

**NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS  
ANNUAL GENERAL MEETING  
SATURDAY 20 NOVEMBER 2010  
TRIBUTE TO FORMER CHIEF JUSTICE PIUS LANGA**

The national president of NADEL, Adv. Gcina Malindi, members of the national executive committee, fellow judges who are here present, the legal profession, ladies and gentlemen, comrades, compatriots and friends. Keynote address is hardly what I am about to deliver. Mine will be a short tribute to our former Chief Justice, Pius Nkonzo Langa, the fourth Chief Justice of democratic South Africa. With him I have had the privilege of serving in a variety of capacities during the struggle against apartheid, within the legal profession and as his judicial colleague and side-kick as deputy chief justice of the Republic.

Pius Langa is a remarkable man. His quiet and ponderous disposition belies a very stern resolve to be what he can be or wants to be and to change the lives of others less well placed. The trajectory of his life testifies to this. We all know that he had humble beginnings. He was born in Bushbuckridge as the second of seven children, some 71 years ago. His religious parents thought that his middle name should be Nkonzo – which loosely translates to reverend or respectable or prayerful service. He did not disappoint. Like me, he obtained his law degrees (B.Juris and LLB) in 1973 and 1976, through Unisa and by sheer coincidence we graduated on the same year in relation to both degrees.

The story of his working life straddles the full range, from shirt factory worker through to being an interpreter/messenger at a magistrates court,

ending up as a presiding magistrate. That judicial elevation he abandoned for the Natal Bar where he practiced as an advocate from 1977 and was elevated to Senior Counsel in 1994. As we well remember, shortly thereafter, he was appointed to the Constitutional Court and with the passing on of Justice Ismail Mohamed, our departed Chief Justice, Pius Langa became Deputy President of the Court and later Deputy Chief Justice and in 2005 became Chief Justice and I was appointed his Deputy.

I have neither the time nor the space to tell you all about the intersection between his practice and the struggle against apartheid. This remarkable cocktail of legal practice and pursuit of a just society he shares with many towering leaders of our struggle. Mahatma Ghandi, Ndzimande, Mziwakhe Aton Limbede, Godfrey Pitje, Oliver Tambo, Nelson Mandela, Robert Sobukwe, AP Mda, and Arthur Chaskalson, Ismail Mahomed, Shun Chetty, Griffiths and Victoria Mxenge, Dullah Omar, George Bizos. He chose, if he was not destined to do work for under privileged, grass roots and civic bodies and working class people. He featured in several trials related to political offences. During that time, I had the privilege of working with him and George Bizos SC for well over 6 months defending Cde Nomzamo Mandela in the Stompie trial. Those were trying times and indeed there was little room for the faint hearted. Within the organised profession he was a founder member and an executive committee member of the Democratic Lawyers Association. Again several of us from the BLA had the distinct memory of the negotiations between the DLA and BLA which led to the formation of NADEL. We indeed served together on the first national executive of NADEL when I was appointed its first national treasurer. We know that Pius Langa moved on to serve as President of NADEL for

a consecutive term of 6 years, from 1988 to 1994. He understood well that indispensable link between individual and collective effort because nothing truly great is accomplished through individual effort. The hurdle was colonial oppression and apartheid; its overthrow needed the hands of all comrades on deck.

We see this same deep understanding of collective nature of human accomplishment, when in the 80's and 90's he helped form and join the United Democratic Front in a mass based democratic push for the overthrow of apartheid. We know that his own brothers went into exile and enlisted for Umkhonto we Sizwe and one of them paid the supreme price for our liberation. And when apartheid was tottering he helped advise the African National Congress during "talks about talks" which led to the Groote Schuur Minute. He did many valuable things in the course of our struggle. I mention only two. He helped form and served on the Release Mandela Committee and we often see his youthful face when footage of Nelson Mandela's release is flighted. He was part of the Reception Committee which provided a soft landing for released political prisoners.

He was a remarkable jurist and leader of the Court; I was privileged to work close to him as his judicial colleague for nearly 7 years. Not nearly enough is said about the jurisprudence of Pius Langa. His jurisprudence is well worth celebrating. It calls for an academic colloquium in order that we may pay tribute to this remarkable jurist and in order to publish a volume on his judicial wisdom. A short survey of the jurisprudence of Pius Langa will suffice.

Within a few months of his appointment to the Court, in 1995, he wrote the seminal concurrence in *State v Makwanyane*<sup>1</sup> (1995). The judgment is known for putting a stop to state sponsored executions. What we often forget is that the collective judgments may correctly be called the foundation stones of our constitutional jurisprudence. All eleven newly appointed justices wrote their hearts out in a festival of ideas on our new jurisprudence. I commend the piece written by our celebrant to you. In *State v Williams*<sup>2</sup> (1995) Langa J as he was then, insisted that the administration of justice must be sensitive to and protect a person's dignity. For that reason, he held corporal punishment to be unconstitutional and invalid because it violated the right to dignity. His preoccupation with fairness in criminal trials surfaced in his adjudication work. He was intolerant, for instance, to the reverse onus in criminal proceedings. In *State v Mbatha*<sup>3</sup> (1996) he struck down a reverse onus provided for in the Arms and Ammunition Act. Again in *State v Coetzee*<sup>4</sup> (1997) he reasserted the founding principle that everyone is presumed innocent until proven otherwise. He struck down a reverse onus and presumption of guilt found in the Criminal Procedure Act in relation to an alleged unlawful conduct of a company director.

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<sup>1</sup> *S v Makwanyane and Another* [1995] ZACC 3; 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC).

<sup>2</sup> *S v Williams and Others* [1995] ZACC 6; 1995 (3) SA 632 (CC); 1995 (7) BCLR 861 (CC).

<sup>3</sup> *S v Mbatha; S v Prinsloo* [1996] ZACC 1; 1996 (2) SA 464 (CC); 1996 (3) BCLR 293 (CC).

<sup>4</sup> *S v Coetzee and Others* [1997] ZACC 2; 1997 (3) SA 527 (CC); 1997 (4) BCLR 437 (CC).

We remember fondly how he made a significant contribution to our equality jurisprudence in *City Council of Pretoria v Walker*<sup>5</sup> (1998) by holding firm to principle where there may have been a temptation to tolerate unfair discrimination only because it favoured residents of formerly black townships. For the next 10 years, his judgments covered a wide variety of jurisprudential disputes. He wrote in *Christian Education v Min of Education*<sup>6</sup> (2000) on the right to establish private schools in order to pursue linguistic, cultural or religious interests. However, corporal punishment may not, he held, be administered even in a private school and even if it is justified on Christian grounds or even where parents had given written consent.

The *locus classicus* on constitutional interpretation could hardly be complete without the leading judgment of *Hyundai*<sup>7</sup> (2000) in which Justice Langa reminded us that statutory interpretation must now be accomplished, not in a vacuum but in pursuit of constitutional rights and values. In *State v Boesak*<sup>8</sup> (2001) again he did not permit his political background and past struggle associations to stand in the way of the rule that constitutional issues are not invoked when a court is required to re-examine the facts only. In that case he in effect held against a former comrade in the UDF, Alan Boesak. He has written about freedom of

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<sup>5</sup> *City Council of Pretoria v Walker* [1998] ZACC 1; 1998 (2) SA 363 (CC); 1998 (3) BCLR 257 (CC).

<sup>6</sup> *Christian Education South Africa v Minister of Education* [2000] ZACC 11; 2000 (4) SA 757 (CC); 2000 (10) BCLR 1051 (CC).

<sup>7</sup> *Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others: In re: Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others* [2000] ZACC 12; 2001 (1) SA 545 (CC); 2000 (10) BCLR 1079 (CC).

<sup>8</sup> *S v Boesak* [2000] ZACC 25; 2001 (1) SA 912 (CC); 2001 (1) BCLR 36 (CC).

expression in relation to religious views in *Islamic Unity*<sup>9</sup> (2002) and to the opposite end in relation to pornography in *De Reuck v Director of Public Prosecutions*<sup>10</sup> (2003). We remember with admiration his intolerance to inequality inspired by African law of inheritance. He struck down the rule of male primogeniture which for long was the foundation of indigenous law of succession.

In a country like ours plagued by a landless and homeless majority, it was only a matter of time before he wrote about land invasion in *Modderklip Boerdery*<sup>11</sup> (2005). Not far from here, thousands of homeless people in an informal settlement invaded an unoccupied farm. The owner procured an eviction order but the sheer number of people who had settled on his farm made it near impossible for the police to evict the people from their informal homes. One need only review the relief that Langa CJ ordered to understand his remarkable blend of the rule of law and human dignity and compassion.

In more recent times, he assumed the responsibility which every Chief Justice should to decide the most complicated and controversial cases with political implications. He wrote in *SABC v NDPP*<sup>12</sup> (2006) with remarkable efficacy about whether or not the SCA should hear the

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<sup>9</sup> *Islamic Unity Convention v Minister of Telecommunications and Others* [2002] ZACC 3; 2002 (4) SA 294 (CC); 2002 (5) BCLR 433 (CC).

<sup>10</sup> *De Reuck v Director of Public Prosecutions (Witwatersrand Local Division) and Others* [2003] ZACC 19; 2004 (1) SA 406 (CC); 2003 (12) BCLR 1333 (CC).

<sup>11</sup> *President of RSA and Another v Modderklip Boerdery (Pty) Ltd and Others* [2005] ZACC 5; 2005 (5) SA 3 (CC); 2005 (8) BCLR 786 (CC).

<sup>12</sup> *South African Broadcasting Corporation Ltd v National Director of Public Prosecutions and Others* [2006] ZACC 15; 2007 (1) SA 523 (CC); 2007 (2) BCLR 167 (CC).

Schabir Shaik appeal under the full glare of television; he wrote about the validity of warrants of search and seizure in the matter of *Thint v NDPP*<sup>13</sup> (2008). That did not seem to earn him many friends. It was he who dismissed the initial application of one Glenister<sup>14</sup> (2009) who approached the Court on direct access to stop the disbanding of Scorpions. And later, in *Chonco v President*<sup>15</sup> (2009), he wrote about the legal requirements of pardon and reprieve of offenders who claim to be incarcerated for offences related to political beliefs. In his last judgment before he left the bench, *Du Toit v Minister*<sup>16</sup> (2009) he wrote with cutting clarity about the purpose of the Truth and Reconciliation Act and about what indemnity means in relation to a police officer who had been convicted on four counts of murder and was later granted amnesty. He had to provide guidance on whether the amnesty should entitle that police officer to resume his rank, pension and benefits as a member of our police force.

Where dissent was warranted, he wrote separately and parted ways with his colleagues.<sup>17</sup>

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<sup>13</sup> *Thint (Pty) Ltd v National Director of Public Prosecutions and Others; Zuma and Another v National Director of Public Prosecutions and Others* [2008] ZACC 13; 2009 (1) SA 1 (CC); 2008 (12) BCLR 1197 (CC).

<sup>14</sup> *Glenister v President of the Republic of South Africa and Others* [2008] ZACC 19; 2009 (1) SA 287 (CC); 2009 (2) BCLR 136 (CC).

<sup>15</sup> *Minister for Justice and Constitutional Development v Chonco and Others* [2009] ZACC 25; 2010 (4) SA 82 (CC); 2010 (2) BCLR 140 (CC).

<sup>16</sup> *Du Toit v Minister for Safety and Security and Another* [2009] ZACC 22; 2010 (1) SACR 1 (CC); 2009 (12) BCLR 1171 (CC).

<sup>17</sup> See, for instance, *Executive Council of the Western Cape Legislature and Others v President of the Republic of South Africa and Others* [1995] ZACC 8; 1995 (4) SA 877 (CC); 1995 (10) BCLR 1289 (CC); *Case and Another v Minister of Safety and Security and Others*;

Throughout his term he understood that everybody exercising public power does so on behalf of the people. They do so as agents and servants of the broader populace. Government, like each citizen that must obey the law, has to rule within the constraints of the law. If government does not do so, the courts must say so in clear and unhesitating terms. He knew well that uncomfortable as it often was, executive and legislative and judicial excesses had to be curbed. 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 tradition of judicial excellence. We thank him dearly for this. Popular judges must remain a rare species. Principled judges are what our nation need most.

Lastly, we who remain, know that we standing on the shoulders of giants. We promise that we shall remain true and faithful to all that you have been, as colleague. 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 and in particular the most vulnerable, poor and marginalised amongst us. We will be very much part of the transformation project, to make our country reflect the text and living spirit of our Constitution.

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*Curtis v Minister of Safety and Security and Others* [1996] ZACC 7; 1996 (3) SA 617 (CC); 1996 (5) BCLR 608 (CC); *New National Party of South Africa v Government of the RSA and Others* [1999] ZACC 5; 1999 (3) SA 191 (CC); 1999 (5) BCLR 489 (CC).



Fidelity to our oath of office, is important, not because we are, but because without it, not us, 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 us to provide. After all, we are the ultimate guardians of our Constitution.

Chief Justice Pius Langa was a wonderful leader and he deserves every single accolade that NADEL bestows upon him tonight.

Thank you and God bless.

Dikgang Moseneke

20 November 2010