute to five lawyers who have, individually and collectively, rendered a unique service to our country. They were called in 1994 from their diverse domicilia, spread throughout the land, to take up positions in a court that was to lead South Africa into its new dawn of human rights, but particularly of human dignity. They were all part of the first 11 Justices of the court, appointed on 13 October 1994, and so they are now the last of the class of '94.

That class had a brief that was hugely ambitious, by any standard. It was to translate into jurisprudential reality, concepts that were the result of a tough political accord. They had to infuse into them intellectual credibility and practical sensibility. As the judgments they handed down show, the rainbow unity presented by their diverse domicilia was anything but what some newspaper editors might call 'safe but boring'. This is not the occasion (nor is there time) for a jurisprudential discussion of their contribution; no doubt in the years to come, it will be subjected to considerable and anxious scrutiny. Today we simply remind ourselves from whence they came, and we look briefly at some of their mostly extra-curial public statements so as to get a glimpse, through their own words, of their calibre. In some instances I will provide the context, but in others I will leave it to you to do so.

At 36, **Justice Kate O' Regan** was the youngest. [She]...became a powerful intellectual presence on the court. For her, the Constitution

is all-pervasive in establishing a unitary system of law; it has a substantial effect on all legal reasoning, and on the common law.

Through the years, Justice O'Regan has said variously in press interviews and speeches:

'I am not a great believer, I have to say, in a strict demographic pattern everywhere...'

'For me (transformation) means rejecting the past which was authoritarian, racist, elitist, sexist, denying of human values, so we need a legal and justice system that is not any of those things.'

'I always recall that faith now when I sit on the bench in a matter that affects a rural community or members of a particular group when they come to the court in their hundreds, as they do, and watch the proceedings in court, nearly always conducted in English, a language they may well not understand. And I realise that the first essential requirement for ensuring justice is the belief in the minds of ordinary people that law can be just.'

Justice Yvonne Mokgoro started working as a nursing assistant and later as a salesperson before she became a clerk in the Department of Justice of Bophuthatswana. [Today] ... she heads the South African Law Reform Commission.

Justice Mokgoro's concern for the weak and the defenceless, is evident from her speeches and her interviews:

'Although all the children's rights in the Convention, our Constitution and our other laws are all very important, I think that the mother of all children's rights is the right of every child to be a child – and to be left alone to enjoy it. It is from being a child that children are entitled to enjoy the protection as children and it is because children have the right to be children that there is an obligation on parents, the community and government to respect children's rights for their own protection. It is when children want to be children that they dream children's dreams and make children's wishes.'