



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

THE DIKOKO CASE – VIDEO TRANSCRIPT

CHAPTER: 'A DUMB CASE'

THANDI MATTHEWS

So, we can also use the principles that you've developed in various contexts on a variety of subjects, because it's the essence of the dignity that counts. Judge Albie, I'd like to move to the *Dikoko Case*, which was about the protection of parliamentary councillors from defamation. Can you speak to us about that case?

JUSTICE ALBIE SACHS

Oh, yeah, that was such a dumb case. Provincial legislature, I think, in Limpopo. And there was somebody, I think on the provincial executive, who got very angry with the chief executive officer and said, *'...it's not my fault that this that and the other happened. It's the fault of the chief executive officer, he doesn't know his work...'* something like that. And the chief executive officer said, *'...take responsibility for your failures, don't put the blame on me...'*

He goes to court and the High Court orders him R110,000 in damages. And he comes to our Court, and he said [that] he was saying this in the course of in legislative proceedings; he's protected... very technical case. And we decide that protection doesn't exist in that legislature for this kind of statement. But Yvonne Mokgoro and I we're worried about the damages.

CHAPTER: A MORE MEANINGFUL APPROACH

This case should never have been pursued in a court for money. Something should have been done to require an apology. It would be much more meaningful. And we write quite independently of each other, but both feeling the same way that instead of using the law of defamation, of libel damages, to award sums of money for people whose reputation has been traduced... that continues the

alienation, it puts a market value on someone's reputation. It's all wrong. And we should change defamation law - not to go for money damages, but to push for an apology; to push for reconnection between the parties concerned; a total recalibration to make it more consistent with the values of the Constitution. The issue hadn't been fully argued, so we wrote our judgments. Yvonne went back into Roman-Dutch law where the theme of apology was quite strong, and I also found something, I think, in earlier law.

CHAPTER: DIGNITY AND HONOUR

But I said the whole idea that a person's reputation can like be quoted on the stock exchange with a value isn't appropriate with the notion of protecting dignity, and the dignity is to have your trustworthiness and honour vindicated by the courts, to get an apology and to walk out of the court with your head held up high, and not how much money you're going to get. The money aspect was actually destroying the human repair that's really required. And a lot of statements on the importance of restorative justice.

CHAPTER: RESTORATIVE JUSTICE AND AFRICAN TRADITIONAL LAW

So, the *Dikoko Case* and *S versus M* are the two cases where I was able to make a strong pitch for restorative justice. I should mention that the Constitutional Court later on said: we accept Albie and Yvonne's approach. But they didn't apply it. In a case some years later, they kind of theoretically came on board the *Dey case*, which was a very extraordinary case on its own. So the two cases of (*S v M*) and *Dikoko* stand out in my memory as being the cases where I attempted to put the theme of restorative justice on the jurisprudential agenda. And it's just an alternative way of looking at getting redress, and a way that's much more consistent with *Ubuntu* and with African culture and tradition of looking for repair, not just for deterrence and punishment and redress, but repair in the community, repair in relationships, repair in emotions and feeling and connections between people.

And I think that's got much more to offer, in creating a more humane and a more safe society than the constant emphasis simply on *prison, prison, prison. Lock them up, don't treat them nice, because they didn't treat us nice*. That doesn't get anywhere. It satisfies a feeling that you're doing something about it. It doesn't keep us safe.

Restorative justice principles have enormous possibilities. I saw them work at one stage in Mozambique early on in the revolutionary period, where they didn't have prisons. They did community work. But it was useful community work where people could feel proud that they're contributing something for the community. It was beginning to create a new ethos. Sadly, the Civil War came and destroyed all that. But I think it has a huge potential for South Africa. I hope it gets picked up in different ways by the legislature, by the courts. In a climate where there is justifiable, understandable public anger at the degree of lawlessness and criminality and greed and violence in our society. All of those factors, shouldn't make us abandon what I think are - what in the long term, medium long term are - the most effective remedies, both in a practical sense and certainly in the social and humanity sense.

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