In memoriam:

Public power on behalf of the people

The late Justice Pius Nkonzo Langa
former Chief Justice of South Africa

Tribute by Deputy Chief Justice Dikgang Mosebeneko

The judicial credo of Pius Langa

Pius Nkonzo Langa was the fourth Chief Justice of
democratic South Africa, following on Chief Justices Mike Corbett, Ismail Mahomed and Arthur Chaskalson. I had the privilege of serving with him during the struggle against apartheid, within the legal profession and as his judicial colleague at the Constitutional Court as Deputy Chief Justice.

Pius Langa was a remarkable man. His quiet and ponderous disposition belied a stern resolve to be what he can be and to change the lives of others at the edges of society. The trajectory of his life testifies to this. He had humble beginnings. He was born in Bushbuckridge as the second of seven children, 74 years ago. His religious parents gave him the middle name Nkonzo – which loosely translates to ‘the prayerful or pious one.’ He did not disappoint. He was a quietly thoughtful person with an ample store of compassion and inner peace.

His working life started in a shirt factory. He then moved on to be an interpreter and messenger at a magistrate’s court. In time he rose to the level of a magistrate. After obtaining a post-graduate law degree he practised as an advocate from 1977 and took silk in 1994. His law practice quickly converged with his political activism. Law practice, he reasoned, was the pursuit of a just society by other means. He acted for vulnerable and working people and featured in political prosecutions. He harnessed apartheid law to magnify the inherent contradictions of that unjust society. On this score he was in the good company of many leaders of our struggle for freedom who also practised law.

He pressed for the formation of a progressive lawyer grouping outside the apartheid statutory bodies for lawyers. Soon, the National Association for Democratic Lawyers was born. Pius and I served together on its first national executive. Later, he led it as President for a term of six years from 1988 to 1994.

The effective political activism of the youthful Langa was nearly boundless. During the 1980s, he helped form and lead the United Democratic Front (UDF) in a mass push to overthrow apartheid. Two of his own brothers went into exile and enlisted for Umkhonto we Sizwe and one of them paid the supreme price for our liberation. Pius also served on the Release Mandela Committee. That explains the presence of his youthful face on the footage depicting the release of Nelson Mandela from prison. In 1993, during the transition to democracy, Pius advised the African National Congress during ‘talks about talks’ which led to the Groote Schuur Minute.

He was one of the first eleven Justices appointed by President Mandela to the Constitutional Court led by Arthur Chaskalson. From 2002, I worked closely with him on the court for nearly seven years. He was a listening leader. He never sought to lead by diktat. He went far to earn the consensus and support of his judicial colleagues. He placed a premium on collegial trust, yet he never trespassed on their terrain of independent decision-making. The court had to work and remain a dependable ally and guardian of our democratic project.

Pius was much more than a good human being. He was a remarkable jurist. He penned judgments well worth celebrating. A short media tribute can hardly do that. His writing mirrored his quiet wisdom and human solidarity. He chose simple and accessible language to capture complex legal reasoning. He understood that a judge must strive to reach a just outcome and to account to the people for it. He took seriously the promise of our Constitution for a better life and used it to shield or enrich the lives of its intended beneficiaries – we the people.

In 1995, the court in Makwanyane outlawed state-sponsored executions. Pius wrote a seminal concurring judgment. Capital punishment, he reasoned, is not only cruel and inhuman but also irreversibly undercuts human dignity in an open and democratic state. In Williams, he insisted that corporal punishment glorified state coercion and trampled on human self-worth. He was particularly alive to the vulnerability of accused people. This meant criminal trials had to be substantively fair. It was unfair, he held, to require an accused person to prove any element of an offence. That would increase the risk of wrongful convictions. In M batha and again in Coetzee he struck down a statutory provision that imposed a reverse onus on an accused person. After all, it is integral to human dignity, equality and freedom that everyone be presumed innocent until proven otherwise.

In Walker, Justice Langa wrote on the right to equality and indirect discrimination. He held firmly to principle where there may have been a temptation to tolerate unfair discrimination only because it would have favoured residents of a black township. In Christian Education, he upheld the guarantee to establish private schools to pursue linguistic, cultural or religious interests. That warranty, he held, does not include a licence to administer corporal punishment even if it is justified on Christian grounds or a parent had given consent.
In Hyundai, Pius laid down that laws must now be given meaning, not from a legalistic ivory tower, but through the lens of constitutional values. In Boesak, he did not permit his political struggle associations to stand in the way of a just outcome. He in effect held against a former comrade in the UDF, Alan Boesak. He held that a constitutional issue does not arise when an appellant is dissatisfied over only the facts found by a trial court. In *Islamic Unity*, he pondered over the protection of legitimate expression in relation to religious views.

To the opposite end, in *De Reuck* he wrote over free expression and pornography. In *Bhe*, he made bare his intolerance for gender inequality spawned by a rule of customary law that for so long kept women from inheriting in a deceased estate only because of their gender.

Our country has many landless and homeless people. Tens of thousands of people, residing in a nearby informal settlement, invaded an unoccupied farm. The owner of the farm procured an eviction order but the police could not forcibly remove thousands of occupiers from their informal homes. Confronted with the dilemma, in *Modderklip Boerdery*, Chief Justice Langa crafted a Solomonic outcome. He balanced out the rule of law imperative that a court order must be obeyed against the indignity and brutality of forcibly evicting vulnerable people from their homes. He set aside the eviction order; directed the state to purchase the invaded land and that the owner of the land receives just compensation – a happy ending all round.

As Chief Justice, Pius had to lead the charge and write in cases with political controversy. In *SABC v NDPP*, he upheld the principle of open justice as he enquired whether Mr Schabir Shaik’s appeal in another court had to be open to the glare of principle of open justice as he enquired whether Mr Schabir Shaik’s appeal in another court had to be open to the glare of public television. Later in *Thint*, a matter that implicated a very senior political leader, he upheld the validity of warrants of search and seizure. In *Glenister I*, he dismissed the initial application of Mr Glenister who bypassed other courts in his challenge against legislation meant to disband the Scorpions. And later, in *Chonco*, he wrestled with the elements of pardon and reprieve of offenders who claimed to be incarcerated for offences related to political beliefs.

In *Du Toit*, he peered into the truth and reconciliation legislative scheme to ascertain what indemnity meant in relation to a police officer who had been convicted on four counts of admittedly political murders and was later granted amnesty. After his release from prison, the police officer argued that the grant of amnesty entitled him to resume his rank, pension and benefits as a member of our police service without more. The Chief Justice thought not.

His judicial credo taught that every public functionary exercises public power on behalf of the people. They are agents and servants of the broader populace. Government, like each citizen, must obey and rule within the constraints of the law. After all, government is a potent and visible teacher of its people. If anyone, and so too government, breaches the law, courts must say so in clear and unhesitating terms. The Chief Justice knew well that as uncomfortable as it often was, executive and legislative and judicial excesses had to be curbed. He had a deep distaste for corruption whether it occurred against the public purse or by private interests and the business sector.

Where judicial officers stepped out of line Pius Langa did not choose to look away. He stood, firm as a rock, in the face of undeserved ridicule and populist expediency. In short, he was true to his oath of office. That is, he acted without fear, favour or prejudice. He kept the highest standards and traditions of judicial excellence. We thank him dearly for this. Popular judges must remain a rare species. Principled judges are what our nation needs most. An upright and dependable judiciary, he taught us, is a necessary condition for a socially just and democratic social order our long struggle and sacrifices demand of us.

Yes, Archbishop Emeritus Tutu, Chief Justice Pius Langa was a servant leader. He deserves every accolade that our nation is bestowing upon him.

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**Fighting for principle**

*‘No one of us has a right to abandon or desert the fight for a principle’*

A tribute to the late **Chief Justice Langa** at the tenth anniversary of the Duma Nokwe Group of Advocates by **Patric Mtshaulana SC**

In July 2013 the country lost former Chief Justice Langa. His untimely death was mourned by many in this country. During the memorial services in Johannesburg and Durban and during the funeral as well as during the memorial organised by the Constitutional Court, many spoke well about the outstanding qualities of this giant. We were told about his humility, his consistency and his commitment to fighting for principle. His colleagues spoke of his unwavering commitment to the independence of the judiciary. Most touching was the description by Mandla, his brother, of how Judge Langa comforted the family when his brother was shot and killed by ANC operatives. He also told us how Judge Langa was also campaigning for the commutation of the death penalty imposed against the killers of his brother. The campaign for the abolition of the death penalty was a matter of principle for him.

I noted that the majority of you were not at the memorial services nor did you attend the funeral in Durban or the memorial at the Constitutional Court. This made me realise how little you knew what an inspirational figure Justice Langa was for the formation of this group. Allow me to say a few words on this.

It was late in March 2003. Judge Langa was preparing to attend an IBA conference in Australia where he was to deliver a speech. I asked him if I could see him before he left. He invited me to come to his office at Braampark. When I arrived he was sitting with his back towards the door. He was in the late stages of editing his paper. It was about 18h00 when I arrived. I sat...