



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

THE SABC vs NPA CASE – VIDEO TRANSCRIPT

CHAPTER: THE RIGHTS OF THE MEDIA AND THE PUBLIC

THANDI MATTHEWS

Our next case, was about the right of the media to access the courts to cover important political cases that may impact on how the public views certain political leaders, but at the same time, it is important to access information in our current political dispensation. Would you like to speak to us about the broadcasting case please?

JUSTICE ALBIE SACHS

And before I do that, I think there's a disclosure that you ought to make. If you don't, I will.

THANDI MATTHEWS

You can make the disclosure.

JUSTICE ALBIE SACHS

It was the South African Broadcasting Corporation, standing up for freedom of speech, said, *'We've got this important argument to be heard in the Supreme Court of Appeal, about the prosecution of Schabir Shaik implicating President Jacob Zuma in alleged forms of corruption. And there's huge public interest and we want cameras in court. The public have a right to know, and we as journalists have a right to let the public know.'* And the judges are saying, *'No, we haven't had it before. We don't like it. It puts pressure on us, and it's going to interfere with the proceedings.'* And so, they give a ruling forbidding. They rushed to Constitution Hill.

CHAPTER: AN URGENT MATTER

We convene, we have to move quite quickly, and we divide. I get the feeling, the majority of my colleagues want to allow the court, the Supreme Court of Appeal to be able to manage its own

business, to familiarise themselves with things. And we don't want to be like Big Daddy telling them what their obligations are.

So that becomes the main judgment. It's deferring to the actual court hearing the matter. It's a courtesy...It's more than a courtesy, it's being respectful of your brothers and sisters on the other court. But I've got another challenge to the approach. It's not so much that the SABC has the right to tell the story.

CHAPTER: THE RIGHTS OF THE PUBLIC

The public have a right to see justice being done, and to me that's much more profound. So, you can have journalists in the court, it's not secret hearings. They can write their reports, they can't broadcast it. And I put the emphasis very much on public justice-- justice being seen to be done, and saying that this is a very important factor, more important than SABC getting more viewers than they would get otherwise. But I also reluctantly go along... we defer to our colleagues; they are the ones on the spot. Hopefully they'll get used to it. And I think I mentioned something about developing programmes to make this possible, so that the public can enjoy that right. Not so that the broadcasters can enjoy their authority and power, but so that the public will have the right to see justice being done. Two of my colleagues were firmer, and they said, '*We understand how our colleagues on the Supreme Court of Appeal feel, but the public right to know, and freedom to impart and receive information overrides...*,' they didn't say the timidity, but they implied the timidity of the judges there. And it wasn't long before we started letting cameras into court.

CHAPTER: LOSING THE CASE. WINNING THE WAR.

So even though your *daddy* didn't win that case, he won the war. And now it's very common to see cameras in court. And the arguments were that it would put pressure on counsel, they'd be grandstanding, it didn't happen. It didn't happen. If they were to grandstand, the presiding officer could slap them down, you know, quite easy. It didn't happen. There was a worry in other cases, that witnesses would be terrified. That's not happening. In the famous Pistorius case, the cameras were there. There was some protection for, I think, seeing faces of witnesses and so on. And I think we've benefited enormously from the fact that cameras are in court, because people get their news today much more through visual sources than through written or audio.

So, thanks Jimmy, for getting the ball rolling...and what seemed very new then, is now absolutely normal now.

THANDI MATTHEWS

CHAPTER: THE COURT AS A THEATRE

And I think also Judge, you know, we talk about the Court as a theatre, that when the middle class has access to issues that have to do with marginalised people, ordinarily they might not necessarily be in confrontation with the same issues, but hearing those issues being depicted live allows you to then also become more of an active citizen, and participate more meaningfully in your democracy, and to also, not just see protest action as something that is unruly, but to situate it within a legitimate claim. So, I do think that case allowed for a more political approach to strategic litigation, to get the entire society involved. Sometimes journalists will be more attracted to the more sensationalist cases, as we're seeing at the moment, but we'd rather have access to the court than to be denied access.

JUSTICE ALBIE SACHS

No, for sure. And you've used the word political. You don't want it politicised, if it's politicised, then it's dragged into the ambitions of political leaders and parties. That's terrible, and you can't allow that. But political in the sense that the impact of things, the way it radiates out, what it means for people in society, that is political, with a lower case p-political, and that's the reality. And to pretend it's not that some kind of completely neutral thing that's happening there, sealed off from the rest of society, it's very unrealistic.

CHAPTER: LAWFARE AND FUNDAMENTAL RIGHTS

I mean, one of the problems you get is what's called *lawfare*-- that people who should be fighting battles in the political arena take all their cases to court, especially if they see they're going to lose.

They're not going to be voted into office. So, they come in through the back door of the court now, to get their way. And that raises the much harder issue of fundamental rights. Fundamental rights, often relate to people who are not politically popular, and the courts then become the bastion of defending vulnerable groups. And the point's always made, you start with this vulnerable group, it's the next one, the next one, then the next, then it's you. But it's not only that, it's the nature of a democracy that allows multiple voices to be heard, that gives them space, that allows new ideas to grow, that actually glories in diversity and pluralism and contention between different positions... sees that as something positive.

CHAPTER: OPEN ACCESS

THANDI MATTHEWS

Yeah. And I think just lastly on this point, one of the objectives of the Constitutional Court was to be an open space. It was to have open access. Otherwise, courts can also be seen as elite institutions. So, this is another form of accessing our justice system and making us all feel that we are part of that system, and that it's not just in the movies that we get to see the courts, but in real life too.

JUSTICE ALBIE SACHS

I mean, access is such an interesting term. There is physical access-- it's very easy to get into the Constitutional Court. You have to pass through security, you can be dressed comfortably as you are, there aren't all sorts of rules about not crossing your legs and stuff like that. Very, very friendly, friendly building. People are invited. It's seen as a good thing when ordinary people stream in and sit at the back and watch what's going on. But there's also access in terms of the tone and the language. And if the Judges are using a language and addressing people in a style that is busy, and pompous, and off-putting, that's denying access. It's saying, *'We are the clever ones! We know everything! Just listen to us! Shut up!'* So, access means getting a good hearing.

It means that counsel and the judges address each other in a kind of language that ordinary people can understand. You're not doing that to make it understandable. You're doing that because the law, when properly expressed, particularly in constitutional matters, should always be understandable. It also means cost. Very early on, we took decisions to ensure that the cost of preparing documents, for the Court, and for bringing a case, shouldn't prevent people from bringing cases.

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