



Leo van den Heever, an unassuming pioneer

by JUSTICE JOHANN KRIEGLER

Readers of this magazine might have noticed one or other of the flurry of tributes published upon the death, last November, of Judge Leonora van den Heever at the age of 99. The number, breadth and particularly the tenor of these laudatory utterances were remarkable. Fulsome statements on behalf of the legal profession and all three branches of government vied with one another in singing her praises and enumerating her outstanding personal attributes and professional qualities. Undoubtedly the accolades and adulatory eulogies were sincerely meant. Judge van den Heever was indeed a remarkable

person and her role in the legal world was unique – the first woman to achieve senior status as an advocate, the first woman to be appointed a judge and the first woman to be elevated to the highest court in the land. She broke the glass ceiling.

But I believe that Leo (as she was universally called), the habitually businesslike judge that I came to admire as a colleague and value as a friend when we served in the Appellate Division in the early 1990s, would tell me not to go overboard and take up readers' time by trying to match these eminent commentators: no florid encomiums, no superlatives, just the facts. Interpreted



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thus, my brief is to share with present-day colleagues relevant information about a remarkable person and her role in the administration of justice. This I base mainly on my personal observations and recollections of a most unusual individual who practised our craft and graced our profession in an all-but-forgotten era, in many respects a different world.

It is an ostensibly uneventful story, devoid of drama, tragedy or intrigue, yet quietly all the more inspiring – primarily for women in the law but actually also for all concerned with the human condition. It is the tale of a daughter who adored and revered her famous father¹ and strove her life long to emulate him – the tale of why and how she arguably came to outshine him, not as a jurist but as a pioneer.

In 1952 young Leo, with a master’s degree in languages and a brand-new UOFS “night-school” LLB behind her name, joined the Bar in Bloemfontein, her home town. It was a very special institution that I could never quite place: though tiny and ostensibly quite undistinguished, set in a one-horse town, it consistently turned out advocates who seemed to punch well above their weight. Probably because of their propinquity to the Appellate Division, the Hendrik van Heerdens, Joos Hefers, Mark Kumlebens and the like got pulled into juicy appeals and blossomed as advocates.

It was in this close-knit professional fellowship that Leo put

up her shingle, learned the ropes and burnished the skills of her profession for close on 20 years. Though she later characteristically tended to make light of the gender-based hurdles she faced, wryly remarking that her biggest challenge was to devise suitably feminised court garb for a female junior advocate, it is clear she had to break into a notoriously conservative and male-oriented profession functioning in a traditionally paternalistic community. She did, however, on one occasion let slip that she did not share in the pool of “easy money briefs”² and kept the pot boiling on *pro deo* defences (for a relative pittance) relieved by the occasional paid brief, some even in the AD. With her first bit of money she bought a copy of *Wigmore* (wisely foreseeing the crucial role of the law of evidence in litigation). She built a largely courtroom practice – no fireworks, no front page of the *Sunday Times* dramas, no ground-breaking AD cases, just the painstaking application of increasing knowledge of the law and deepening experience of people and their forensic foibles.

While her being a woman was initially seen by many in the profession as a hindrance, with time Leo became to all intents and purposes just another junior advocate building a practice. But then uncomfortably soon she married, and by prevailing norms had to accompany her husband when he was transferred to Welkom, some 150 km from Bloemfontein. The move could – and by normal standards would – have meant the end of her career. But Leo, being Leo, boldly set up shop in Welkom (with the consent of her bar) and practised from her home for some years, at the same time managing to produce and raise three little girls in quick succession.³

Though this must have been a most harrowing spell, Leo, when asked about it years later, put a positive gloss on it, saying that Welkom, at that time the hub of the rapidly developing Free State Goldfields, offered an interesting range of both civil and criminal work in the magistrates’ courts. Somehow, she contrived to present her potentially disastrous professional exile rather as a serendipitous windfall.

Indeed it is difficult at this point not to transgress her own rule against superlatives. The picture of Leo, effectively a single mother, running a household with three small children, two of them probably overlapping in nappies for several years, while maintaining an active advocate’s practice in a variety of magistrates’ courts and a High Court nearly a hundred miles away, truly boggles the mind. Yet she made nothing of it – actually making fun of being able to disguise her advanced pregnancies under her advocate’s gown.

I pause to remark that the Welkom interlude (lasting some six years), and more specifically our protagonist’s dismissive attitude towards it, serve to demonstrate and underscore why Leo van den Heever is such an inspiring example to all who face ostensibly insurmountable obstacles. It is not that she was brilliant, or that she was lucky. It was, as she herself said many years later, copying Gary Player, a matter of “The harder I work, the luckier I get”.

In retrospect she also brushed over her crucial decision to apply for silk (theretofore unheard of for a woman), as a reflex reaction to a senior colleague’s remark to the effect that, because she was a married woman, her practice was actually a hobby. No doubt the thoughtless insult cut her to the quick, but taking a career-threatening plunge was hardly a self-evident response. Yet the decision was a masterstroke, kicking open any remaining



Toon van der Heever, Leo, Eugène and Max.

professional doors and, hardly fortuitously, galvanising the minister of justice into an “experiment”, as he put it, with a woman on the bench.⁴ A brief acting stint in the Free State was followed by a permanent appointment in Kimberley in 1969, then a transfer to the Western Cape and – ultimately – in Leo emulating her father in 1991 with an appointment to the Appellate Division.

When she and I were juniors, the Bar as a whole was infinitely smaller than today, as was the bench,⁵ and to a substantial degree the advocates’ profession was a closed and relatively inbred society, its members keeping tabs on one another and, of course, freely engaging in gossip. Accordingly, although I cannot fix when our paths first crossed, but long before we actually met professionally, I knew of Leo van den Heever, the woman reputed to be a typical product of the Bloemfontein Bar: a sound lawyer, tough and well-prepared, a formidable opponent, combative but sensible and personable, scrupulously honest and direct to a fault – withal the compleat trial advocate.

It was therefore certainly no surprise when we heard she had taken silk and even less of a surprise when her appointment to the bench was announced. One followed her path thereafter via the Law Reports,⁶ first the usual flurry of criminal appeal and review judgments (in 1969 (3) and (4) of the SALR) with the novice flying in tandem with the JP or substitute, and then a steady stream of judgments in the NCD and the CPD reports. Occasionally one could see that Judge van den Heever had gone to special lengths to produce an elegant product, at times it was more workmanlike, but always evidencing her facility with language and gift for apt expression.⁷ A Leo judgment is generally a model of what a judgment should be. The reader knows quickly and clearly who were involved, what was in issue, what the conflicting factual and legal contentions were, exactly what the judge’s reasoning was – and ultimately what the result is.

Having worked with her at the appellate level, I can vouch that she was a profound lawyer, especially fluent in Latin and familiar with the old authorities, quick, clear-thinking and independent-minded, at times even a touch stubborn, yet genuinely prepared to be persuaded. Importantly, she had a feel for the law and a real understanding of its role in society.

As to her qualities as a judge of first instance, one can look to her extensive body of judgments: literate, sometimes entertaining and with an occasional touch of wit. She obviously

took trouble to write well⁸ and her judgments often make enjoyable reading.

Senior members of the Cape Bar tell me that in court Leo was down-to-earth, direct and keen to get to the nub of things. Patient with witnesses although on occasion brusque with counsel, she brooked no nonsense and ran an efficient and productive court. She was meticulous in reviews and appeals and her keen sense of justice was evidenced by a sharp eye for injustice in the lower courts and a general leaning in favour of the disadvantaged. She played a leading role when the Divorce Act of 1979 introduced an entirely new regime and I believe she concentrated on matrimonial work when she returned to the provincial court for a brief spell upon her retirement in 1996.

What I have been told I readily accept, as it corresponds with the Leo van den Heever whom I came to know in Bloemfontein. Our first encounter was not exactly propitious: she politely ejected me, at the time a mere AJA, from my pokey little office at the back of the court building when she arrived. But we soon became good friends and I found her a breath of fresh air, irreverent, witty and good company. More



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Toon van der Heever with Leo, Eugène, Max and daschund Wolman.

to the point, we came to know and understand one another as judges. We were soon thrown together in several cases, two of which produced leading judgments that she and I respectively penned.⁹ But little need be said about Leo van den Heever the appellate judge. Her judgments speak for themselves.

Of course by the time Leo was elevated to the AD any particular personal, social or other factors distinguishing women from men were becoming professionally irrelevant. Leo herself was – and had universally come to be seen purely and simply as – a judge, a judge like any judge, a judge whose professional strengths and weaknesses could be assessed without reference to gender. If at any stage there had been a belief that she suffered some inherent weakness peculiar to women or, conversely, that she had certain inborn abilities, insights or perspectives because she was a woman, no-one was still aware of it.

But of one thing Leo was proud and would want me to declare: In an era when women were disparaged, in a world where the legal profession was all but closed, she proved that a woman, an ordinary woman who was prepared to put in the hard miles, was at least as good as a man. She could compete and not merely survive but flourish – and come out on top. Leo van den Heever, as I can testify, proved an eye-opener to many a practitioner, not only to the old dinosaurs and a fair sweep of conservative advocates and attorneys but, much more importantly, to the many young women who saw her as a guiding spirit. To them she was a living icon, an icon proving that although women had to try twice as hard, indeed ironically precisely for that reason, they could one day aspire to the highest ranks in the administration of justice.

She took the lead when the going was hard. **A**

Notes

- 1 He was F.P. "Toon" van den Heever, famed Afrikaans poet and renowned jurist, who at the very time that Leo joined the Bloemfontein Bar participated in the politically highly contentious and historic Appellate Division judgment in *Harris and Others v Minister of the Interior and Another* 1952 (2) SA 428 (A) knocking back the apartheid government's attempt to disenfranchise "Coloured" voters in the Cape Province and heralding a period of unspoken and nuanced tension between the government and the AD Bench.
- 2 Formal unopposed motion court work, e.g. applications for discovery orders or simple default judgments, or postponements and simple final return days in divorce cases.
- 3 Though Leo's marriage falls outside the ambit of this piece, it should be mentioned that it was on the face of it a perfectly "normal" and successful middle-class Afrikaner union. Husband Chris was an ordinary salaried employee (never reduced to consort status) whose job for many years kept him on the road weekdays, so Leo had to perform her parental-professional juggling act substantially solo.
- 4 And she remained the only woman on the Bench for many years, until Jeanette Traverso's appointment in 1994.
- 5 I would guess that today there are twice as many advocates at the Johannesburg Bar alone than there were in the whole of the country when I started practice in the late 1950s. When Leo and I joined the AD in 1991 there were some 160 permanent judges in the country, 18 of them in the AD.
- 6 Her name appears in the Law Reports over four decades, from 1969 (3) in the Northern Cape Division to 1998 (3) in the Western Cape, and in five jurisdictions from the Free State, via the Northern Cape and Western Cape to the Bophuthatswana Appeal Court and the Appellate Division.
- 7 For instance in *N Goodwin Design (Pty) Ltd v Moscak* 1992 (1) SA 154 (CPD) at 158D: "... Mr Goodwin who, incapable of answering a question with a mere 'yes' or 'no', has a predilection for pretentious polysyllables. The Mosca's perhaps talked too little ..." or at 160C: "The inspection *in loco* revealed that 'The Bistro' is somewhat like a Mona Lisa who cannot afford to smile broadly because some of her teeth are bad. The general impression is good, but detail sometimes shoddy."
- 8 Few people are aware and Leo made little of the fact that she also wrote a number of beloved children's books.
- 9 *Johnson v Beckett and Another* 1992 (1) SA 762 (A) and *Administrator, Cape v Raats Röntgen & Vermeulen (Pty) Ltd* 1992 (1) SA 245 (A).