



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

THE DVB BEHUISING CASE – VIDEO TRANSCRIPT

CHAPTER: A MEASURE OF CONTRADICTION IN TRANSITIONAL JURISPRUDENCE

THANDI MATTHEWS

Judge Albie, the next case I want to talk to you about is DVB. You wrote this together with Judge Goldstone and Judge O'Regan, and it had to do with the racist proclamations with respect to land from the apartheid era. In that judgment, you said, *'Jurisprudence of the transitional era necessarily involves a measure of contradiction. Fundamental fairness at times requires that aspects of the old survive immediate obliteration, and are kept alive, pending their replacement by appropriate forms of the new. In the present matter, the meritorious desire manifested in the majority judgment for a clean sweep of the past in the name of modernisation and de-racialisation has an unintended and ironic consequence. It deprives underprivileged communities from gaining access to a cheap form of land tenure, which, in terms of national legislation, can be upgraded to freehold. The Constitution requires the government to foster access to land. The repeal of the proclamation by the North West Province, in one sense at least, does the reverse.'*

Could you please speak to us about that?

CHAPTER: REPEALING APARTHEID-ERA RACIST PROCLAMATIONS

JUSTICE ALBIE SACHS

Yes, I think this was a case where a province had, seeking to exercise its own powers, repealed a proclamation from the apartheid era. It was racist, it had to go; there was no problem about that. But what I and my colleagues, Richard Goldstone and Kate O' Regan, were worried about is: You simply wipe it out, and there'd be tiny little - not even rights - gestures towards rights, granted to black people in terms of pieces of paper with a kind of a right to occupy pieces of land. White people could become owners of land; have full title. Black people were just given these little pieces of paper - I think I'm correct in my memory - a kind of right to occupy that had no... they're not registered, you

couldn't sell it, you couldn't build on it, you couldn't get a loan based on it as security.... it was just an official saying, '*You can occupy.*'

CHAPTER: UPGRADING MINIMAL RIGHTS INTO FULL RIGHTS

But what we're pointing to now is under the new property clause, in the new Constitution, the state is under a duty to upgrade even these minimal rights, and to convert them into full rights. And now, you're taking away even those little pieces of paper; it's an unintended consequence of the sweeping approach to the whole matter.

It was something found in other aspects of the law as well, that so much of administration on segregated racist apartheid lines dealt with practical things of importance to people in their ordinary lives. And you sweep them all away because of their racist origins and who suffers? The people who have always suffered. The poor, the marginalised. So, that that was the point that we were making in that particular case.

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