

MTK MOERANE SC

The most senior Black practising advocate in the RSA

by Nokukhanya Cele, Durban Bar

Cele sat down with Moerane SC after the veteran counsel delivered a speech at the KZN Bar dinner.

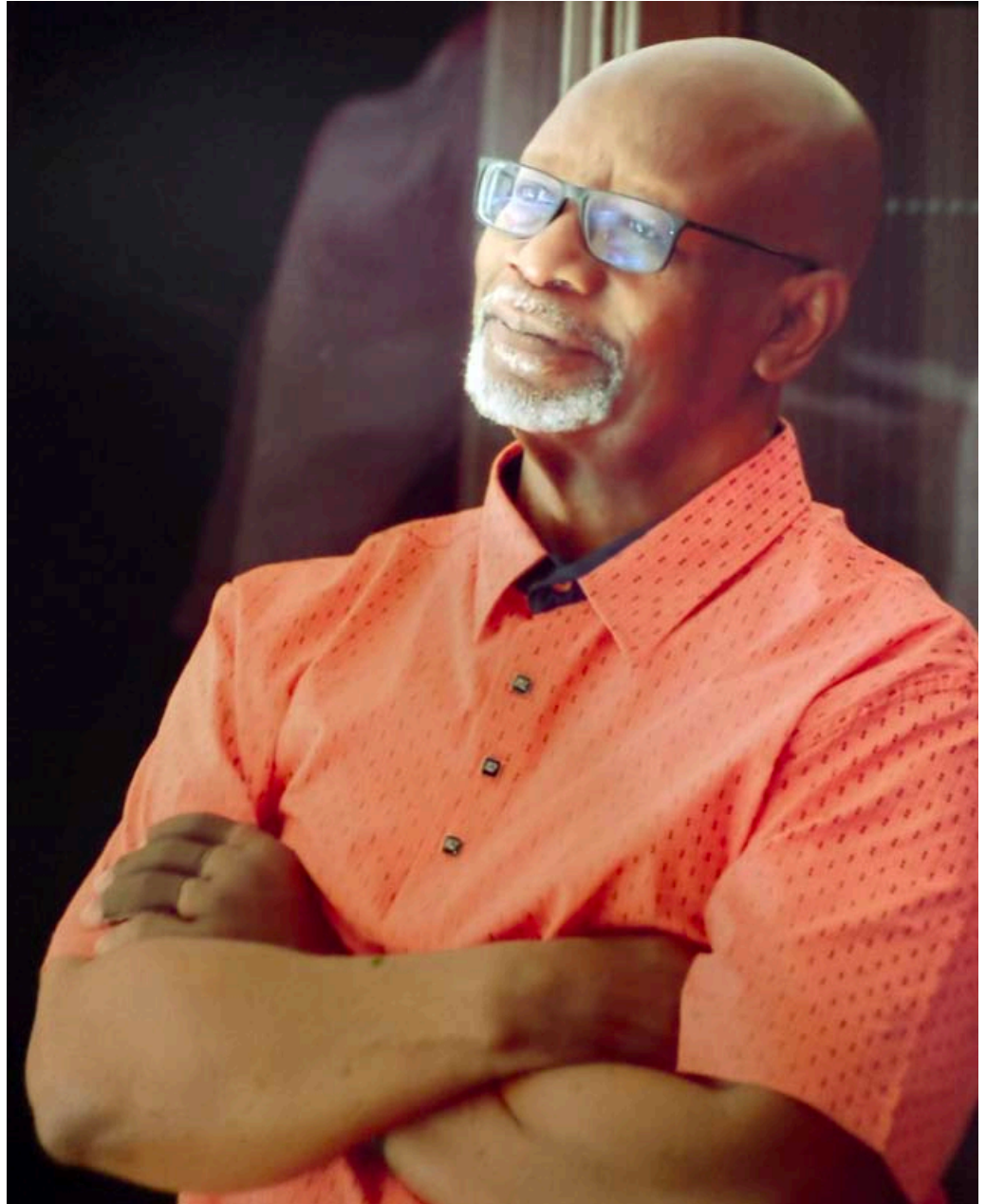
Appointed Senior Counsel on 20 January 1994, Marumo Tsatsi Khabele Moerane SC is the most senior Black (African, Coloured, Indian) practising advocate in the Republic of South Africa. Moerane is highly regarded as a doyen of the legal profession. His extraordinary career as an advocate and his contribution to the transformation of both the bench and the Bar post-apartheid, along with the role he has played in helping to build South Africa's constitutional democracy, have solidified him as one of the greats within the legal profession. Moerane's name is mentioned in the same breath as the likes

of former chief justices Ismail Mahomed, Pius Langa, Sandile Ngcobo, former Deputy Chief Justice Dikgang Moseneke, former Constitutional Court justices Thembile Skweyiya, Chris Jafta and Zak Yacoob, and current Constitutional Court justices Mbuyiseli Madlanga, Leona Theron and Steven Majiedt, former judges president Bernard Ngoepe and Vuka Tshabalala, former justice Ntsikelelo Poswa, the late attorneys Griffiths Mxenge, Archie Gumede and Kwenza Mlaba, and other such individuals, all of whom he has known personally and practised with, and some of whom he mentored during the course of his illustrious career.

It would be an injustice if I did not give a brief synopsis of Moerane's career. In 1958, he completed the Joint Matriculation

Board examination from Inkamana High School in Vryheid, KwaZulu-Natal with a first-class pass. Moerane's first academic qualification was a BSc from Rhodes (University of Fort Hare) majoring in physics and chemistry. He then obtained a BCom degree from the University of Natal and finally pursued his childhood dream by obtaining an LLB degree from the University of Natal. After serving articles of clerkship with Mr R.A.V. Ngcobo, Moerane was admitted as an attorney in 1972 and practised as such for more than five years before heeding the call to the Bar. Moerane was admitted as an advocate of the Supreme Court of South Africa (as it was then called) on 3 January 1978 and commenced practice in April of that year. He built up an extensive human rights litigation practice from 1978 to 1994 representing, among others, persons involved in the struggle against apartheid throughout the country, but mostly along the length and breadth of the Eastern Cape.

Moerane has participated in literally thousands of cases and continues to appear regularly in various high courts, the Supreme Court of Appeal and the Constitutional Court. Many of the cases he participated in are reported in the South African Law Reports, Butterworths Constitutional Law Reports and other law reports. Some of the cases on which he has worked are regularly cited in court judgments and during argument by colleagues. He and others represented the Constitutional Assembly before the Constitutional Court when an application was made during July and October 1996 to have the Final Constitution of the Republic of South Africa certified. He successfully led the government's legal team in the case brought against the government by 39 pharmaceutical companies relating to the importation of cheaper generic substitutes of medicines (1998–2001); he successfully represented the National Director of Public Prosecutions, Mr Bulelani Ngcuka before the Hefer Commission into "spy allegations" in 2003 and also represented President Mbeki and members of the Cabinet Sub-Committee in the Arms Procurement "Seriti" Commission into the Special Defences Packages (2014–2015), just to name a few of his high profile matters. For 10 years he was deputy chairperson of the specialist Competition Tribunal of South Africa and has on



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several occasions acted as a judge in the high and labour courts.

The year 2024 marks the 30th commemoration of South Africa's democratic dispensation and 30 years of Moerane as a Silk. I was honoured and privileged to have had the opportunity to sit down with Moerane and discuss how the judiciary and the Bar have been transformed since the ushering in of democracy. As stated, he was part of the legal team that represented the Constitutional Assembly in the application to



He recounted the struggle experienced by Vuka Tshabalala (who later became the judge president of the KwaZulu-Natal Division) when he started practising as an advocate in 1969. Vuka, as Moerane referred to him, was not permitted to commence his pupillage with the late Philip Meskin (as he then was) at the then Natal Bar because it would have been a violation of the Group Areas Act. White persons who would be consulting with Meskin would be embarrassed and uncomfortable to have an African sitting in on the consultation. Moerane shared this story during his speech at the 2024 KZN Bar dinner, which touched many of the young advocates who were in attendance and who were unaware of such atrocities against aspirant African advocates in the past. Moerane went on to say that many Black advocates fell victim to apartheid policies when attempting to apply for membership of the Bar. They included Fikile Bam (who later became president of the Land Claims Court), Dikgang Moseneke (who ended up as Deputy Chief Justice of South Africa), Duma Nokwe and Ismail Mahomed (who became Deputy President of the Constitutional Court and later Chief Justice of South Africa). Due to the rejection experienced by others, Thembile Skweyiya (who later became a judge of the Constitutional Court) did not bother to apply for pupillage and commenced practice from CNR House, which was in the Durban Central Indian Group Area. The number of Black advocates in practice in South Africa at the time was small and dismal.

certify the Constitution. The Constitution, as certified, changed our country's legal system in a fundamental way, by declaring its supremacy and rendering any law or conduct inconsistent with it invalid. It also entrenched certain rights in a justiciable Bill of Rights.

Moerane began our conversation by painting a picture of what it was like to practise as a Black (African) advocate in the 70's and 80's. He explained how apartheid measures, such as the Natives (Urban Areas) Consolidation Act 25 of 1945, limited the movement and residence of Africans in urban areas (the so-called influx control laws); the Natives (Abolition of Passes and Co-ordination of Documents) Act 67 of 1952 obliged Africans to carry a pass at all times and places and made it a criminal offence not to do so, and, specifically, the Group Areas Act 36 of 1966, prohibited Africans from owning or occupying land and buildings in urban areas. The last-mentioned Act precluded African members of the Bar from taking up chambers in the same buildings as their white counterparts.

An influx of African advocates to the Bar took place in 1977 when the Natal Bar obtained a blanket permit allowing African advocates to occupy chambers in white areas. Moerane said that notwithstanding that they were now occupying chambers in the same building as their white counterparts, Black advocates refused to participate in the governance structures of the provincial Bars or the GCB or to even accept acting judicial appointments. They refused to take part in the application and administration of apartheid laws. It was only once the liberation movements were unbanned, their incarcerated members and leaders released from prison and freedom fighters returned to South Africa, that Black advocates felt it appropriate to participate in the governance structures of the Bar. It was also felt by then that the process to repeal apartheid laws and discontinue apartheid policies and practices was now irreversible. It was at this time that Moerane had his first stint as a junior bar council representative of more than five years in 1992. After serving several terms on the Natal Bar Council, Moerane was twice elected chairperson of the KZN Bar between 2010 and 2012.

Moerane understood that for Black advocates to make effective and meaningful contributions to the governance structures of the Bar, corrective measures had to be implemented to achieve real and substantive equality. It is for this reason that he had earlier joined organisations such as Advocates for Transformation (AFT), the National Association of Democratic Lawyers and the Black Lawyers Association. Moerane expressed his approval of the way in which the Bar has been transformed, especially in KwaZulu-Natal, his home province. He considers the KZN Bar to be the most transformed bar, particularly by consistently upholding the 50/50 convention for almost 30 years, namely, the rotation of leadership within the KZN Bar Council between AFT and non-AFT members every two years. The KZN Bar's 50/50 convention has proven to be progressive. It has not only increased the number of Black female members but has also led to the appointment of the first female chair of the KZN Bar and a majority of women on the 2022/2023 KZN Bar Council.

Moerane also enjoyed a front-row seat in the transformation of the judiciary. He was a member of the Judicial Service Commission (JSC), the engine for transformation, from its inception in 1994 in terms of the Interim Constitution of 1993 and the 1996 Constitution. Moerane served on the JSC for a period of 16 years as one of the representatives of the advocates' profession. During his time on the JSC, several excellent appointments were made to the judiciary in a relatively short period of its existence. These appointments enriched the constitutional jurisprudence of South Africa. I encourage members to read Moerane's article published in the South African Law Journal under citation (2003) 120 SALJ 708, which is titled "*The Meaning of Transformation of the Judiciary in the New South African Context*". Moerane read this paper at the National Judges' Symposium held in 2003. It is interesting to know that these conferences are seldom held and only three national judges symposia have taken place in the history of South Africa, the first in 1931, the second in 2003 when Moerane addressed the judiciary and, more recently, in 2023. This article gives great insight as to what is meant by transformation of the judiciary. The injunction in Section 174(2) of the Constitution to transform the judiciary has truly been fulfilled. Moerane is very proud to appear before the many presiding officers of whose appointment he has been a part, some of whom he has mentored and led in practice. The face of the bench now more than ever broadly reflects the demographics of South Africa.

During his time as a visiting scholar at the Columbia University School of Law in New York between 1995 to 1998, Moerane lectured in a seminar with Professor Jack Greenberg on the post-apartheid Constitution of South Africa. Internationally, he has represented South Africa in seminars and lectures and locally he has dedicated his life to upholding the principles of constitutionality even before the Constitution as we know it was enacted in this country.



Those who have interacted with Moerane can attest to his impeccable manners in and out of court. He is truly the classic gentleman, neat, poised with a welcoming demeanour. His charming smile and youthful appearance cause many to ask him countless times "What is your secret to youth?" to which he just smiles. I have often thought to myself, why does Moerane look so good for his age after being in practice for over 50 years? From my observation, I believe Moerane truly loves the law. He is a walking institutional library and leader. Mentally, he is resilient enough to let go of losses and humble enough to take the praise he constantly receives with a quiet and self-assured grace. He has balanced his work, family life and self-care perfectly. He intentionally sculpted his career for his own benefit and not for what others expect of him. I believe that when you do something in your own unique way, you pave a path that brings peace, happiness and fulfilment. That is why Moerane has that signature smile, he is truly happy. In the advocates' profession, Moerane is a treasure. He is proof that Black excellence exists, and can withstand the test of time to thrive. From my own experience as his junior and from his general reputation at the Bar, he is universally respected by the judiciary countrywide.

In introducing him at the above-mentioned KZN Bar dinner, Griffiths Madonsela SC said "Marumo Moerane SC is to Black advocates what Douglas Shaw QC is to non-AFT members" – a trail-blazing legal mind that paved the way for Black advocates to be recognised for their talents and litigation skills. **A**