



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

## THE STEENKAMP CASE – VIDEO TRANSCRIPT

### CHAPTER: OUT-OF-POCKET EXPENSES IN RELATION TO A TENDER

THANDI MATTHEWS

Judge Albie, tenders have become a major issue in our current political dispensation. There's even a South African term – maybe it's international, I don't know - called a Tenderpreneur. In the Steenkamp matter, the Court dealt with the issue of a tender and out-of-pocket expenses in relation to that tender. What happened?

JUSTICE ALBIE SACHS

The problem in the Steenkamp Case was that Mr Steenkamp had tendered for, and won, a tender. Incurred quite big expenses in expertise and collecting evidence and so on. And the tender had been upset on appeal. I think because of an irregularity, maybe some corruption. Not that he'd been corrupt, but something to do with the appointment of the board. So now he says, I did everything right, I did nothing wrong. I won the tender. Okay, I can't insist on the tender, but at least the state now, because the state messed up, the state can pay me my damages. And I want the ordinary kind of commercial damages you get in the case of delict.

### CHAPTER: PUBLIC LAW REMEDIES FOR PUBLIC LAW DAMAGES

The Court was very reluctant to apply the ordinary, delictual damages when somebody smashes into your car or is negligent in some other way, causes you injury or intentionally causes you injury and then you go to court, you get paid out for that. We felt the public law should have public law remedies. And it just seems too much of a squeeze to say he must get the money back because he'd spent it under ... not false pretences, but because of unlawful action on the part of the people in the tender board.

### CHAPTER: THE KIND OF CASE THAT LAWYERS LOVE

So, a very fine judgment was written by Dikgang Moseneke who is particularly strong - we're all strong, we like to believe, in all areas, but some are more strong, or stronger, in certain areas. And I agreed, I think, with most of what he said, and not with some of what he said. And it also had something to do with the interim Constitution, and the final Constitution, and the law being different. So, it's a very technical case. The kind of case that lawyers love looking at, but doesn't carry grand themes for posterity.

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