

# | JUSTICE ARTHUR CHASKALSON |

## TOP THREE AWARDS

- Honorary Membership of the New York City Bar, 1985
- Order of the Baobab (Gold), 2002
- Human Rights Award (Foundation for Freedom – Switzerland), 1990

## WHAT PEOPLE DO NOT KNOW

He was a first-rate football player and was selected for the combined South African Universities football team in 1952.



## UNWAVERING TRANSPARENCY AT THE ESSENCE

South Africa is considered to have one of the best, if not the best, Constitutions in the world. And its custodian, the Constitutional Court, has as its justices some of the finest legal minds in the country. The Honourable Chief Justice Arthur Chaskalson played central roles in helping to draft and shape the Constitution and the establishment and promotion of the Constitutional Court – long before becoming the President and then the Chief Justice of this court.

Born in Johannesburg, Justice Chaskalson matriculated at Hilton College and went on to obtain BCom and LLB degrees from the University of the Witwatersrand (Wits). To capture the essence and significance of his life, following this seemingly straightforward beginning, is not an easy task – but two quotations help to create a foundation from which to start. The citation accompanying the Gruber Prize for Justice<sup>1</sup> that he received in 2004 included these words:

If a life could be mapped, that of the Honourable Arthur Chaskalson would surely appear as a straight line starting from a commitment to human rights and leading, without deviation, to the bench of the Constitutional Court of South Africa and the position of Chief Justice. It is a long line, but an unwavering one.

The citation might have added that the straight line was one that joined together a large number of dots along the route, each of them of considerable significance.

The second quotation comes from Senior Counsel Geoff Budlender's memorial tribute to Justice Chaskalson:

<sup>1</sup> The Gruber Prize for Justice is one of five international prizes awarded by the Peter and Patricia Gruber Foundation. Recipients are selected by a distinguished panel of international legal experts from nominations received from around the world. The prize is presented to individuals or organisations for contributions that have advanced the cause of justice and is intended to acknowledge individual efforts, as well as to encourage further advancements in the field and progress toward bringing about a fundamentally just world.

...there was transparency in everything he did. He was a person of rock-solid integrity and morality. ... His core belief was that it was human beings who were really important in life – and therefore also in the law. He put people at the centre of everything which he did.

Chaskalson grew up in the 1930s and early 1940s “as a little white boy in a middle-class home in an area where I met other little white boys and girls”. Discrimination against and segregation and marginalisation of black South Africans were realities long before the formalisations of apartheid, and it is likely that these circumstances influenced his decision to become a lawyer while he was still at school.

At Wits he studied for a BCom degree, not because he wanted to do so, but because an undergraduate degree was a requirement for entering the LLB programme. At the time, Chaskalson felt that the BCom was a waste of his time – although later in his career it stood him in good stead – the basis for his work in Commercial Law.

His time at Wits introduced him, though, to a world that his childhood had placed beyond his experience. Not just the reality of apartheid (his first year at Wits was in 1949 when the National Party came into power) but the extent and horror of both pre-apartheid discrimination, and the extent and enormity of the unfolding legalised inequity, confirmed his decision that his future lay in the law.

In fact, his unexpected introduction to the importance of clear thinking and the value of precision came, at Wits, when he spoke up for George Bizos, a fellow student. Bizos was facing a vote of no-confidence from his fellow members of the Wits Student Representative Council (SRC) due to his ‘radical’ views, and the debate raged on endlessly until Chaskalson (a first-year student) stood up and pointed out the wrong questions were being asked and debated: what is the University's policy?; what has it been?; what should be? These were irrelevant, he said, because there was only one important question: “what is right and what is wrong?”

After graduating and, subsequently, becoming an advocate and being admitted to the Johannesburg Bar, Chaskalson worked in a highly successful commercial practice, primarily as a civil lawyer. He engaged in very few criminal matters – and those that he did take on were *pro deo* cases that he undertook for the organisations Defence and Aid and the Legal Aid Bureau. He initially found the *pro deo* work distressing, since Criminal Law was not his area of speciality and many of his cases carried the possibility of a death sentence, which he abhorred. But his work for Defence Aid and The Bureau resulted in his beginning to build a practice in rights work during the early 1960s.

## ONWARD TO POLITICAL TRIALS

He very soon built up a practice in Public Interest Law and took on several political trials in which the accused were charged with sabotage related to the Suppression of Communism Act (*Act 44 of 1950*).

In 1963, Chaskalson was asked to join the defence team as a junior member in what became known as the Rivonia Trial, in which Nelson Mandela and nine others were to face unclear charges (under *Act 44 of 1950*). The lead-up to the case was a shambles – dates weren't set, the exact charges weren't specified and the members of the defence team were given very little time to prepare their case. It was Chaskalson who finally managed to get the organisational situation resolved and, by the end of the trial in 1964, he had eroded a substantial portion of the State's case and so played an important part in having the anticipated death sentence reduced to life imprisonment.

Similar cases revolving around apartheid laws followed, each eroding elements of apartheid. In 1975, he so confused the judge in a case that forbade a Mr and Mrs Komani to live together that, despite claiming to having been led down a garden path, the judge could find no flaw in Chaskalson's argument and the couple were finally allowed to live together. In 1977–1978 he defended the so-called Pretoria 12 – one of whom was Tokyo Sexwale.

In 1983, in the so-called 'Rikhoto' case, Chaskalson's victory changed the lives of more than 150 000 black men who, following the judgement, were allowed to bring their families to live with them in the residentially segregated areas in which they worked.

Chaskalson was also extensively involved in the professional structures of his profession. He was a member of the Council of the Johannesburg Bar Council for a total of 15 years (over two periods), and Chairman of the Council in 1976 and 1982. For 12 years, he served on the National Bar Examination Board (as Convenor for part of his time) and, for five years, as the Vice-Chairman of the General Council Of the Bar of South Africa.

While fighting for human rights in the South African courts, Chaskalson helped established the Legal Resources Centre (LRC) in 1979 along with Geoff Budlender and Felicia Kentridge. Specialising in defending human rights, the LRC was one of the first public interest law centres to be established in South Africa. Not only was this a major development for the practice of law and legal training – it also reflected Chaskalson's commitment to the profession's work: he had to convince the Council of the Johannesburg Bar that the LRC could function with both attorneys and advocates working collectively, at a time when this was considered by the Council to be unprofessional.

He agreed to serve as the National Director of the LRC for two years although he gave up his other work and lead the LRC for 14 years as his primary job. Two years later (in 1980), he created a fellowship programme within the LRC to support (primarily) young black women candidate attorneys. In 1993, he stepped down as the National Director of the LRC, then, and now, known as one of best public law 'firms' in the world.

By this time, Arthur Chaskalson was an internationally recognised and respected human rights lawyer and jurist, and the nature and scope of his work began to expand both within and beyond South Africa's borders.

In late 1989 and early 1990, he played an important role as an advisor to the Namibian Constitution Assembly – with the then Prime Minister of Na-

mibia, Hage Geingob, suggesting that he had played more of a role in the creation of that country's constitution than he ever spoke about.

## FROM APARTHEID TO A CONSTITUTIONAL DEMOCRACY

In 1991, negotiations around the transition from apartheid to a constitutional democracy in South Africa began and, after faltering, started again in 1993, focusing on the development of an interim and then final Constitution. His influence is clearly visible in the text which was finally approved. Geoff Budlender states that Chaskalson “fingerprints are all over the document. You see them in the care, precision, and attention to detail; and you see them in the Constitution’s recognition that we need to go beyond a typical liberal constitution, which aims to limit the power of the state”.

In 1994, President Nelson Mandela appointed Chaskalson as President and later (after a title change) as the Chief Justice and Head of the Constitutional Court. In the lead-up to the formal opening of the Court in 1995, he had worked consistently to ensure that the Court would have the means to allow it to function effectively. He was able to oversee the new (present) Court Buildings when they were opened on Constitution Hill in Johannesburg – in 2004. He used the opportunity to make it clear that the Constitution (and so, then, the Court) did not simply dismantle the old apartheid laws but had to do much more than that. “It demands that our society be transformed from the closed, repressive, racial oligarchy of the past, to an open society based on the founding values of democracy, human dignity, equality and freedom – values which must now inform all aspects of our legal order.”

In 1995, he became a Commissioner of the International Commission of Jurists and served as its President from 2002 until 2008 – and also served as a member of the United Nations Permanent Court of Arbitration.

In 1999, he was appointed to the United Nations Permanent Court of Arbitration – all this while continuing his responsibilities as Chief Justice. He retired from the Court in 2005 and was succeeded, most appropriately, by his Deputy, Justice Pius Langa.

In his years of retirement, Chaskalson was acutely aware of new legislation being proposed and, when he believed that a proposed act was in contravention of the Constitution, he didn't hesitate to comment on it.

For all his local and international achievements and honours, and the positive impact his work has had on many facets of South African life, friends and colleagues report that Chaskalson was consistently modest and meticulously polite and courteous – even when dealing with his ‘opponents’. These same sources describe him as a shy man whose shyness was sometimes interpreted as his being distant whereas, in fact, they attest that he was as warm and approachable as he was modest.

Apart from his being shy, something that not many people realise is that, in his young days, Chaskalson was a first-rate football player and was selected for the combined South African Universities football team in 1952.

For most people, however, Arthur Chaskalson became the personification of the values of the Constitution and their implementation. What greater contribution to society might a scholar/jurist and humane judge make?

Margaret Marshall, Chief Justice of Massachusetts in the United States, put it this way:

What a voice his has been. Precise, learned, thoughtful, compassionate and highly persuasive.

Just as well, for society and for each of us individually, since one of the Honourable Judge's sharpest lines was that “Governments are not the natural protectors of rights”.

*The writer wishes to acknowledge the considerable help of Justice Richard Goldstone and Ms Alice Brown in providing information about, and insights into, the life of Justice Arthur Chaskalson who passed away in 2012.*

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