

Arthur Chaskalson (1931–2012): Former Chief Justice of South Africa

AUTHOR:

Pius N. Langa¹

AFFILIATION:

¹Former Chief Justice of South Africa, Constitutional Court, Johannesburg, South Africa

CORRESPONDENCE TO:

Pius Langa

EMAIL:

Langa@concourt.org.za

POSTAL ADDRESS:

Constitutional Court, Private Bag X1, Constitution Hill, Braamfontein 2017, South Africa

HOW TO CITE:

Langa PN. Arthur Chaskalson (1931–2012): Former Chief Justice of South Africa. *S Afr J Sci.* 2013;109(1/2), Art. #a007, 2 pages. <http://dx.doi.org/10.1590/sajs.2013/a007>

Arthur Chaskalson passed away on 01 December 2012. Born on 24 November 1931, he was 81 years old. After being appointed as the first President of South Africa's Constitutional Court when it was established in 1994, he assumed the position of Chief Justice of the country in 2001, a position he occupied until his retirement in June 2005.

His appointments as President of the new Constitutional Court by then President Nelson Mandela and later as Chief Justice of South Africa were a culmination of a long journey which started long before 1994. The choices he made in his practise of law and later as a judge showed a commitment to fight for justice and democracy in South Africa. He directed his energies and talents to this cause with admirable single-mindedness. A graduate of the University of the Witwatersrand where he obtained a BCom degree and, in 1954, an LLB (cum laude), he was admitted to the Johannesburg Bar in 1956 and took silk in 1971. He appeared as counsel on behalf of members of the liberation movements in a number of major political trials, the best known of which is perhaps the Rivonia Trial in 1963/1964, at which eight leaders of the African National Congress, including Nelson Mandela, were convicted and sentenced to life imprisonment.

A remarkable feature in this journey was his role in institution building. In 1978, he helped set up the Legal Resources Centre, a non-profit organisation dedicated to pursuing justice and human rights in South Africa using law. Under his leadership, the Centre launched a number of challenges against apartheid laws, such as the notorious pass and influx control laws, on behalf of the poor, the marginalised, the homeless and the disempowered. Although that era is now in the past, Chaskalson remained steadfast in his pursuit of equality, human dignity and the achievement of social justice for all. He believed that without the realisation of these ideals, the promises of a better life for all would continue to have a hollow ring.

His greatest achievement, however, was in his involvement with and leadership of the Constitutional Court, an institution which, more than anything else, best symbolises South Africa's radical change to a democratic constitutional dispensation. This court was to be the guardian of the new Constitution of South Africa with its Bill of Rights. In appointing Chaskalson as the first President of the Constitutional Court, President Mandela was acknowledging Chaskalson's pre-eminence as a constitutional lawyer and as a leader. Chaskalson, for his part, was to reward that trust in good measure. The institution was built and developed from scratch. The Constitutional Court, however, had to hit the ground running. The people had great expectations and their needs were great, as a result of more than 300 years of colonial and apartheid misrule. Those who worked with him, and I was privileged to be one of them, were extremely fortunate to have a person of his calibre at the helm at this critical time. The Court's first case dealt with the emotive question of whether the death penalty should be available as a penalty in South African criminal law. We could not have asked for a more difficult entrance into constitutional litigation. Nor could we have chosen a more appropriate case to benchmark the new constitutional milieu. However, the case afforded us and the country the opportunity to experience Chaskalson in action. His ability to organise the work of 11 judges, with diverse backgrounds, and weld them into a team that would produce remarkable results, was nothing short of amazing. It was a feat that required wisdom, tact and leadership qualities of the highest order. It seemed as if this was what he had been doing all his life. He led by example and no one was more hardworking and full of ideas. He was careful and painstakingly meticulous, driven by a clear commitment to build a jurisprudence that would play an important role in bringing about the healing of the wounds caused by the divisions of the past and to make social justice a reality for all.

Chaskalson was a good listener, and listened to all. He was not only a leader to his colleagues, he was a supporter as well, and was always available to lend a helping hand. Today, the Constitutional Court stands as a shining and exemplary achievement of this country. And for Chaskalson, it is indeed a shining and indelible memorial.

He played a very central part in helping to develop constitutionalism in South Africa. He was praised for his role in developing the constitutional foundations of the new South Africa. He assisted the constitutional committee of the African National Congress in formulating the guidelines for a democratic South Africa and served as an advisor at the Multi-Party Negotiating Forum as a member of the Technical Committee on constitutional issues and in the formulation of the interim constitution and transitional mechanisms. His expertise also spread to the development of the Namibian Constitution. In addition, he participated in numerous conferences and workshops and delivered lectures primarily on constitutionalism, justice and human rights in many parts of the world. It was a fitting mark of recognition of his work and dedication when, in 2002, he was awarded a high national honour – Supreme Counsellor of the Order of the Baobab (Gold) – for his services to the nation in respect of constitutionalism, human rights and democracy. Former President Thabo Mbeki described Chaskalson as “a giant among the architects of our democracy”, and former President Mandela's message on Chaskalson's passing was “[a] towering tree has fallen in the forest”.

Chaskalson was a tireless worker, both in South Africa and internationally. He occupied a number of prestigious positions at various times. His activities include being a founding member and the first chairperson of a forum of chief justices and senior judges in the southern African region, chairing the International Commission of Jurists (ICJ) for a number of years and acting as chairperson of the Eminent Jurists Panel appointed by the ICJ. He was vice chairman of the Legal Aid Division of the International Bar Association and was a member of the Permanent Court of Arbitration. He received many awards in recognition of his work, both locally and internationally. He was elected as an honorary member of several bar associations, most notably, the New York City Bar Association, the Boston Bar Association and the Johannesburg Bar and he served as vice chairman of the General Council of the Bar of South

Africa. He received the Premier Group Award for prestigious service by a member of the Faculty of Law at the University of the Witwatersrand and the Claude Harris Leon Foundation award for community service. In 1990, he was a joint recipient of the Human Rights Award of the Foundation for Freedom and Human Rights in Berne, Switzerland, and, in 2004, he was the co-recipient of the Peter Gruber Justice Prize. In 2007, he received (jointly with Wangari Maathai) the Nelson Mandela Award for Human Rights and Health. The General Council of the Bar of South Africa honoured him with the Sydney and Felicia Kentridge award for his promotion of human rights and constitutionalism. He was also honoured by the Jewish Board of Deputies, by Rotary (the Paul Harris Award), and by the Lawyers for Human Rights and the Constitutional Hill Trust. In addition, he received a number of honorary Doctor of Laws degrees from several universities in South Africa and abroad.

Chaskalson was a Trustee of the Legal Resources Trust and of the Constitution Hill Trust as well as the Constitutional Court Trust. He was elected a member of the Academy of Science of South Africa and was a foreign honorary member of the American Academy of Arts and Science and a member of the South African Institute for Advanced Constitutional Law.

A man of peerless honesty and unquestionable integrity, he opposed and was outspoken against any attempt to undermine the judiciary and to threaten its independence. Shortly before he passed on, he

wrote and made public speeches in support of the independence of the judiciary and that of the legal profession. He believed implicitly in the transformation of the judiciary. When he retired as Chief Justice, he did so voluntarily, reasoning that the time was ripe that a Black person should be appointed to that position.

Chaskalson was a man who did not just speak, he believed in doing. Both at the Legal Resources Centre and at the Constitutional Court, he encouraged young legal and human rights graduates through mentorship programmes. He never tired of training them or of giving them guidance to help prepare them for their future careers.

He was not given to rhetoric and fiery speech. He spoke in quiet measured tones, never raising his voice even in the face of provocation. He maintained his dignity always, but never lost his sense of humour.

Where did he get his strength from? We need look no further than his family. Dr Lorraine Chaskalson was his wife and partner, and doubtless his mainstay. He was devoted to her, and she to him. In turn, they were devoted to their two sons – Matthew and Jerome – and, as they grew up, their families. We, the whole nation, owe Lorraine and the family a debt of gratitude for having made a home for him and for the support they unfailingly gave that has benefitted all of us.

May he rest in peace.

