

## **Tribute to a legal giant**

On 7 March the Constitutional Court held a ceremonial court session in honour of the late former Chief Justice Arthur Chaskalson, who passed away in December. Speakers at the service included Chief Justice Mogoeng Mogoeng; President of the Black Lawyers Association, Busani Mabunda; former President of the National Association of Democratic Lawyers (NADEL), Gcina Malindi; a representative of the General Council of the Bar, McCaps Motimele; the chief executive officer of the Law Society of South Africa (LSSA), Nic Swart; and Deputy Minister of Justice and Constitutional Development, Andries Nel.

### **Contribution to the Constitutional Court**

Chief Justice Mogoeng opened the special session by paying tribute to the founding President of the Constitutional Court. Chief Justice Mogoeng said that for a country that was as deeply divided as South Africa was at the time of the birth of the Constitutional Court, 'only a man or woman of strong maturity [and] calmness, with wisdom, could successfully see it through its birth, crawling, walking and running stages to a point of forcing even the doubting Thomases to acknowledge that our Constitutional Court is a force to be reckoned with'. He added that the world had been forced to pay attention to and respect the Constitutional Court because of the many groundbreaking decisions it handed down under the stewardship of former Chief Justice Chaskalson.

Chief Justice Mogoeng served under Justice Chaskalson as a junior Judge President in the heads of courts forum. The Chief Justice said that some of the lessons he drew from the former Chief Justice was the need to be in command of every situation, however serious it may be; to be courteous to others, however disrespectful or insensitive they may be; and to be a team leader who wants everybody to have their say before a final decision is taken.

Chief Justice Mogoeng noted that Justice Chaskalson was the first Chief Justice to have issues critical for the efficiency and effectiveness of the court system discussed by a body of judges at the national judges' conference. These included –

- the need for judicial independence;
- the need for a civil rule-making authority;
- the need to overhaul the rules;
- access to justice;
- civil justice review; and
- court modernisation.

Justice Chaskalson wanted to create a Constitutional Court that was a champion establishment, that made for excellent access to justice and delivered quality judgments. He wanted to put in place a court on which other courts in the country could be modelled. For the first time legislation was passed that not only gave the head of the court the final say in the court's budget, but also gave him a meaningful say in the appointment of the court manager and other senior support staff and information technology resources necessary to facilitate or enhance optimum performance, said Chief Justice Mogoeng.

Chief Justice Mogoeng added that Justice Chaskalson had also ensured that one of the most effective case management systems was put in place at the Constitutional Court.

In terms of this, judges take charge of all applications from the time they are filed and personally manage them, including by drafting directives and managing most of the correspondence to practitioners, until judgment is delivered to make sure that unnecessary backlogs and delays are not experienced.

This model has been piloted in three High Courts, with a view for it to eventually be rolled out nationwide in magistrates' courts to address most of the inefficiencies presently complained about, including backlogs, said Chief Justice Mogoeng.

Building on the milestones achieved by Justice Chaskalson in the early years of court modernisation, Chief Justice Mogoeng said that the Office of the Chief Justice intended to announce proposals related to electronic filing, video conferencing, offsite and on-site record keeping and a move towards paperless courts.

Chief Justice Mogoeng thanked the Chaskalson family, on behalf of the judiciary and South Africa, for giving a share of Justice Chaskalson's time, energy, intellect and leadership.

### **Contribution to the legal profession**

Mr Mabunda said that, even during former Chief Justice Chaskalson's retirement, he continued to keep the views he aired in line with the oath he committed himself to when he assumed the role of a judicial officer. He added that the former Chief Justice, in a speech on the Legal Practice Bill (B20 of 2012) at the Cape Law Society's 2012 annual general meeting, stressed the importance of the independence of the judiciary and the legal profession for constitutional democracy. Justice Chaskalson 'articulated the doctrine of separation of powers', he said, adding: 'As legal practitioners, we must bear this in mind so that we continue to move forward.'

Mr Malindi paid tribute to Justice Chaskalson on behalf of NADEL and as a friend of the family. He added that Justice Chaskalson had played an important role in supporting NADEL as an organisation committed to the struggle against apartheid and that he had used his legal skills to defend many political activists.

Justice Chaskalson's 'public speeches concerned the rule of law, the courts, the Constitution and transformation. These will continue to be important debates in South Africa's young democracy, and these matters can best be resolved by dialogue, public debate and by looking for solutions to problems that exist. Let us all commit ourselves to following on Arthur's footsteps in adjudication of freedom for the vulnerable and marginalised members of society,' said Mr Malindi.

Mr Motimele said that, as a judge, Justice Chaskalson had always been polite, which he believed was a fast-disappearing quality on the Bench. He added that the profession would miss the former Chief Justice, who had believed in improving the dignity of life for all and in justice for all. He added that, in his address to the Cape Law Society, the former Chief Justice said that the public must have access to the legal profession, which has a duty to serve the public interest. The profession should take heed of Justice Chaskalson's words, said Mr Motimele.

Mr Swart said that the LSSA was 'deeply saddened' by the passing of the former Chief Justice as he was 'a giant who influenced the legal profession'. Mr Swart said that Justice Chaskalson made an immense contribution to the formation of the Constitutional Court and the Constitution; however, he would also be remembered for the value of the work he did as an advocate to challenge the apartheid government.

‘He was one of the courageous few who spoke on and raised important legal issues when others hesitated. ... His work in establishing the Legal Resources Centre, where both attorneys and advocates work together by defending the rights of the vulnerable, will forever add value to the legal system. It is fitting that his last speech at the Cape Law Society annual general meeting marked him as a champion for the independence of the legal profession. As legal practitioners, we must bear the independence of the legal profession in mind so that we continue to move forward on the path that will lead to a stable democracy. The LSSA will remember him for his humility. On behalf of the co-chairpersons of the LSSA and the attorneys’ profession, we pay tribute to him, we lower our flag at his passing,’ said Mr Swart.

### **Contribution to the country**

Mr Nel began his address by quoting former President Nelson Mandela during the conclusion of his address at the inauguration of the Constitutional Court on 14 February 1995:

‘To Judge Arthur Chaskalson and other members of the Constitutional Court, let me say the following: Yours is the most noble task that could fall to any legal person. In the last resort, the guarantee of the fundamental rights and freedoms for which we have fought so hard, lies in your hands. We look to you to honour the Constitution and the people it represents. We expect from you; no, demand of you, the greatest use of your wisdom, honesty and good sense – no short cuts, no easy solutions. Your work is not only lofty, it is also lonely. In the end you have only the Constitution and your conscience on which you can rely. We look upon you to serve both without fear or favour.’

Mr Nel said that the country will remember the former Chief Justice’s role as a member of the defence team during the Rivonia Trial and the trials of many other freedom fighters; the leading role that he played as a member of the legal profession on the Johannesburg Bar Council; his role in the formation of the Legal Resources Centre; his contribution to the drafting of the interim Constitution and as the first President of the Constitutional Court; as well as his contribution to the cause of justice and human rights in the international community.

‘The [Justice Department] continues, through its work, to promote access to justice through the establishment of new courts, the upgrading of existing courts and through working with the judiciary, the legal profession and all stakeholders to improve the efficiency and effectiveness of both our criminal and civil justice systems. We believe that this work constitutes a fitting tribute to the memory of former Chief Justice Chaskalson,’ said Mr Nel.

He cited Justice Chaskalson in *S v Makwanyane and Another* 1995 (3) SA 391 (CC), in which the death penalty was declared unconstitutional: ‘The rights to life and dignity are the most important of all human rights, and the source of all other personal rights in chap 3. By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others,’ said Mr Nel.

Mr Nel said that one of his enduring memories was of the passion former Chief Justice Chaskalson and his wife Dr Lorraine Chaskalson had for mentoring young people, and law students in particular, in using the law to promote social justice.