



Tribute to Justice Thembile Skweyiya
Chief Justice Mogoeng
6 May 2014
Constitutional Court of South Africa

This is the special session of the Constitutional Court, to mark the retirement of our Colleague and Brother, Justice Thembile Skweyiya.

When a person retires like Justice Skweyiya, I am always constrained to reflect on the impact his or her career path has had on the lives of others. And that is what I have decided to do.

Multitudes already knew who “Luwi” Skweyiya was when I enrolled for the Bachelor of Law(B.Juris) degree in 1981. Bhuti, as I affectionately and respectfully call and address him, was the most senior African Advocate in South Africa that time until he accepted appointment to the High Court Bench.

I stand to be corrected, but I seem to recall that he was the first African Advocate to be awarded the SILK STATUS in South Africa.

As I a young, African law student who knew how difficult it was for a black person to acquire a law degree, I drew a lot of inspiration from the very fact that Bhuti was a lawyer, and especially that he appeared in the Supreme Court and was thus permitted to engage in serious intellectual unrelenting matches with his white counterparts before the Judges. It was a big deal to be an Advocate back then. Such a big deal it was, that one of the debates which used to occupy my friends and I were the legal stream that we were going to follow upon completion. I recall Justice Zondo used to say he was going to be an attorney and later “ummeli wa se majajeni” meaning the lawyer who appears before Judges. Those days only an Advocate could appear before a Judge. Advocate Ishmael Semanya SC used to say, “I am going to be an Advocate, and not only an Advocate but an SC”. The name “Lewis” Skweyiya ranked very high on the list of African lawyers who silently but effectively motivated us to soldier on, knowing that just as they made it, so will we.

Bhuti, was one of those African pioneers in the Advocates Profession like Duma Nokwe. Pioneers because, only a limited number of African law students were allowed to pass per semester. So difficult it was that come graduation time, for example very few out of many would graduate. For example of the 180 law students that Justice Zondo and I started with, only about 11 graduated record time. Pupillage was also reportedly very difficult to pass then. I was shocked to learn years later that it was government policy devised by

the Broedersbond to predetermine the number of black people who would make it in certain disciplines such as engineering, economics, accounting and law. And the Deans, most of whom were members, carried out this mandate dutifully.

So Justice Skweyiya did break new grounds and gave a reason to the likes of me, to believe that if a fellow human being from an underprivileged background could defy the barriers of exclusivity and rise to become an Advocate, so could we.

I recall, and I shared this incident with Justice Skweyiya sometime last year, I think it was, that when I was a student at the University of Natal, one student alerted us to his presence in our library. We peeped at him from afar, just to come to terms with the reality of a black man being an Advocate in South Africa back then. The resolve to pass and to become Advocates or Attorneys was strengthened by the mere fact that he was a lawyer and black like us. It meant that the odds could be defined.

This nation is grateful to you for the role model that you have been to many, as a lawyer and as a Judge. We are equally indebted to your dear wife, children and grandchildren for having released you to serve humanity over the years, even when you had some health challenges.

I ultimately had the privilege to see you at close range in Mahikeng, during the years of the famous Skweyiya Commission. Little did I know, that come October 2009, you and I would be colleagues at the highest court in the land.

You have no idea how humbled I was to have the privilege to recommend you for appointment by the President, as the Acting Deputy Chief Justice of the Republic, from 1 November 2014 to 31 March 2014. The memory of the distant and yet effective source of inspiration that you were to me during my student days and beyond, came alive sharply. I saw your appointment to this high office as an appropriate and appropriate parting elevation and recognition for a man who has been a lawyer for more than 50 years, a human rights activist, and the Chancellor of the University of Fort Hare.

Last night at dinner you raised a very important matter of the woeful underresourcing of the Judiciary even at the highest level as juxtaposed to the comparable levels in the Executive. As you correctly hinted, only the Chief Justice, the Deputy Chief Justice and the President of the Supreme Court of Appeal are entitled to official residence. All other Judges however highly placed they may be, have to fend for themselves. Security and convenience arrangements around Judges are lamentably conspicuous by their absence, except for about thirteen or so of us. This, notwithstanding the high risk to which the nature of our work exposes us to. The concern extends to

the institutional independence of the Judiciary in relation to which we sing the same song with the Executive but seem to walk in different directions when it comes to implementation or manifest a said disinclination to implement what we have or undertaken to do, publicly.

As you know, our commitment to ensuring that the Judiciary in this country and beyond is independent, is treated with dignity, is efficient and reasonably well-resourced, is unwavering. Several initiatives have already been taken Bhuti, to have even the concern you raised last night, addressed. A task team established by the President, the Speaker, the Chairperson of the NCOP and the Chief Justice was established last year, to look at these disparities among the arms of State, and how best to address them, our budgetary constraints notwithstanding.

Bhuti, you are a pleasant person to work with, and a very considerate, unmistakably humble and peaceable man. We appreciate you and we will miss you a lot. Hopefully, you will avail yourself to assist in the many judicial programmes and projects that we have embarked upon to improve the image and efficiency of the Judiciary, in this country and in the continent. Turning to the challenge posed by your retirement.

Bhuti you would recall that, it was a struggle to attract a good number of candidates for the last two Constitutional Court vacancies. We had to re-advertise, which comes at a huge price but even then, barely got by. For this reason, we will take some time before the post you vacate is advertised. This is intended to give us room to create a pool of possible candidates additional to those who would apply anyway, even if they had not acted in the Constitutional Court.

I implore you, to use the abundant free time now at your disposal, to “mobilize” women and men who are suitably qualified to be considered for possible appointment, to apply. This is also a plea to the broader public. We all owe it to the nation to encourage people to apply so that we may be spoiled for choice.

I thank you!

Mogoeng Mogoeng