



A Curated Conspectus of the Life, Love, Law,
Literature and Laughter of Albie Sachs

THE AD & ANOTHER CASE – VIDEO TRANSCRIPT

CHAPTER: PROTECTING ABANDONED CHILDREN

THANDI MATTHEWS

The last aspect of vulnerability that I want to speak to, has to do with children. In one of your first cases that had to do with *children's rights*, it had to do with the adoption of a baby. Baby R, I think her name was in the in the judgment. We're also living in a time now though where there's a huge problem of child trafficking and this case had to do with US citizens who wanted to adopt a child from South Africa. Your judgment goes through the history of adoption, both globally as well as in South Africa. What would be the factors to consider, when it comes to protecting a child who has been abandoned? This is, ensuring that they are not part of a system of trafficking?

CHAPTER: A CASE THAT DIVIDED THE COURTS

JUSTICE ALBIE SACHS

It wasn't trafficking so much. Trafficking means against consent into some forced servitude. It wasn't that at all. A very, very poignant... it was the *Baby Ruth Case*. And it divided the courts all the way up. The *Supreme Court of Appeals* split three-two, and the issue there was that a number of lawyers were establishing quite lucrative practices on the basis of finding adoptees in South Africa for people abroad who would pay quite a lot of money.

And they would do it through getting a High Court order on the basis that it's in the best interests of the child. An abandoned child being in an orphanage for a long time, nobody's come forward for the adoption, and here's this lovely family from Holland or Canada or the United States, and they're good people, and they've been vetted, and they want to give a loving home to an isolated child.

And this is happening on quite a big scale. So, I wouldn't call that trafficking, but the people working in the children's courts, working with adoption, generally objected to this.

CHAPTER: ELEMENTS OF THE OBJECTION

And it was a mixture of different elements in the objection. The one was that they felt there was a kind of exploitation of the would-be parents' eagerness to find a child, a willingness to pay money. Others felt that it's so against African tradition. There's always somebody, it could be the most distant cousin, who has a responsibility of taking care of the child. The idea that you could sever a person from his or her origins and family and blood is kind of unacceptable.

And then sometimes that racial dimension would come in: these white people come here, and they take our black babies. It's like saying we can't look after them properly. Maybe we're not looking after them properly. And that's the kind of reality, but it creates all sorts of different emotions. And these feed into the debates, with some of the judges firmly saying, '*... the best interests of the child, think of the child! That child will now get a beautiful home and a chance to play sports, be educated and have a life! And you're saying no because it's a foreigner - that child's got to stay stuck in a foster home, with foster parents who can't look after it properly.*'

And others are saying, '*No, there are elements of exploitation that are involved here, and it's almost like engineered. We're not trying hard enough to find South African foster parents and other parents. And water follows the path of least resistance, particularly with a bit of money involved, where the water is flowing.*' So, as I said, sharp judgments.

CHAPTER: THE BABY RUTH CASE

The *Baby Ruth Case* reaches us. And Baby Ruth had been found abandoned, lying upside down in a tin drum somewhere and taken in by Christian missionaries. Black Christian missionaries in South Africa, and was being looked after by them. And there was a black American couple visiting, who said, '*We would like to adopt Baby Ruth.*' And they went to the High Court. Procedures were followed. I forget all the details, but this was now challenged, and the challenge was everything should go through the Children's Court. That's the main guarantee. That's done fairly. Let the Children's Court decide what's in the best interest of the children, not the High Court just getting affidavits from these wealthy people and clever lawyers.

So, time is passing now. Baby Ruth is accustomed to the new family. The longer Baby Ruth is there, the stronger the reason for allowing the child to stay. And I'm asked to write the judgment for the Court. And I go into the history of adoption law since World War II and after World War II - millions of displaced people, abandoned children in Europe, huge international efforts were made to find homes

for those children, strong support for inter-country adoption. Ten, twenty, thirty years pass, and now independent countries, third world countries... people are objecting. They come to our country, to Malawi - singer, Madonna, film star, adopting, adopting, adopting - and it's somehow invidious and wrong. And we don't like it. We don't want it.

CHAPTER: MY JUDICIAL INCLINATIONS

My inclinations, judicial inclinations, are strongly in favour of giving a central role to the Children's Court. That's your main protection. But it's the Children's Court that's got to be open minded, not chauvinistic, narrow, parochial. But at the same time encourage South Africans to provide alternative homes for children who've lost their home or don't have a home for whatever reason – an emphasis on that.

And most of the people I know working in the children's rights area were passionate about that. They wanted a Children's Court full stop. And I could think there might be cases where... I thought of a case of an uncle who's looking after a child and the parents have died and it could be an uncle in America. The child is there. You know, it's so much easier to just do it. But there would need to be very, very exceptional cases where there are already strong bonds. And I know some of the people in the children's rights area didn't want even that tiniest exception, but generally, they liked it. From what I heard afterwards, they liked the tenore of the judgment.

CHAPTER: A CHILDREN'S COURT BASED ON EQUALITY OF RIGHTS FOR CHILDREN

It's not a formal bureaucratic equality, it's an equality of rights for children going through the Children's Court. But having a Children's Court that is open minded, well-trained people, that gets good evidence, that's willing to go out and search and find ways. There were huge headlines about this case, you know, for months. And very sadly, about two years later, the adoptive mother, I think, had a breakdown, in the United States.

But there's never a guarantee against things like that from happening, and that didn't make it a wrong decision. And by the time Baby Ruth had already spent the first almost two or three years of her life with this family, who were a very caring family, and maybe having dark skins, you know, would make it easier for the dark skinned child to adapt to the parentage than if there was a discrepancy in appearance where you'll have to explain all the time. That sort of mitigated to some

extent one of the issues that arose. But children... wow, people get very, very emotional when the rights of children are at stake.

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