

Editor
Fanny Rabkin
franny.rabkin@gcbsa.co.za

Editorial committee
Frank Snyckers SC (chair)
Nathi Dwayi
Marilena Maddison
Sandhya Mahabeer SC
Loyiso Makapela
Jean Meiring
Lwandile Sisilana
Muhammad Zakaria Suleman
Myron Dewrance SC
(ex officio – GCB chair)

BAR REPRESENTATIVES
Cape: Gregory Solik
Free State: Inga Macakati
Grahamstown: Thomas Miller
Johannesburg: Quentin du Plessis
KwaZulu-Natal: Lisa Olsen and
Nooreen Nursoo
Namibia: Esi Schimming-Chase
Northern Cape: Albert Eillert
North West: John Stander
Polokwane: Nathi Gaisa
Port Elizabeth: Morné Olivier
Pretoria: Alex Politiis
Mthatha: Yusi Msiva

EDITORIAL INFORMATION
Advocate is the journal of the General Council of the Bar (GCB). Except in the case of official press releases or statements, published as such, the views expressed by individual contributors of articles and items in Advocate do not purport to be the views of the editorial committee of Advocate, or the official views of the GCB, but remain the views of the individual contributors. This applies also to the views expressed by the editor in her contributions.

Correspondence and enquiries relating to contents, contributions and advertising:
The Editor, Advocate,
PO Box 786878,
Sandton 2146
082 927 5536
franny.rabkin@gcbsa.co.za

Street address: Grindrod Tower,
2nd Floor, 8A Protea Place,
Sandown,
Sandton 2146

Subscriptions
Annual subscriptions R400 (VAT incl.)
Advocate, PO Box 786878,
SANDTON 2146
Tel: +27 (011) 784 0175
E-mail: christine.baek@gcbsa.co.za

Website: <https://www.gcbsa.co.za>

Proofread by Refiloe Seiboko
Design by Hond CC
Printed by Hansa Print

Artwork on cover:
Drawing for Studio Life, Episode 1
(Portrait of Sydney Kentridge), 2020
by William Kentridge

ISSN 1683-2566
© General Council of the Bar
of South Africa

Volume 35, number 3 ■ December 2022

advocate

Iphaphabhuku labameli basemajajini baseNingizimu Afrika
Dzhenala ya dzangamo la vhaadivokati vha Afrika Tshipembe
Die Suid-Afrikaanse Bailetydskrif ■ The South African Bar Journal
Kgatisobaka ya boadivokati ya Afrika-Borwa
Jenali ya magwetha ya vavanyisi van Afrika-Dzonga



FROM THE EDITOR

During the course of laying out this edition of *Advocate*, I was searching for a picture of Nonceba Komani, the Legal Resources Centre's client in the famous case that challenged pass law regulations. I instead came across the speech by Geoff Budlender SC at the funeral of Arthur Chaskalson, Komani's counsel, in December 2012.

He said: "Arthur was an extraordinary advocate. He was not one to engage in rhetoric or sound bites. His weapon was precise and remorseless logic ... I still remember his performance in the *Komani* case in the Appellate Division, in 1980. Mr and Mrs Komani had a simple yet profound desire. They wanted to live together. The pass laws forbade it. The law was plain, and it was against Mr and Mrs Komani. Arthur constructed a brilliant and novel argument which was so persuasive that Chief Justice Rumpff – no friend of Mr and Mrs Komani – became frustrated: 'I think you are leading us down the garden path,' he said to Arthur. But he could not find the flaw in the argument, because there was none. Ultimately, the Appellate Division unanimously decided in favour of Mr and Mrs Komani. It was the result of the most brilliant advocacy I have ever heard."

In the speech, Budlender spoke also of Chaskalson's integrity and his deep compassion – qualities impossible to miss by anyone who had even, like me, a passing experience of the former chief justice.

I was looking for Mrs Komani's picture because in this edition, we run, in full, the text of the first Arthur Chaskalson memorial lecture by Tembeka Ngcukaitobi SC in Cape Town earlier this year entitled *The Rule of Law in Times of Political Crisis*.

Ngcukaitobi talks at length about Mrs Komani's case, among others. He ends his lecture by reflecting on what we can learn from Justice Chaskalson and says: "The reality is that at each stage of his life, each crucial moment of his decision, he was always in doubt. He doubted that Mandela, the accused, could be saved from hanging. He doubted his own decision to transition from a commercial practice to a public interest law centre. Always in trepidation, always unsure. He doubted that Komani would turn out the way it did, in fact he doubted its viability. He did not know the future."

It is a long read. But if you are anything like me, you will read it easily, in one gulp. And then sit, quite still, and think about it for a long time.

This December 2022 edition may be one of my favourites of all time. Because we here publish another great labour of love: a tribute to Sir Sydney Kentridge by Jeremy Gauntlett on the occasion of Sir Sydney's 100th birthday in November.

Sydney Kentridge is one of the greatest legal legends of our time; and to have – here exclusively on our pages – a beautifully written, meticulously researched reflection on his life and work is just such a treat. However, as I was reading and relishing I got troubled when I got to the bit about Sir Sydney's views on transformation in the judiciary and judicial selection.

What to do when one doesn't agree with Sir Sydney? I didn't like disagreeing with Sir Sydney. He is amazing. His cross examination exposed the brutal murder of Steve Bantu Biko to the world. And all the rest. I wanted to admire him in an uncomplicated way.

But then I went back to Arthur Chaskalson's example. Maybe we don't have to always be so sure. We can disagree and still admire and respect each other just as much – if we disagree with integrity (and even a bit of compassion). In that spirit, I went and read the full Sir David Williams Lecture on the selection of judges by Kentridge and I found that I disagreed much less than I thought.

It seems there is a lot of disagreement in the legal profession at the moment. I often fret about this: about what it will do to the independence of the profession, and so to the judiciary and so to the rule of law. But maybe it's okay, depending on how it's done.

Budlender said about Chaskalson: "Arthur took on important positions as a leader of the Bar. I was at first puzzled by this: the Bar seemed rather like a parody of an English public school, with some strange customs and practices. I couldn't see why he put so much time and energy into it. But Arthur saw the need for an independent legal profession. Much of the legal profession was cowed by those who held power, and was subservient to them. It was, frankly, a degrading spectacle. Much of the profession abandoned those of its members who were harassed, detained, banned or assassinated. Arthur worked to build the institution of an independent and fearless profession, which served the people and which served justice. He saw this as a foundation of the rule of law."

The Bar has always been a terrain of struggle, it seems. It has never been easy. My entreaty is that you – dear readers – disagree in a way that builds an independent profession.

I have focused on Ngcukaitobi and Gauntlett's pieces but that is also doing an injustice to the others. There is so much great stuff in this edition. Quentin du Plessis's piece on the Roe/Dobbs debate really gave me pause. I loved Justice Rogers' tribute to his colleague Justice Mabindla-Boqwana and John Pammenter's tribute to Justice Malcolm Wallis. Jean Meiring will make you laugh about your use and abuse of definitions. There is *Vintage Fly* – a 20 year anniversary special.

This is an edition to take home for the festive period and read at leisure, and think, and enjoy.

Last thing: Ahead of this edition, *Advocate's* editorial committee met for the first time in real life (instead of on Zoom) since the Covid-19 pandemic started. It was lovely to see everyone in person and exchange hand shakes, elbow-dabs and hugs. We met in Cape Town, hosted by Marilena Maddison in her chambers on Keerom Street. It was the first time seeing some committee members in person as they joined after the pandemic. We welcomed our new ex-officio member GCB chair Myron Dewrance SC. We had a proper send-off for Mark Euijen SC. Thanks to Christine for organising and to Marilena for hosting us. **A**

The editor contributes to *Advocate* as an autonomous author. The views she expresses are entirely her own, and do not purport to represent any view or position of *Advocate* or of the GCB.