



Supreme Court Oration

Introduction: Deputy Chief Justice Dikgang Moseneke

Banco Court

Monday, 13 June 2016, 5:30 pm

**The Hon Catherine Holmes
Chief Justice**

I welcome you all to the Banco Court tonight: Judges of the Supreme and District Courts, Judges of the Federal Court, Chief Magistrate Rinaudo, Magistrates, retired Judges, distinguished academics, members of the profession, ladies and gentlemen. I should say also that there are many apologies, including from the Governor, the South African High Commissioner, the Chief Judge, the Commonwealth Attorney-General and others, all of whom I have no doubt deeply regret missing this opportunity to hear from such a distinguished jurist, with such an extraordinary background.

Justice Moseneke retired from his position as Deputy Chief Justice of the Constitutional Court of South Africa three weeks ago. Always having had a deep interest in legal education, he remains Chancellor of the University of Witwatersrand. His story is a remarkable one. I want to tell you something about it, so that you will understand when he speaks as a former Constitutional Court judge, he is certainly not doing so from the ivory tower perspective commonly and unfairly attributed to judges. He has been a fighter for rights since he was not much more than a child. At 14 he became an anti-apartheid activist, joining the banned Pan Africanist Congress. He was arrested the following year and dealt with on a charge of sabotage without the benefit of legal representation. He spent 10 years as a prisoner on Robben Island, between the ages of 15 and 25. There, Nelson Mandela became a mentor. While imprisoned, he undertook his matriculation and two university degrees and after his release completed a Bachelor of Laws.

But Justice Moseneke had then to fight to enter the legal profession, the Law Society opposing his admission because of his conviction. The Court having decided that he was a fit and proper person, he began his practice as an attorney in 1978 and after five years went to the bar. The Pretoria Bar's whites only membership rule prevented his getting pupillage; he consequently undertook his pupillage in Johannesburg before returning to practice in Pretoria. In the course of his practice, he defended activists and unionists, after



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10 years becoming Senior Counsel. This is remarkable: he received his Letters Patent as silk from President FW de Klerk at a time when he had no entitlement to vote.

In other activities, Justice Moseneke had remained active in the Pan Africanist Congress, and became its Deputy President when it was “unbanned”, in 1990. He served on the Committee that drafted the interim Constitution and was Deputy Chairperson of the Independent Electoral Commission which in 1994 conducted the first democratic elections in South Africa. His career took a side turn for five years from 1995 when he went into the business world becoming, among other things, chairman of Telkom, the South African telecommunication provider.

In 2001, Justice Moseneke was appointed to the High Court and a year later to the Constitutional Court, in 2005 becoming Deputy Chief Justice. He was for a period Acting Chief Justice. There is certainly a view that the fierce independence of his decisions on the court may have had something to do with his role being confined to an acting one. For example, in *Mazibuko v Sisulu*, the applicant was the Leader of the Opposition, who sought to move a motion of no confidence in the President, and the respondent, the Speaker of the National Assembly, who relied on the fact that the parliamentary rules made no provision for such a motion. Justice Moseneke wrote the judgment, in which the other five members of the court concurred. The court made a declaration that the rules, in failing to provide for the exercise by a member of the Assembly of the right to have the Assembly vote on a motion of no confidence in the President, were inconsistent with the Constitution.

That is not the sort of decision which will win the heart of a ruling party. But the issues which arose for the Constitutional Court of South Africa in that case, of balance between legal, in that instance, constitutional rights and the will of a democratically elected parliament, are of the kind which arise in every parliamentary democracy, including, I might say, in the State of Queensland. Such cases require independence and courage, qualities which Justice Moseneke has exhibited throughout his life. He combines those qualities with learning and erudition to produce very fine judgements and speeches. We are fortunate to hear one such speech tonight.