

**The Formal Court Sitting to Mark the Departure
of Deputy Chief Justice Dikgang Moseneke
from the Constitutional Court of South Africa
Friday, 20 May 2016**

Chief Justice, former President Thabo Mbeki and Mrs Mbeki; former President Kgalema Motlanthe and Mrs Motlanthe, President and Deputy President of the Supreme Court of Appeal. Justices of the Constitutional Court – both currently sitting and retired. Judges President, Heads of Courts and Judges of all our courts, the Chairperson of the National Council of Provinces, Deputy Minister of Justice and Constitutional Development, leaders of political parties and of social movements, all formations within the legal fraternity, Deans of Law Schools, members of my family, and in particular my wife, Kabo Moseneke and my mother, Karabo Moseneke. Allow me also to welcome all patriots, compatriots and citizens of our land and friends who have cared to come and observe this moment with us.

I will cease to hold office as a Deputy Chief Justice of the Republic and retire from the Constitutional Court of South Africa at midnight today, 20 May 2016.

I have had the distinct privilege of serving the judicial bench for 15 years; of which no less than a continuous period of 14 years I served in the Highest Court of the Republic.

A formal ceremony, such as the present, is by now well etched in our judicial convention. The Judiciary knows no better way of celebrating and sending off one of its own than in the very forum in which it dispenses justice. It is a time honoured tradition that on an occasion as the present, fellow colleagues who

hold judicial office would robe and so would counsel and be in attendance as a mark of homage to the departing Justice.

And that explains, in part, why this morning commenced with an actual court sitting in which I had the honour of delivering my last judgment ever in this Court. It is a symbolic way of a final salute or, if you want to change the imagery, it is a moment to discard one's judicial robes and gavel.

In a formal farewell, like the present, representatives of the Bar would appear in formal robes. I thank the representative of the General Council of the Bar, Adv Jeremy Muller SC and Adv Dumisa Ntsebeza SC from Advocates for Transformation, who delivered tributes on behalf of the advocates of our country. I am grateful to attorneys Mvuzo Notyesi, President of the National Association of Democratic Lawyers and co-chairperson of the Law Society of South Africa and Lutendo Sigogo, President of the Black Lawyers Association, who are here to represent attorneys of the entire Republic. I am also grateful to receive Adv Andrew Chauke, Director of the National Prosecuting Authority, Gauteng Local Division.

In deep recognition, that in our part of constitutional arrangement, the Judiciary is an arm of the State, a formal ceremony such as the present, will be hardly complete without high representatives and leaders of our Legislative and Executive arms of the State. I am humbled and delighted by the tribute of Honourable Chairperson of the National Council of Provinces, Ms Thandi Modise MP – *re a leboga Mma*.

We are equally pleased to receive the Honourable Deputy Minister of Justice and Constitutional Development, Mr John Jeffrey MP, representing the Executive arm of the State.

I am thankful and honoured by the presence of formations in the legal profession and these include the General Council of the Bar, Advocates for Transformation, the Law Society of South Africa, Black Lawyers Association and the National Association of Democratic Lawyers. I thank public interest law entities, which include the Aids Law Project, the South African Institute for Advanced Constitutional and Public Law, Human Rights and International Law, the Centre for Human Rights, the Legal Resources Centre and the National Movement of Rural Women.

I ask to make special mention of Deans of Law Schools. Legal education for our young people and indeed for sitting judges and magistrates is my passion. I have found time throughout my term to lecture at law schools both at home and abroad. Equally, I thank leaders of Chapter 9 and other institutions which are charged with the protection and advancement of our constitutional democracy. These include the Human Rights Commission, the Public Protector and the Independent Electoral Commission. We have also in our midst many attorneys, advocates, social activists, members of the public who have kindly agreed to join us and grace this occasion. I am deeply appreciative.

I have talked a little about my life story last night at a dinner held by the Chief Justice in my honour. I will avoid doing so again. Mine is a long tale. I have written it up in a memoir. The tale meanders from the dusty streets of Atteridgeville through to my secondary tuition and my untimely residence on Robben Island. Then, I had no idea that my perilous experiences were to set me up for a life of remarkable fulfilment. The pain and adversity in my childhood prepared me for a life-long commitment to conduct that will bring true and full liberation of our land and all its remarkable people. The sojourn on Robben Island set me on a course of constantly asking: what are the features of a good society?

Out of all that emerged two cardinal lessons. First, you cannot merely dream about your revolutionary ideals. You have to take real and concrete steps to pursue legitimate ideals. The second lesson was that I was my own liberator. A line copied from the inimitable revolutionary thinkers like Anton Muziwakhe Lembede and Robert Mangaliso Sobukwe. They must in turn have copied it from Amílcar Cabral. These thinkers in essence were urging young people like me to pursue: *inkululeko nge xesha lethu* – freedom in our life time.

This to me was the ultimate statement of personal and collective agency. We have to identify worthy causes which might change our lot and the world. Immediately thereafter we must ask the question that Lenin famously posed, what is to be done? And then we must get up and do things. Things that will move us closer to our idealised collective condition.

So I knew when I came out of Robben Island that I had to make a choice either to go into exile or to remain a combatant in the domestic struggle. I chose to do things the way I know best. To become a lawyer of remarkable excellence, of unfailing integrity and of commitment to the broader struggle of our people in all their kinds, shapes and colours for an equal and just society.

To that end, I wanted to become an attorney even if I was a convicted terrorist. I did everything to achieve that. I litigated against the Law Society to let me in. I went onto the Bar Council which had a race clause that excluded black people. There too I kicked the door open. I was very determined to become a spokesperson for our people in difficult times in our troubled past.

I defended every activist you care to remember. I searched and found uMkhonto we Sizwe cadres in solitary confinement. I saved a number of the Azanian People's Liberation Army combatants from further hangings. I have appeared in trials of Azanian National Liberation Army fighters. I had the

privilege of defending Dr Fabian Ribeiro, Titus Mafolo, Smangaliso Mkhathshwa, Winnie Madikizela-Mandela, Jan Shoba, Clement Zulu, Achmad Cassiem, Nkosinathi Nhleko, Ingoapele Madingoane, Zwelakhe Sisulu, Thami Mazwai, Mathatha Tsedu, Ronnie Mamoepa, Nkosinathi Nhleko, Don Nkadimeng and scores of other activists as well as numerous trade union formations.

I had the blessing of a vast, varied and progressive law practice that was well aligned with my personal and collective mantra that I was my own liberator and that our people are their own liberators.

Before I knew it, I was a senior counsel with only ten years of practice at the Bar after five years of practice as an attorney.

Before the democratic transition had gained traction I made a conscious choice not to be a politician but to remain a freedom fighter and a revolutionary. That I thought I could best achieve by resigning from all political formations and by concentrating on being a full time legal practitioner. Aside a little digression into business, I concentrated on becoming as good a lawyer and later a judge as I could be.

It was Arthur Chaskalson who pestered me to come to the bench. But even more emphatic was the President of the time, Mr Thabo Mbeki who in his characteristic way said: “Chief, you are one of the leaders of our people”. Utatu’Nelson Mandela was a little more blunt. I suspect he was set on me by the Chief Justice and the President of the Republic. He said: “Dikgang, your people need you”. I relented and became a judge. Fifteen years later here am I, deeply thankful to all who urged me on to assume this onerous responsibility.

As my mother often says, *di tshegofatso tsa Modimo ga dina tekanyetso* – the blessings of the Lord know no limit. The first of the blessings was near perfect

health. This allowed me energy to no end. In the 15 years of service, I have never taken sick leave and the only time when I was away from work for a week was when my beloved son, Bo succumbed. So that lifetime dedication of hard work I brought to my judicial obligations.

The second blessing was the love I have and continue to have for our people. They are entitled to live in a just and socially inclusive society where their dignity and self worth is intact and well cherished. They must access quality education, universal health care, water and sanitation, a place that they can call home, an environment that is well preserved and in all this, the space to simply be human. That explains why at my 60th birthday, I made the point and I make it again: it is not what the ruling party wants, it is not what any other political party wants, it is what is good for our people. That is what makes me wake up in the morning and be a good Justice of this Court as all my faculties permitted me.

What a privilege it was to serve you all and I am thankful for that. I had the space to work, to think and to write to my heart's content. I have had the pleasure of writing on virtually every big political, social and commercial disputes in our land. I have had the joy of going to law schools in this land and in other lands only to find extensive passages of what I have written taught to young lawyers at law schools. I have been blessed with remarkable colleagues who made judicial collegiality appear natural and inbred.

As I end, going back to where I started, I am my own liberator. Our people are their own liberators. In the last instance, the people are the bed rock of our democracy. It is they who matter and we as institutions that wield public power, like courts, are in their service.

Lastly, let me turn to my family. None of my fascinating legal and judicial journey of 40 years would have been possible without my mother and father

(may his soul rest in peace). And none of it would have been possible without my sibling brothers and sisters. In all of these travails I had the sheer warmth of a big robust family which was there throughout and it is here today and will be there towards my last days. That is the magic of a loving, cohesive and supportive family.

Chief Justice, it was a wonderful experience to work with you and I hope that I provided a joint and supportive leadership to our Judiciary. I said last night that despite our past uncomfortable encounter, we have found each other. We have made common cause on a principled and honest footing. We share the love for our people and their right to be well as it is our duty to serve them. I say without any fear of contradiction, that your integrity is beyond question. Your fervour to defend and protect the gains of our hard won struggle for liberation, freedom and democracy is unsurpassed. Each time there were storms that swelled around our institution, you stood firmly. You never flinched from making unpopular decisions provided that they were consistent with your honest and rigorous judicial judgment. But sadly, much turbulence lies ahead. But that is what good pilots learn to live with. You are a safe pair of hands and I wish you well as I make my last salute.

I always understood that everybody exercising public power had to do so within the constraints of the law. I knew well that uncomfortable as it often was, Executive and Legislative and indeed corporate and business excesses had to be curbed. I truly hope that I was faithful to my oath of office. I pray that I kept its highest standards and tradition of judicial excellence.

To my remaining colleagues in this Court and all of our Judiciary, I urge you to remain on this hallowed bench not unaware of what a privilege it is. You must recognise that that we are standing on the shoulders of giants. You must promise that you shall remain true and faithful to all that you have been, as a colleague. You must promise to defend fearlessly the independence of the

Judiciary, the rule of law and the full realisation of the basic rights that our Constitution affords to each one of our people. You will be very much part of the transformation enterprise and the democratic project to make our country reflect the text and living spirit of our Constitution.

Fidelity to our oath of office is important, not because we are important but because without it, it is not us, but our people who will suffer. By our people, I mean the full diversity, poor and rich, white and black, female and male, urban and rural, the marginalised and the powerful all deserve our unwavering protection, which our Constitution demands us to provide. After all, you are the ultimate guardians of our Constitution for and on behalf of our people.

May God bless Africa. May God bless her people. May God give us, leaders the wisdom and the care that we need to deliver our people and may all of us be granted the wisdom to know that each is his or her own liberator and may find the space to make a real difference. A space which my nation favoured me to have, love, cherish and use.

God bless.

Dikgang Moseneke

20 May 2016