



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

THE MKONTWANA CASE – VIDEO TRANSCRIPT

CHAPTER: A TENSION AFFECTING EVERYBODY

THANDI MATTHEWS

In the Mkontwana matter, that judgment dealt with the implications of both owners and non-owners having to pay their rates, taxes for services to local municipalities prior to properties being transferred to new owners. It caused quite a bit of tension with respect to the arbitrary deprivation of property. Withholding the right of a new owner to take occupation of the property. What happened in that case?

JUSTICE ALBIE SACHS

This was something now that affected everybody, even us, if we are transferring properties. Many of us lived outside Johannesburg. Some acquired properties in Joburg while we were attending the Court. And the regulation, I think it was a municipal regulation, said - or maybe it was provincial government - that the registrar of properties couldn't register the title, the transfer, unless there was proof that the rates were paid up. And that was seen as an absolute necessity to get people to pay their rates. They just weren't paying their rates. And the amounts were accumulating, accumulating, accumulating. Becoming huge. And it was costing the public services that needed the money for service delivery extensively.

CHAPTER: A REASONABLE CONNECTION BETWEEN THE MEASURE AND THE PURPOSE

And I might be wrong in my recollection, but I think we held that this was not arbitrary deprivation of property. That there was a reasonable connection between the measure and the purpose to be served. A legitimate connection. And therefore, it was not an arbitrary, in the terms of the word arbitrary... was not arbitrary and therefore it was constitutional.

THANDI MATTHEWS

But what happens in instances where owners never pay their rates? This is something that we are dealing with at the moment. We have municipalities who are not paying rates or residents not paying rates to municipalities. In the event that the owners just refuse to pay, or the previous owners just refuse to pay, does an owner just lose their right to property?

JUSTICE ALBIE SACHS

So, if they refuse to pay, they can't sell, and you can't buy a property. I don't know what the law is at the moment, but certainly in terms of the decision at the time, you can't buy a property unless the rates have been cleared.

CHAPTER: WITH ALL RIGHTS COME RESPONSIBILITIES

And it was seen as part and parcel of ... it's a kind of education in responsibilities. You don't only have rights in a constitutional democracy, you have responsibilities. And you pay your taxes. And you pay your rates. And you pay for water. You pay for electricity. Now those were hard issues in the townships, where people as part of resistance had been refusing to pay – paying to the apartheid government - to oppress them. But it's not the apartheid government now. It's the democratically elected government. It's their own people whom they should be able to manage and control, representing them on the council and the resources are needed there.

THANDI MATTHEWS

Well, I like what you say about rights come with responsibilities. You often make reference to African tradition. In the African Charter for Human and Peoples' Rights it makes it quite explicit that with all rights come responsibilities. And I think it's sometimes difficult to manage, but it is important. And I do hope that in instances where there are challenges in paying rates and taxes, for example, that there are mechanisms in place to ensure that other liberties are not deprived of individuals.

JUSTICE ALBIE SACHS

And in fact, we insisted - the Court insisted - that on something like water, which is an absolute need for people, that indigent people don't pay for water. There is a big free supply. And it's not being gracious or nice, it's being constitutional. That's a requirement. In terms of rights and taxes I don't know if there's a similar provision but there might be administrative mechanisms used, I'm not sure, that allow for some kind of discretion. I don't know.

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