

In *Hyundai*, Pius laid down that laws must now be given meaning, not from a legalistic ivory tower, but through the lens of constitutional values. In *Boesak*, he did not permit his political struggle associations to stand in the way of a just outcome. He in effect held against a former comrade in the UDF, Alan Boesak. He held that a constitutional issue does not arise when an appellant is dissatisfied over only the facts found by a trial court. In *Islamic Unity*, he pondered over the protection of legitimate expression in relation to religious views.

To the opposite end, in *De Reuck* he wrote over free expression and pornography. In *Bhe*, he made bare his intolerance for gender inequality spawned by a rule of customary law that for so long kept women from inheriting in a deceased estate only because of their gender.

Our country has many landless and homeless people. Tens of thousands of people, residing in a nearby informal settlement, invaded an unoccupied farm. The owner of the farm procured an eviction order but the police could not forcibly remove thousands of occupiers from their informal homes. Confronted with the dilemma, in *Modderklip Boerdery*, Chief Justice Langa crafted a Solomonic outcome. He balanced out the rule of law imperative that a court order must be obeyed against the indignity and brutality of forcibly evicting vulnerable people from their homes. He set aside the eviction order; directed the state to purchase the invaded land and that the owner of the land receives just compensation – a happy ending all round.

As Chief Justice, Pius had to lead the charge and write in cases with political controversy. In *SABC v NDPP*, he upheld the principle of open justice as he enquired whether Mr Schabir Shaik's appeal in another court had to be open to the glare of public television. Later in *Thint*, a matter that implicated a very senior political leader, he upheld the validity of warrants of search and seizure. In *Glenister I*, he dismissed the initial application of Mr Glenister who bypassed other courts in his challenge against legislation meant to disband the Scorpions. And later, in *Chonco*,

he wrestled with the elements of pardon and reprieve of offenders who claimed to be incarcerated for offences related to political beliefs.

In *Du Toit*, he peered into the truth and reconciliation legislative scheme to ascertain what indemnity meant in relation to a police officer who had been convicted on four counts of admittedly political murders and was later granted amnesty. After his release from prison, the police officer argued that the grant of amnesty entitled him to resume his rank, pension and benefits as a member of our police service without more. The Chief Justice thought not.

His judicial credo taught that every public functionary exercises public power on behalf of the people. They are agents and servants of the broader populace. Government, like each citizen, must obey and rule within the constraints of the law. After all, government is a potent and visible teacher of its people. If anyone, and so too government, breaches the law, courts must say so in clear and unhesitating terms. The Chief Justice knew well that as uncomfortable as it often was, executive and legislative and judicial excesses had to be curbed. He had a deep distaste for corruption whether it occurred against the public purse or by private interests and the business sector.

Where judicial officers stepped out of line Pius Langa did not choose to look away. He stood, firm as a rock, in the face of undeserved ridicule and populist expediency. In short, he was true to his oath of office. That is, he acted without fear, favour or prejudice. He kept the highest standards and traditions of judicial excellence. We thank him dearly for this. Popular judges must remain a rare species. Principled judges are what our nation needs most. An upright and dependable judiciary, he taught us, is a necessary condition for a socially just and democratic social order our long struggle and sacrifices demand of us.

Yes, Archbishop Emeritus Tutu, Chief Justice Pius Langa was a servant leader. He deserves every accolade that our nation is bestowing upon him. 

Fighting for principle

'No one of us has a right to abandon or desert the fight for a principle'

A tribute to the late **Chief Justice Langa** at the tenth anniversary of the Duma Nokwe Group of Advocates by **Patric Mtshaulana SC**

In July 2013 the country lost former Chief Justice Langa. His untimely death was mourned by many in this country. During the memorial services in Johannesburg and Durban and during the funeral as well as during the memorial organised by the Constitutional Court, many spoke well about the outstanding qualities of this giant. We were told about his humility, his consistency and his commitment to fighting for principle. His colleagues spoke of his unwavering commitment to the independence of the judiciary. Most touching was the description by Mandla, his brother, of how Judge Langa comforted the family when his brother was shot and killed by ANC operatives. He also told us how Judge Langa was also campaigning for the commutation of the death penalty imposed against the killers of

his brother. The campaign for the abolition of the death penalty was a matter of principle for him.

I noted that the majority of you were not at the memorial services nor did you attend the funeral in Durban or the memorial at the Constitutional Court. This made me realise how little you knew what an inspirational figure Justice Langa was for the formation of this group. Allow me to say a few words on this.

It was late in March 2003. Judge Langa was preparing to attend an IBA conference in Australia where he was to deliver a speech. I asked him if I could see him before he left. He invited me to come to his office at Braampark. When I arrived he was sitting with his back towards the door. He was in the late stages of editing his paper. It was about 18h00 when I arrived. I sat

next to the door looking towards a window where I could see the sun disappearing leaving behind a glowing picture of itself.

Looking through the window nature seemed so beautiful and majestic. Yet, behind the beauty of the sun I could see the scary shadow of the approaching night.

I had come to see Judge Langa to tell him that since 1998 I had been involved in various activities and structures of the Bar but had not seen any progress towards transformation. I had come to tell him that I had lost hope that the Bar could be transformed and that I was now going to stop and just earn money like everyone else.

After I had finished talking he turned around. His face looked darker than the approaching night. His eyes looked bigger and brighter than the disappearing sun. Glaring at me with a fatherly but stern face he firmly said: 'No one of us has a right to stop the fight for transformation. We must fight on.' He returned to his editing. I remained looking and shocked. I had not expected this reaction from him. I sat wondering what it is that I could do because I could not be involved in the fight just for the sake of it.

While I was caught up in these thoughts, he turned round once more and said: 'In any case if you have to do it, you must do it with a bang.'

Up to that day I had always seen him as a gentleman but I never imagined he could take such a radical approach. We parted and I was not sure what it is that one could do. For those of you who have forgotten, in Dec 2002 black advocates had resigned from the Bar Council. The reason for their resignation was lack of progress with transformation. A Transformation Indaba had been called at the beginning of 2003 but in my view it had yielded no results for transformation. The meeting with Judge Langa was taking place in this context.

After our meeting I had discussions with Terry, Dabi, and Kameshni. We approached various colleagues and raised the idea of a new group with a new ethos. Some joined us but others were angry because in their view we were breaking the Bar.

The discussions and preparations culminated on 1 of September with a breakfast meeting at the square in front of Fountain Chambers.

It was a sunny morning. There was a chilly breeze, a reminder of the disappearing winter. We were joined by friends like Suresh Khanah, who is now CEO of PWC Africa. He was there with a few partners from PWC. We had partners from Werksmans. We had colleagues from the Bar. Some of them had been angry with us when we mooted the idea. But now it was spring. The ice of winter had melted. The warmth of the new season made it possible for all of us to smile and to celebrate. It was a beautiful morning. All around us dormant trees were springing to life. Deciduous trees were blooming. There were buds and flowers all over. The atmosphere was filled with aroma and the flapping grace of butterflies.

We asked Judge Langa to cut the ribbon – a sign of the opening of the door of the chambers. After accepting the pair of scissors he moved towards the door to cut the ribbon. As he moved he was like a father moving towards a wife who had just delivered a baby. He seemed ready to cut the umbilical cord and to separate the baby from the mother. As he cut the ribbon and smiled I felt as if he was announcing the birth of the baby, announcing its separation from the mother. In that mood of joy and laughter of everyone I realised that a new baby was born. It

was separate from the mother but it was part of the family. The Johannesburg Bar had given birth to the first group of its kind.

As we celebrate this occasion may we please also think of Judge Langa the principled man who guided us during this difficult journey. May we always remember that none of us has a right to abandon a fight for a principle.

At the funeral of Judge Langa in Durban the President of the Republic JG Zuma proudly told the gathering that Judge Langa had played an important role in recommending a middle position between the Media Tribunal which the ANC wanted and what the media wanted. He told the gathering that the ANC was happy to abandon the tribunal in favour of the recommendations made by Judge Langa.

The inverse of that coin is that the media community fought against the idea of a media tribunal. They never rolled over and allowed the ANC to carve a place for them in our democracy. We in the profession are faced with a similar situation. In his column in *Advocate*, the chairman of the GCB in a well-written piece, sets out where the Bar stands on a number of issues regarding the Legal Practise Bill.

I suggest that we should respond to the chair. From where I am standing my view is that the fight for the independence of the profession is a fight for principle.

The issue about whether the discipline of the profession should be in the hands of the state or of the profession is a matter of principle.

It is clear to me that the assets of the Johannesburg Bar belong to its members and the government has no right to expropriate them as the Bill suggests. This is a position of principle.

It seems to me that the advocates' profession is a separate profession, separate even from the attorneys' profession. This is clear from the members of the JSC some of whom are attorneys while others are advocates. It follows that a fight for the independence of the advocates' profession is a fight for principle.

Judge Langa taught us that: no one of us has a right to abandon a fight for principle. I hope this will be our response to the chair. We should encourage our leaders to fight on as judge encouraged us to fight when we thought it was over. We should never forget:

If you think you are beaten, you are;
If you think you dare not, you don't;
If you'd like to win, but think you can't,
It's almost a sure you won't.
If you think you'll lose, you've lost,
For out in the word we find
Success begins with a fellow's will,
It's all in the state of mind.

If you think you're outcasted, you are;
You've got to think high to rise.
You've got to be sure of yourself before
You can ever win a prize.
Life's battles don't always go
To the stronger or faster man;
But soon or late the man who wins
Is the man who thinks he can.*

* *The Man Who Thinks He Can* by Walter D. Wintle 