

Source: STAR

Date: 30-Sep-2010

Topic: 15

Ref No: 11935



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ID: 03883874-01 Source Page: 13

A stepping stone on the bridge between pain and unity

The question is whether reconciliation can erase the facts that make up one's history

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THE REGISTRAR at the Supreme Court of Appeal (SCA) cut to the chase in February in explaining judgment in the matter of *The Citizen and Others v Robert John McBride*.

The *Citizen* had questioned the Johannesburg High Court's decision that it had defamed the former ANC guerrilla, and by a majority, the SCA partially upheld its appeal – but not in the way in which the newspaper would have preferred.

Their fight had been going on for a long time. It had hurt both sides, and divided the country.

McBride had originally filed for damages against the newspaper, its editor and some journalists after editorials and articles were published from 2003 which said he was a criminal and a murderer and that he had been involved in gun running in Mozambique.

The paper had started its campaign against McBride when he was first named as a contender for the job of Ekurhuleni metro police chief, and it felt he was entirely unsuitable because of his crimes.

But *The Citizen's* emotional verdict – which was drawn out of its feelings about the 1986 Magoo's Bar bombing, in which three women died – was indeed troubling.

"McBride's candidacy for the (post) is indicative of the ANC's attitude to crime," it had written. "They can't be serious. He is blatantly unsuited, unless his backers support the dubious philosophy: set a criminal to catch a criminal."

"Make no mistake, that's what he is. The cold-blooded multiple murders which he committed in the Magoo's Bar bombing put him firmly in the category."

It was troubling because McBride had after all received amnesty for what he did in terms of the Reconciliation

Act, which dealt with political crimes committed during conflicts of the past.

And the act clearly provided that those who had been given amnesty could no longer be held liable for their offences. Where a person had been convicted, any record of the conviction was expunged from all official documents.

In other words, for all purposes, the conviction was deemed not to have taken place, but that did not mean that

McBride's actions and the consequences of his actions had to be forgotten. It would always remain a fact that he had placed a bomb that killed people, and it would always remain a fact that he had been convicted of their murders.

Amnesty could not and was not intended to obliterate any of that, but it was part of a new social manifesto, a stepping stone on a bridge between pain and unity. The most important truth was that people like McBride could no longer be regarded or treated as criminals or murderers.

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ID: 03883874-02 Source Page: 13

That is why the SCA only upheld The Citizen's appeal that it had not alleged that McBride had been involved with the Mozambican gun dealers, but only that there were facts indicating that he may have been. For the rest, that court, like the High Court before it, stayed true to the letter of the Reconciliation Act.

Only Appeal Judge KK Mthiyane disagreed with the SCA majority finding. In a dis-

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senting judgment, he argued that The Citizen's description of McBride was fair comment.

He was quite outspoken, saying that the interpretation of the act would have “a chilling effect on freedom of expression guaranteed under the constitution”.

Despite this, and despite the significant moral tension around it, the SCA entrenched the truth: McBride was an altogether free man.

It is that judgment which has led to the events which will play out today at the Constitutional Court.

The ANC's most controversial former soldier and the newspaper's imperilled leader writer and editor will at last stand opposite each other in front of the highest bench in the land – and it promises to be a complex encounter.

The hearing could well be one of the most important for the Concourt when we consider what its judgment – either way – will mean for how we look back on some of the most painful moments in our bloody history.

McBride will be trusting that the court agrees that the bombing and the deaths cannot be held against him. The High Court and the SCA even awarded him costs, but the newspaper's refusal to back down means that the Concourt's verdict is likely to have critical implications for our country as we continue to battle to find reconciliation.

At the core of its decision may lie a very difficult truth: that many, if not most, white South Africans do not properly understand the past.

Earlier, McBride took this into account when he said he was looking forward to meeting his adversaries in front of Chief Justice Sandile Ngcobo.

“In a funny way this is, almost by default, the test case of whether... reconciliation can work. I never asked for any special privileges. I never asked to be handled differently at all.

“When I embarked on (the) Struggle, I knew what it meant for me. I haven't changed in my belief that we are establishing a new country. That was always the deal.

“That was why the TRC was so important. There was no purpose for me to go to the TRC in the sense I was already out of jail, but my organisation agreed it was part of reconciliation, part of nation-building. So we went.

“The Citizen and other newspapers had a field day. It was like the retrial of Robert McBride. But for me there is a clear issue.

“Take the Witbank car bomb of 1988, also perpetrated by MK. Three people died. But nobody knows the name of even one of them. Who were the cadres? Ask anyone. They wouldn't know. People want to be selective in their morality. But I say it's a free country.”

It may indeed be worth noting that everyone who died in the Witbank blast was black.

And while it would probably stand its ground on this point, there is certainly a view that The Citizen went after McBride only because the Magoo's Bar bomb killed white people.

McBride was sentenced to hang and spent a long time on death row, but 15 years after the attack came the amnesty ruling which acted against retribution and victimisation. The SCA agreed on its provision that those who had taken part in the armed Struggle, like McBride, should be given the chance to be reintegrated into society.

There has been a harvest of interest in the proceedings at the Concourt today, and The Citizen has notably been joined in its battle to win by the South African National Editors' Forum (Sanef), which supports its contention that the media would become party to the falsification of history if it wasn't allowed to refer to past convictions.

Sanef says it is deeply concerned that, through the majority SCA ruling, a law intended to foster reconciliation has the extraordinary power to censor historical fact.

And while it is not involving itself in The Citizen's views on McBride, it wants the wording of the amnesty legislation to be amended.

This would affect many on both sides of the political and racial divide who admitted to their crimes.

The same would be true of Barend Strydom, the self-confessed racist who walked up to dozens of black people on Strijdom Square in Pretoria in 1988 and smiled at them before shooting them at point-blank range.

He killed eight and injured more than 24, saying he regarded black people as nothing more than vermin.

In what was described as a trade-off, Strydom and McBride walked free at the same time, having shared death row for years.

The time has surely come for the Concourt to give us all a chance to talk it through again, but it's not going to be easy.