



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

## THE MOSENEKE CASE – VIDEO TRANSCRIPT

### CHAPTER: AN EXTRAORDINARY STORY

JUSTICE ALBIE SACHS

There are two other cases where I remember the issue of race cropped up. One very directly, and that was the Moseneke Case, and the Moseneke is the same Moseneke -- Dikgang Moseneke. When his father died. He writes so beautifully about his father in his biography. Dikgang, aged 15, being sent to Robben Island, Pan-Africanist Congress. He writes about studying Latin while pushing a wheelbarrow filled with quarry stones. One of the PAC leaders is teaching him Latin '*amo, amas, amat, amamus, amatis, amant, I love, you love, he loves.*' Extraordinary story... passing his exams, qualifying, becoming an attorney, an advocate, now a judge.

And he writes about his dad, who on Sunday mornings would sit on the stoop of their little house in the township, with a newspaper, and it might even be upside down, but he wanted to be seen reading the newspaper. And with a huge investment in education. There's something wrong with that story because his dad was a school principal. It was his grandfather! The grandfather sat with the newspaper because he wanted to look learned, and the newspaper would be upside down. His dad, the school principal, and now Dikgang.

### CHAPTER: DIFFERENTIATED BY THE NATIVE [BANTU] ADMINISTRATIVE ACT

The dad dies and he takes the will to the Master's Office to be dealt with. The Master says, '*no, you're a native, I can't deal with it.*' He was shocked; '*this is the public office dealing with wills and now I'm being treated as a native?*' I think he was a judge then already, but I don't think he was on our Court at that stage. So, he goes to court, he's obviously very angry. The papers are... you can feel the emotion in them. It's not because he's Dikgang, our friend, we knew him from legal work, I'd met

him when I was in exile, he came to see me in New York, we had wonderful conversations. Native Administration Act? In new South Africa? And yet for tens of thousands of relatively poor, modest income black people, the act provided for facilities for dealing... close to where they lived and worked. So, from a purely practical point of view, it made sense to continue to allow the magistrates and the others to handle those estates.

#### **CHAPTER: EQUAL ACCESS FOR EVERYBODY ON A NON-RACIAL BASIS**

But Dikgang objected to being treated as a native, differentiated on that basis. It was a totally valid objection, it was like intolerable in the new South Africa that this old apartheid law that was continuing to serve some kind of practical purpose, but based on the notion of whites are people with rights and claims, and access to public services; and blacks are a population to be administered. It was revolting. So, we struck down the provision that required him to go to the special facilities, but we didn't want to prevent anybody from getting any kind of responses in the meanwhile. So, we left it to parliament to change the law, to make equal access for everybody on a non-racial basis. But without preventing the poorer black families, where there had been wills, from getting some kind of practical support in the meanwhile. But very strong language in the Court about how harsh it had been, and how painful it was to have a reminder to continue into the new democratic South Africa of the invidious provisions of the apartheid era.

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