



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

## THE GROOTBOOM CASE – PART 2 – VIDEO TRANSCRIPT

### CHAPTER: REASONABLENESS WITHIN PROGRESSIVE REALISATION

#### JUSTICE ALBIE SACHS

I forget the years of cases, but 2000 was the year in the United States of Bush versus Gore. So, it was little Bush Junior and Grootboom in South Africa. *Big Tree* is the name. The importance of the *Grootboom case* wasn't just putting the strong emphasis on reasonableness. Reasonableness means there is a great discretion for government. They know best. You can provide housing through putting up apartment buildings, RDP houses. You can give people land and say build your own house. You can provide credit facilities to public housing authorities. That's for government to decide. We don't decide that. That's part, if you like, of the separation of powers. But it's not only powers, it's functions, it's focus, its expertise, it's abilities, capacities are all involved in that. There becomes moments, times, circumstances, where the people involved are plunged below the level of dignity that's incompatible with our Constitution. And so, it was very much a case of the normative thing of dignity, not the purely utilitarian best use of resources, that was decisive in that matter.

We'd been urged in the *Grootboom case* to develop a theory of measurement in socio-economic rights based on what was called a minimum floor being provided; minimum core consistent with dignity. And that had been developed by the United Nations Socio-Economic Rights Council.

An Australian, who did a lot of pioneering work. He was alarmed when he saw that ... this was Sri Lanka ... they said that, '*We're meeting our duty to provide housing.*' But the housing went to army officers and civil servants. '*Well, we're progressively realising the right.*' And he said, that's the wrong focus. It's not enough simply to provide public housing. The housing must go to those who need it the most.

And he developed the notion of a minimum floor. I wanted to keep the idea open. My colleagues didn't like it. They didn't know how it could be done. It looked a little bit too mechanical, and it looked as though it would draw the courts into spheres where they just didn't have the expertise. So, we left it open in the Grootboom Case.

#### CHAPTER: A HEROINE VINDICATING HER RIGHTS AS A HUMAN BEING

And just before I leave it, when I commented on the Grootboom case afterwards, we had the 10th anniversary of the founding of the Court. So, it would be in 2004. We're in our new Court building, and we had an international conference on landmark cases, and we used the Grootboom case as a landmark case. And we had a famous case from England, about freedom rights in the midst of war, and *Brown versus Board of Education* from the United States. Jack Greenberg, who had appeared as Thurgood Marshall's junior, Professor of Law at Columbia University, whom we all knew very well, he spoke about that case.

We had somebody from the Italian Supreme Court speaking about a case involving Berlusconi, the Former Prime Minister of Italy, and could he be prosecuted? A wonderful, wonderful thing. One of the participants was Sydney Kentridge, still insisting on literal interpretation. And I remember speaking about the Mrs Grootboom case and saying that one of the features of it was to shift the constitutional gaze from the politicians, high profile figures, public leaders to Mrs Grootboom. It was at the time of the Washington Consensus, where the idea of *develop the market, the market provides a rising tide that lifts everybody out of poverty*, the trickle-down effect and so on. Away from the mechanisms of the market, away from the decisions of the political decision makers and the powerbrokers in society.

The focus now was Mrs Grootboom. And we take it for granted, in South Africa now, that we come to court on the behalf of the poor. But it involved a major shift of focus and attention, and that's why her name is rightly, held up. She became unwittingly a sort of heroine of being able to use court proceedings to vindicate rights for desperately poor people, even though she never, herself occupied it, her children occupied the house that had been lined up for her, not long after she died.

In that sense, she became one of those figures that you read about afterwards. Not a swashbuckling guy who defied power, but just as somebody who's now vindicating her rights as a human being.

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