



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

THE SIDUMO CASE – VIDEO TRANSCRIPT

CHAPTER: JUDICIAL FUNCTION OR ADMINISTRATIVE ACTION?

THANDI MATTHEWS

Judge Albie, the next case I want to talk to you about is the Sidumo case that was heard in 2007. It dealt with the procedures to be followed when effecting a dismissal and whether an unfair dismissal resolved through arbitration amounts to judicial conduct or administrative action.

I'm not sure why the distinction even matters, but I'd like to quote from the judgment where you concluded that *'The Bill of Rights should not always be seen as establishing an independent normative system, operating in isolation from each other, each with exclusive sway over a defined ground of public and private activity. The disparate textual protections are unified by the values immanent in all of them.'*

CHAPTER: THE CO-EXISTENCE AND INTERPENETRATION OF RIGHTS

The relationship between the separately protected rights should be regarded as osmotic rather than hermetic. Seepage should be understood not as form of analytical blurring to be avoided, but rather as a desirable mechanism for ensuring that constitutional interests in appropriate cases are properly protected and constitutional justice fully achieved. And hybridity should be recognised for what it is, the co-existence and interpenetration of more than one guaranteed right in a particular factual and legal situation.'

Could you please provide content to those words, for those of us that are laymen?

JUSTICE ALBIE SACHS

Yeah, they're pretty abstract words. The issue was very specific. Somebody had been dismissed and he'd applied to arbitration against the unfair dismissal. He now wanted to appeal against the result of the arbitrator. And the question was, if the appeal against the arbitration went to one of the labour

judges, was that an administrative action, in which case PAJA - The Promotion of Administrative Justice Act - applied, which gave quite a lot of protections, or was it simply a labour law matter? And normally the Court of Appeal doesn't interfere with the balancing and so on, that's been done, by the person who originally hears the matter. And Justice Navsa favoured the one approach and Justice Ngcobo favoured the other approach.

CHAPTER: DIFFERENT ROUTES, SAME VALUES, SAME ANSWER

But they both came to the same result. And I said it's no accident that they came to the same result, because it doesn't matter which route you follow. If it's an administrative action with judicial elements to it, you get the right answer. If it's a judicial action with administrative elements, you get the same answer because the values are the same.

So, we're far too strong on pigeonholing and classification. And I used terms like osmosis, hybridity, and it shocked some of the lawyers -- they actually wrote about it, mocking this Judge who lives up in the clouds and uses language like that. But it was a challenge to the very technician, formulaic, classificatory mode of reasoning. And it's in line with my general approach which looks to intersectionality, overlapping real situations and puts major emphasis on the foundational values of the Constitution; and values are not compartmentalised, the core values of non-racism and non-sexism and open society and other values of that kind - a rule of law - they apply across the board so you can enter the portal through this door or that door, it doesn't matter in the end, applying the Constitution to the facts, you're going to come up with the same the same result. It's the kind of thing that I think could give somebody quite a nice, I wouldn't say PHD, but quite a nice LLM following that further a little bit.

THANDI MATTHEWS

I agree.

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