

THE HISTORY OF WOMEN AT THE SUPREME COURT OF APPEAL

speech by Justice Caroline Nicholls, Supreme Court of Appeal, 25 May 2023

Justice Leonora van den Heever is the start of a great progression that we've had. She started off in 1991 as the 60th judge to be appointed to the Supreme Court of Appeal and the only woman.

As we sit today, there are 12 female judges appointed to this court, out of a compliment of 25. So, the progression has been quite remarkable and we pay tribute to these women.

For almost seven years after Justice Van den Heever's retirement, there was no woman judge appointed to the Supreme Court of Appeal – until the appointment of Justice Carole Lewis in 2003. She had served as an academic, editor and judge of the high court prior to her appointment to the Supreme Court of Appeal in 2003 until 2019. She is currently enjoying retirement in Cape Town.

We are privileged to hear Justice Lewis' experiences at the SCA in her own words. This is what she has written:

"I was the first woman judge appointed to the SCA in the democratic era. I first acted in 2002 and was appointed permanently with effect from January 2003. I was enormously honoured to have been asked to act by Judge Joos Hefer in mid 2001 but could not do so as I was in the middle of a part-heard trial. Coming into a strange city, Bloemfontein, where I had been only once previously and into an unfamiliar court was extremely daunting. The whole environment was strange and the work was difficult and then, of course, all my colleagues were men. All of them spoke Afrikaans, which, although I could understand, was hard for me to speak. I was quickly made aware that I was not welcomed by several colleagues. One of them told Joos Hefer that he would "never sit with that woman". He subsequently became a great friend and colleague after he had discovered that I did know some Roman Law and liked whiskey. One of the objections to me was that I hadn't come through the traditional route to the Court i.e. the Bar and the bench for a long period. I had sat in the high court in Johannesburg for only two years and had spent a term in Pretoria,

which was an amazing alien environment. Previously I had been an academic at Wits so I was regarded as a strange newcomer and many colleagues doubted my ability. I did however receive great support from Joos and several others, particularly Louis Harms and

fortunately my very good friend Edwin Cameron who had been appointed the previous year, and Robert Nugent and Mahomed Navsa who had been at the high court when I was there, they were there to extend friendship and company. I became used to the Court very quickly and found the work interesting and challenging. I found some of the traditions bizarre especially the fact that each judge was allocated a particular seat at the tea table. For years I sat between a man who ate a clove of garlic every single day and Joos, whose left ear was deaf. So conversation was difficult. Apart from that it was usually in Afrikaans. I started nagging about changing the rigid seating tradition early in my

tenure and eventually succeeded only to discover that people tend to gravitate to the same seat anyway. I was joined by other women in 2004, Belinda van Heerden, and then by Mandisa Maya. Male domination had come to an end. I spent 18 worthwhile and challenging years at the SCA. The latter years were more difficult though. Most of the colleagues who mentored me had retired and I felt increasingly isolated. The court had become a different place now. Judges were no longer grumpy old men. But I look on my first few years with nostalgia and great affection."

A year after the appointment of Justice Lewis, Justice Belinda van Heerden, from 2004 – 2013 was a judge of the SCA. Prior to her appointment, Justice Van Heerden served as an academic, attorney, and a judge of the Western Cape High Court. She now lives in Cape Town. We are fortunate that she also has sent us an account of her experiences at the SCA:

"I joined the Supreme Court of Appeal in August 2004 after acting in that court for a year. My acting stint



meant that by the time I became a permanent member of the court the other members of court were already well-known colleagues and in some cases close friends. At the time I joined the court, Justice Craig Howie was President and Justice Lex Mpati his deputy. I was fortunate to have their full support and also the support of all my colleagues, all male, except for Justice Carole Lewis. It was a challenge getting used to the modus operandi of an appeal court and I felt quite free to ask for help from other judges, which help was readily given. Of course, over the years during my tenure more women joined the court in addition to myself and Justice Carole Lewis. They were justices Mandisa Maya, Bess Nkabinde, Suretta Snyders, Nonkosi Mhlantla, Zukisa Tshiqi, Leona Theron, and Halima Salduka. It was wonderful to be able to draw on the insight and wisdom of fellow women judges and we all got on very well indeed. The experience of working together as women judges at an appeal level was novel and refreshing. The fact that all the women judges on the SCA were also members of the South African Chapter of the International Association of Women Judges gave us another shared sphere of interest and activity. The Supreme Court of Appeal is a very demanding working environment, the workload is punishing both during court terms and recesses, the volume of reading and preparation is enormous. In this regard I found it most gratifying in being able to draw from the experiences of other members of the bench and to work together so as to present a well-prepared front when discussing the relevant appeal. In most cases the collaboration and writing, discussing, and settling the judgment was collegial and often exciting. This is not to say that there were no disagreements or disputes. There were certainly disagreements from time to time and these were ended amicably. As we celebrate a 100 years of women in law in South Africa I am of view that the SCA has by and large provided an enabling environment for women judges in the court. The fact that there were only two women judges when I joined the court and seven more by the time that I left shows that women play an increasingly important role in the work of the court. There are those who including myself would argue that the pace of appointment of women judges to the SCA has been too slow but this does not detract in any way from the support given to women judges and the quality of such judges. The fact that a number of women judges appointed in my tenure have gone on to join the Constitutional Court shows the high esteem in which women judges of the SCA are held. My time at the SCA as a woman judge was most rewarding and I am proud to have been a member of that court”.

We then go on to Justice Maya, who is no stranger to us all. She was appointed two years after Justice Van Heerden’s appointment in 2006 and she is the current deputy chief justice of the country.

Prior to her appointment Justice Maya was a puisne judge in the Eastern Cape Division of the high court in Mthatha. She also held various positions in the South African judicial system, most notably as an academic and as an advocate. In 2015 she was appointed as the first women Deputy President of the SCA. In 2017 she became the first president of the court; and in 2022 she became the first women Deputy Chief Justice of the country a position that she still holds today.

The next appointment was Justice Mhlantla, who was appointed to the SCA in 2008, prior to that she was a judge in Gqeberha, and an attorney in Port Elizabeth. She was elevated to the Constitutional Court in 2016 and she currently serves in the Constitutional Court.

In 2009 two women were appointed to the SCA, Justices Tshiqi and Snyders. Justice Tshiqi was an attorney and judge in the Johannesburg High Court. In 2019 Justice Tshiqi was elevated to the Constitutional Court where she is currently serving. Justice Snyders joined in the SCA in 2009 and prior to her elevation to the SCA she was a judge of the Gauteng Division of the High Court in Johannesburg. Sadly, Justice Snyders passed away while still in office in 2014.

The next appointment of a woman judge was in 2010, and this was Justice Theron. In 2017 she was elevated to the Constitutional Court where she is still serving. Justice Saldulker was appointed to the Court in 2013, prior to her appointment she was a judge of the Gauteng Division, Johannesburg and where she had served as an advocate.

Our next female judge was Justice Dambuza who joined the SCA in 2015 where she is still serving. Prior to that she was an attorney and lecturer. She is currently serving as the acting deputy president of the SCA.

In 2016 Justice Mocumie joined the Court and is still in the SCA. In 2018 Justice Molemela joined the Court and she will soon take up the seat as Justice Maya’s successor.

We then get a flood of women being appointed.

In 2019, for the first time, three women judges were appointed to the SCA. Justice Mokgohloa is one of them and she still serves in the SCA. The next one was Justice Nicholls who is still at the SCA. The third was Justice Mbatha, also still a judge of the SCA.

In 2021, three more women judges were appointed to the SCA. Justice Carelse was one of them and still serves at the SCA. Justice Hughes was the second judge to be appointed and she still serves. Justice Mabindla-Boqwana was the third judge.

In 2022 two women judges were appointed. Justice Weiner was one, and the second was Justice Molefe; both are still judges of the SCA.

So, it is apparent that from a single judge being appointed here and there, women judges are now an unstoppable force and we will continue to be appointed to the SCA in large numbers. 