



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

THE VAN DER WALT CASE – VIDEO TRANSCRIPT

CHAPTER: AN ABSOLUTELY WICKED CASE

JUSTICE ALBIE SACHS

It was an absolutely wicked case because Van der Walt was involved in litigation in the High Court, and he didn't like an order that was given against him. And he appealed to the Supreme Court of Appeal. And something strange happened, there was like a binary fission.

The application was heard by two different panels. Supreme Court of Appeal, very large, and it was 17 members. And they sit in panels because they are hearing one application after the other after the other. And the one panel had said he was wrongly treated in law and the matter should go back and be reopened. And the other panel, also very learned judges in the Supreme Court of Appeal, said no. They didn't say, no, they didn't know about this other decision. They give exactly the opposite position.

CHAPTER: IS THIS A CONSTITUTIONAL MATTER?

So, what to do? Is this is a constitutional matter that we can even hear? And I think we decided, well, if there's a clash between two panels in the Court of Appeal, that does raise a constitutional issue. How do you decide? It was sort of an amusing case. A droll case.

And clearly there was some imperfection in the procedures there. It shouldn't have happened. But the mere fact that every court process can be messed up doesn't mean you don't take a decision. So, I think we divided ourselves amongst ourselves about even how to approach the matter.

CHAPTER: A WORK-PERSON-LIKE APPROACH

And I think certainly my approach was, if you've got these two countervailing positions and one is saying send it back to reopen and the other is saying no, end of matter, you should favour sending it back. Because the worst that the opposing litigant would suffer is more time spent; a longer delay in getting to the truth. And that could be dealt with through costs orders and in other ways. Whereas the worst that could be suffered by the opponent would be that he's actually been done out of a proper hearing. So that was the approach that I adopted, a kind of work person-like approach to a practical issue that had arisen.

END