Khanya Jele Constitutional Court Oral History Project
21*’ December 2011

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This is an interview with Nokukhanya Jele, and itâ\200\231s Wednesday, the 21" of December, 2011. Khanya, thank you so much for agreeing to participate in the Constitutional Court Oral History Project.

Itâ\200\231s a pleasure, and a privilege, thanks.

| wondered if we could start the interview, if you could talk about early childhood memories, where and when you were born, and your experiences of growing up where...you grew up in Zambia?

| did.

...you could talk about those experiences, and how you think the formative influences may have led to the career path you eventually took?

Well, | was a travelling baby, as they call them. My father was a full-time ANC in exile, and he was at the time posted at the World Peace Council in Finland when he was allocated an interpreter, who was a French Hungarian lady, who was my mom. So | was born in Finland, spent a few months in France, and then ended up in Zambia in April of 1978. So to me the world has always been a lot smaller than it seems to most people, going from one side of it to the other, it doesnâ\200\231t seem too daunting. And as a consequence, relating to other human beings, | think, is part of the reason that | found the law particularly attractive. In my mind | think being privileged enough to have known individuals like Oliver Tambo, for example, you think of lawyers in a completely different way, | think, that most individuals do. You grow up thinking of lawyers as individuals who spend their time and their focus thinking of others and wanting to do things for others, and using the law to make society what they want it to be. And growing up in Zambia was also peculiar, because Zambia, first of all youâ\200\231re surrounded by ANC people, so youâ\200\231re surrounded by very consciously anti-racist people. As a kid | didnâ\200\231t notice tha
t
there was something weird about my parents. The fact that they were different coloured just literally did not cross my mind. Most of my friends had mixed race parents, most of my friends were of every single imaginable race, and Zambia for that was absolutely amazing.

Really?

Absolutely amazing.

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In what sense?

It was just an entire society what | can truly and genuinely say, there was an effort both by the government and the people of Zambia, to fight racism in a very conscious way. Zambian people are some of the most warmest, most welcoming human beings, and when we lived there, Zambia was growing as a nation. Theyâ\200\231d only been free since 1964. And they had welcomed pretty much every single liberation movement there was. Bearing in mind that in the seventies Zimbabwe wasnâ\200\231t free. Zaire at the time was under Mobutu. And then you had Namibia and Angola on that side, so we had, naturally the Angolans were with us, SWAPO was with us, Mozambique was also a mess in those years, and in the middle of it was little land-locked Zambia, with no access to ports, no access to markets, and yet welcoming all of these individuals, who before Zambia was free, mostly were in Tanzania and came to Zambia because it was closer to where they wanted to do their work. We were welcomed, we were given state housing, we were given farms so that we could feed ourselves, we were given land for the camps, Umkhonto we Sizwe. They just recently when they celebrated the fiftieth anniversary we remembered that. And having an entire nation behave like that towards the fellow neighbours in need, so to speak. To their own detriment, because as a consequence they struggled to develop. They couldnâ\200\231t get aid because they were accused of harbouring terrorists, as we were called in those good old days. | still remember to get potatoes you had to travel to Dar es Salaam. To get milk, mom would queue for hours and hours and hours. My grandmother actually sent a recipe book that she used during the Second World War to my mom, when we lived in Zambia, so that, you know, all sorts of recipes of what do you do when you donâ\200\231t have eggs? How do you bake a cake when you donâ\200\231t have butter? Those kinds of recipes. How do you make pancakes when you donâ\200\231t have milk, that kind of thing. And you do learn to appreciate the generosity of others, that giving and the responsibility of giving back. But obviously growing up like that, it very much is rosy coloured, naturally. But that was growing up. It was in a society where everybody was open, it was also a society where a lot of things were scary. But they became second nature. My momâ\200\231s family in France used to be freaked out about the fact that at the age of six, the first thing | did when | sat in the car was lock the door. But you just...you got used to that. And some people...| Know, for example, friends overseas find it extremely odd, the barbed wire, the burglar bars, the alarms. | find it perfectly natural. As a matter of fact when | lived in England, the fact that there were no burglar bars, or there was no security gate on the front door that led onto the street, freaked me out beyond words. And itâ\200\231s a strange balance but you get used to it. And after Zambia we finally came here (means South Africa).

At what point was that?

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First trip was in June of 1990. That was first trip with my family. My dad had come before then for a short trip...

Was that in 1989 perhaps?

No, it was earlier (means later), in 1990. End of...in September of â\200\23189, when (Walter) Sisulu and Govan Mbeki, etc, were liberated, they came to Lusaka and we met them at the airport. Early in 1990, one of the first trips that (Nelson) Mandela made when he was liberated was to Lusaka, and we met them at the airport as well. And my father came down, | think it was April, something like that, he hadnâ\200\231t been home for twenty-five years. We actually have a video of him packing. It was the weirdest thing. Itâ\200\231s the only video of anybody packing, sort of (/aughs)...

Homecoming...

Absolutely. And in June of 1990 when we came...his daughter wasnâ\200\231t...my eldest sister, my half sister, wasnâ\200\231t born when he left. So he was meeting her for the first time.

And so were you?

Yes. | walked right past her when we walked into my grandmotherâ\200\231s house. | have a memory of landing, and those men with the grey suits and the sunglasses, stopped dad at the airport, and | think we waited about six hours for him. So when we finally got dad out of the airport...goodness knows what they asked him, | wasnâ\200\231t told obviously. | was thirteen, going on twenty-five, as
we always are at that age. We ended up in Soweto in the dark. | remember walking in to the matchbox house of my grandmotherâ\200\231s through the back, and there was this tall lady standing in front of the old Primus stove, who shyly said, hello, and | just shyly said, hello, and kept on walking. | didnâ\200\231t realis e that
that was my sister. And then we walked in, and there was my gran, and my uncles and my uncle and my aunts and cousins and everything else. And we did a tour of the country. And | hated it. | hated this place with a violent passion. | just...| didnâ\200\231t fit, everything was weird, people looked at us funny ,
every colour and every shape looked at us like we were the weirdest thing theyâ\200\231d ever seen. This mixed race...| think on top of that when weâ\200\231re s tanding
next to them, it wasnâ\200\231t just theyâ\200\231re walking around together, itâ\200 \231s, they have a
child that age, and we literally...you know, we were a curiosity. It felt like walking through a zoo. | remember we stayed at the Parktonian in the city centre. And the staff looked at us like we were just...it felt...the whole country felt wrong to me. When we decided to go down to Cape Town we thought of taking the train, and my father used to actually, itâ\200\231s one of his jobs, he used to
sell tickets at Park Station. So we get to this train station and Iâ\200\231m looking around, and Iâ\200\231m thinking, this is the most disorganised, messy train station Iâ \200\231ve

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seen in my whole life, and we go in, and we canâ\200\231t find the sales desk. And my mother looks, sort of across the way, and says, no, itâ\200\231s around that way, to my dad. He goes, no, youâ\200\231re not allowed to go that way. And then he stops. It was the â\200\230whites onlyâ\200\231 section. It took my father all of three of the weirdest longest
minutes in my entire life, just to cross the threshold of that door, of a place where he had worked for years on end, and standing there thinking, | can actually walk onto this side of the station. And | realise the meaning of it now. At the time | just thought there was something seriously wrong with a place that makes my daddy, whom | love, this uncomfortable. It was a learning curve. Bearing in mind that throughout my childhood, one of the things that my parents had tried to do is make sure that | had some kind of family connection, since we couldn't really connect with the family here, or communicate with them. | think the first phone call my father had with his mom was in the mid-eighties. First photograph they saw of me was early eighties. So every...| went to the French school in Lusaka, and every summer holidays, being European summer holidays, | went to visit my gran and my momâ\200\231s family in France. So | had a sense of France was an entirely different world as well, but my French family always has been sort of very open, very tolerant, most of them politically active as well. And you grow up, especially when you grow up in the movement, you were told, this is your home, this is where weâ\200\231re going back to. | mean, you learnt all the freedom songs. Whenever they had guests or dignitaries coming through, we had our pioneer uniforms on and we sang what needed to be sung, we were the kids that you put in the choir in front, so theyâ\200\231d take photos with whoever is coming to say, thumbs up to the ANC and that kind of thing. And you walk into South Africa and youâ\200\231re told, this is your
home, and this is what we have been aiming for, and you feel like | donâ\200\231t want to spend another minute (/aughs) in this seriously weird place. So it was a bit of a shock. We finally moved in, in September of 1991, because it was the start of my school year, and | went to the French school here. Thereâ\200\231s one in Morningside. And that just worsened the shock (/aughs). There was a German teacher that had no qualms about using texts of Goebbels to teach German. There was a headmaster, who when one of the Congolese guys burst out laughing in the middle of the hallway said, weâ\200\231re not in your savage home, behave! And me being the loudmouth that | was, decided in reaction to that, to sell ANC posters out of the boot of my momâ\200\231s car during the break. And then there were people coming up to me and asking me, so could you tell us exactly who is this (Nelson) Mandela guy? That was the school | was going to. | couldnâ\200\231t stand those people. And every holiday | was jumping on a plane back to Zambia and begging my parents to go and see normal people, who didnâ\200\231t think it was strange that my parents were this mixed race couple, and people who knew who (Nelson) Mandela was and had grown up knowing who (Nelson) Mandela was, and | just didnâ\200\231t fit. And it was very much, as soon as | can get out of here, | want to.

Khanya, Iâ\200\231m curious, what were the stories you were told as a child by your dad about South Africa, and his experiences growing up here?

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They werenâ\200\231t negative stories. My father could laugh about the weirdest things. He would laugh about the fact that one of the first times he was arrested in Pretoria is because he had bought fish and chips with the last pennies he had of his salary, and a police officer had bumped into him and spilt his fish and chips, and so heâ\200\231d turned around and beaten the crap out of a police officer. And so thatâ\200\231s how heâ\200\231d gotten arrested (/Jaughs). Dad could
talk about ninety day detention and being tortured, laughing. And if you saw him sitting next to his friends, his closest friends, people like Thomas Nkobi, who had the loudest laugh on the planet, | still to this day miss that manâ\200\231s laugh. Joe Nhlanhla, people like that, they would sit around and they were laughing, loud. There was no foreboding, there was no doom and gloom.
What he did talk about was the fact that five of his brothers and sisters had died of kwashiorkor. My father canâ\200\231t stand, to this day, the sound of crying. And thatâ\200\231s because he remembers hearing his brothers and sisters dying of hunger in the bed next to him. You whimper, and he goes nuts. You cry, you have a darn good reason. Otherwise you donâ\200\231t. There were certain realities that you were just aware of. He had nightmares from torture. You had to wake him up very slowly, just to make sure that he knew you were waking him up. | donâ\200\231t think then | really appreciated what that meant. | also donâ\200\231t thi nk then he
was able to communicate a great deal of that stuff. | think there was a great deal of strain to him. You did know...comrades came with bullet wounds, and scars, physical, mental. There were funerals every weekend. We commemorated June 16". You knew because you were taught. The personal stuff was the hardest always. The first time we finally got photos, when they unveiled the tombstone of my grandfatherâ\200\231s grave in Alexandra township, looking at photos of these individuals, and youâ\200\231re realising just how little money people have back home, and realising that the little that you do have really is a lot. But stories of back home were few and far between just because dad had a great deal of trouble communicating them. And | found myself very much discovering on my own. There was a book by Francis Melli that came out in the mid-eighties, that was a history of the ANC. But also it was a combination of my familyâ\200\231s history in the sense that momâ\200\231s family is
Jewish. My grandfatherâ\200\231s family, aside from his two brothers, everybody died...well, all of his sisters, his cousins, everybody. So | was also intrigued by that and would read. There was a book, itâ\200\231s supposedly like a cartoon but itâ\200\231s a cartoon for adults. Itâ\200\231s called Maus and itâ\200\231s a history of...ja, and | would
gobble those things up like crazy. My mother tried to convince me that | was too young to understand Sophieâ\200\231s Choice but Iâ\200\231d still try to force myse lf to read
it. Those realities, you try to absorb, pretty much a kid trying to understand daddy, more than him being able to actually convey realities. Heâ\200\231d watch the news, and | grew up with a sense...whether it was happening...because home was South Africa somewhere far away that | didnâ\200\231t know, | keep from that, | can watch the news, it doesnâ\200\231t matter where it is, if something horribl e is
happening to another human being, | can still watch it with a, aaah! This could be and, oh, those poor people, and it does feel like that. but bear in mind, a few months after we first moved here, which was September 1991, the one friend | had made at the French school, was a young Rwandese girl, her name is Marie. She happens to be here on holiday right now. And April 1992,

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for Rwanda, was not a particularly good time. And so we went through...sheâ\200\231s of a half Tutsi, half Hutu family...went through not knowing where the family was, if there was any family left. | think it took a year before they figured out that her grandmother had made it to a camp in Tanzania, and then her grandmother died of dysentery in said camp in Tanzania, | mean, it was just...and then all hell broke loose in the then Zaire, now DRC. And the second friend Iâ\200\231d made, Carole, was from Lubumbashi originally. It transported me elsewhere. | didnâ\200\231t absorb what was going on here. To me what was going on here was, | was uncomfortable because my group of friends were the only mixed group of girls our age walking around Sandton City. To me this place was just...there were other things going on in the world. And | still...that distance, was still there. | didnâ\200\231t absorb it until much later. Till much, much later. But stories...ja, dad did talk about the torture, but it...literally when | say, heâ\200\231d laugh about it, one of his friends, after a ninety day detention was freed ,
and the bus stop was across the street from Jo'burg Central, and so he sat down and he waited for the bus. And the cops come outside, look at him, heâ\200\231s sitting there, oh, you donâ\200\231t want to go, okay, fine, come back in (/aughs). And this is pure laugh, it is...and that was how it was conveyed to you as a kid. Donâ\200\231t waste food. But strangely enough that came just as much from dad as it did from my momâ\200\231s dad, who was poor Hungarian boy who remembered the pogroms. You donâ\200\231t waste food with grandpa either. As a matter of fact, you donâ\200\231t waste anything with my grandfather. So there wasnâ\200\231t anything uniq ue
about the horrors of here as opposed to the horrors of elsewhere. It didnâ\200\231t seem that way to me. After | left, | realised how special people outside of...finally when you go to varsity, youâ\200\231re outside of that circle that you gre w
up with, and the circle | grew up with were either exile children or kids of expatriates, people who have travelled. But | was very often naturally attracted to human beings who had the same affinity for the rest of the world. My friend, Marie, now works for UNICEF. Sheâ\200\231s Rwandese, sheâ\200\231s married a Spaniard and they live in Mozambique. Sort of typical of the circle | had grown up with. And all of a sudden | find myself in this little French university. Most people have never even left France, let alone Europe. And in their minds, South Africa is this exotic wow, and itâ\200\231s on the news, and all these fascinating thin gs
happening there. And all | can think of is, | donâ\200\231t fit there, and...

What period was this then?

| got to Paris in September of â\200\23194. In August September of â\200\23194.

So you would have been how a young adult by then?

Seventeen. | was seventeen when | got there. The elections on top of that here, we helped out, me and a couple of friends, at the ANC office. Iâ\200\231m giggling because â\200\230we helped outâ\200\231...we answered the phones, we made sandwiches and we made soup. Thatâ\200\231s pretty much what we did. While we listened to our mothers answering the phones and explaining to domestic

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workers that the madam is not going to know who you vote for, and yes, you can vote for whoever you want to. And no, sheâ\200\231s not going to fire you because sheâ\200\231s not going to know. Tell her whatever she wants to hear (laughs). Those are the memories of the elections. But Iâ\200\231m sure you recall that a few days before the election, there were a number of explosions.

This was at Shell House?

Ja. One of them blew up on the 24" of April, to be precise, and we remember it because itâ\200\231s my momâ\200\231s birthday. And a friend died in one of those explosions. They were actually driving past and its shrapnel that got her right here. and by the time her partner, who was sitting on the seat next to her, realised that she was hit, she sped off to Joâ\200\231burg Gen, and it was too late. So in all of this euphoria, there was, you know...and 1993, on top of that, we lost both my grans, we lost OR(Oliver Tambo). Chris Hani was a family friend. 1993 was not nice, at all (reference to the assassination of Chris Hani). And then 1994 came, and everybody is excited, and we were...mom was mourning a friend. And when everybody was stocking up on water and canned goods, just in case all hell broke loose, my mother was very deliberately buying the most perishable imaginable items. And only, you know, like two cucumbers (/aughs), one piece of fish (Jaughs) which was obviously marked to expire the very next day (/Jaughs). Very deliberately so. But it didnâ\200\231t
make the place any more welcoming long term. So when | got to France, it was weird that everybody was so fascinated by this South African girl. But it just made me feel even more out of place (/aughs). It was very odd. And after those two years | was miserable, so | just packed up and left. My father by then, had been appointed South Africaâ\200\231s ambassador to the United Nations. And at nineteen years old, going to live in New York, pretty attractive thought. So | packed up and went. | had no idea what | was going to do there. | worked part-time as typist and database keeper, in a small financial firm on Madison Avenue. And then finally got accepted at NYU after Colombia said, â\200\234youâ\200\231ve got
to be crazy, youâ\200\231re not good enoughâ\200\235.

(pause in recording)

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Khanya, we were really talking about coming back to South Africa for your dad and..., you came back for the first time, and your experiences, and then going to NYU. | wondered whether we could pick up from that point onwards, your experiences in NYU and then what the trajectory was thereafter? Because it sounds like at some point you decided you wanted to do law?

Yes.

And Iâ\200\231m curious about those choices...

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Well, itâ\200\231s actually interesting that you mention that. | decided that | wanted to
do law when | was eight years old.

Interesting. What made you...?

So I'd always known | wanted to do law.

But why?

| think when | was a kid, it just seemed glamorous and challenging and
interesting, and it seemed like the greatest human beings that | knew of were
all lawyers, and | think thatâ\200\231s what did it for me when | was younger. | wasnâ\200\231t
sure | was going to stay the path. | know that going to NYU was what got me
absolutely sure that thatâ\200\231s exactly what | wanted to do. Mostly because | found
Americans having a completely different appreciation of what a lawyer was,
than | had always imagined it. And probably, | donâ\200\231t know, call it
stubbornness, call it the decision to be different, | donâ\200\231t know, but | decided
that | was going to prove to myself that my instincts, my original instincts,
about what being a lawyer meant, were correct, and | was going to pursue
that. | couldnâ\200\231t stay in the States, | couldnâ\200\231t afford Law School in th
e US, so |
ended up going to England. Just because as a European citizen | could afford
to go to England, to university, which is where | did my Masters degree.

Where did you go?

| went to Coventry. And | did it in international human rights and criminal
justice. And | did...my thesis was a case study on child rape. Everything from
the reporting stage, victimisation surveys, all the way to rehabilitation issues.
And | came home to do the interviews. | still remember asking people to take
the photos out of the docket before | came to police stations to interview guys
of the Child Protection Unit at the time. It wasnâ\200\231t the Sexual Offences Unit of
the NPA (National Prosecuting Authority), yet. And then, obviously, started
inquiring about practising law here. | was put in touch, strangely enough, and
told to call Patric Mtshaulana. | think people assumed that because he came
from the Netherlands and came in with a foreign degree, he was sort of the
person to call to figure out how to get your equivalencies and everything else,
and he gave me a few very, very good pointers. | still ended up spending
some time on the phone with the Dean of the Law School at Unisa, explaining
that my thesis for my Masters was on Criminal Justice, which means that |
really would like to be exempt from Criminal Law 101, and having him tell me
that doing a Masters thesis means that you know the detail. It doesnâ\200\231t tell me
that you know the big picture and the general principles. That was an
interesting debate (/aughs). Frustrating one. | certainly didnâ\200\231t want, at that

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time, to go back to school full-time. | didnâ\200\231t. So | started looking for work a
nd
did my LLB by correspondence, because that was the only way to become a
practising lawyer here. And the first job that | found was with NADEL (National
Association of Democratic Lawyers), with the Human Rights Research and
Advocacy Project in the Cape. My boss, who is now a fellow member of the
Bar, was Roseline Nyman. Now that was a crazy boss to work for and | still
tell her to this day, she was my nuittiest boss ever. But there was something
unbelievably amazing about earning a living, walking down the streets of the
poorest communities of the Western Cape and Eastern Cape, with a
questionnaire in my hand. The report that | wrote is in this library, which is
actually kind of cool. | entitled it Cleaning up the Garbage. Because the focus
was on all socio-economic rights, we realised we hadnâ\200\231t done anything on the
rights of the environment, and the idea was to speak to disadvantaged
communities and have an appreciation of what their views on the environment
are. But it really was very, very humbling to have these questionnaires and to
go door-to-door, everywhere from Khayelitsha, Langa, Duncan Village,
Mdantsane, all of these places, not speaking a local African language, looking
like | do, with a name that | have. | very often, especially in the Cape, would
get, where did you get that name? With my dad gave it to me, not being a
satisfactory answer. Or getting a, but you should be a Tanya de Villiers
(laughs). That was always amusing. But it was amazing, it was, it was
absolutely amazing work. | did that for close to a year. There were a few
changes at the project and unfortunately now itâ\200\231s closed down, but at the time
those changes were starting and unfortunately | ended up leaving. | kept on
applying for work and found myself in January 2002 working for the National
Prosecuting Authority, in their Research and Policy Department. And thanks
to my thesis, what was | brought in on?...A study on offenders who rape
children between the ages of zero and twelve. Spent the next two years
working on that. At the end of which | couldn’â\200\231t...1 just, | couldnâ\200\231t.
| mean, there
were other projects, and there was other work, but | felt as though | had been
pigeonholed in one of the most depressing parts of the law that | ever could.
And bear in mind that | worked there at the time of the Hefer Commission, at
the time where they moved in for the first time into the Victoria and Griffiths
Mxenge building, the new building, and during those two years | finished my
LLB. And the moment | had finished my LLB, | thought, now | have to get back
on track, so to speak. And so l...

You mean in terms of practice?

Exactly. And | had been told that clerking for this Court was a very, very good
idea career-wise. So | applied, and | was interviewed, and | got to clerk for
uncle Pius (Pius Langa). And then | spent a year and a half of my life, with the
best boss a human being could ever have. Best boss ever. Being challenged
in a completely different way. And thinking, okay, finally Iâ\200\231m doing what | wan
t
to be doing. And sitting on the Benches out there, looking up at counsel, and
thinking, oh please, | can do that. Ja, | spoke too soon. Itâ\200\231s harder than it l
ooks
(laughs). And now that Iâ\200\231m doing it to earn a living, itâ\200\231s a different
perspective,

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but Iâ\200\231m one of those lucky human beings who found a profession that | absolutely love. | feel very, very privileged in that. | really do.

Iâ\200\231m curious, Khanya, when you arrived in South Africa 1990, was it a very difficult adjustment...

Very.

But you seem to have chosen to actually come back after England...

Absolutely.

And Iâ\200\231m curious about that choice.

| think, first of all, living abroad opened my eyes to what was good about home. Sometimes the grass is greener, you get to the other side, and you get a wake-up call. Certainly in terms of basic quality of life, South Africa was ten times better. | also did a lot of activism, especially when | was in Paris, and | realised the...there was a lot of cynicism in that world, in France.

You mean on the Left?

Yes, yes. A lot of old long-standing traditions that felt as though they were so ingrained there was no moving forward. And | think what | realised is, South Africa is where things are developing, where there are possibilities, there are options, and the weather is better. And you combine all of that, and sort of, well, letâ\200\231s just go home. | regularly think, because it always is an option, wo uld
| go back? My first negative is, | think in terms of exercising my mind to something that is worthwhile to me, | doubt Iâ\200\231ll find anything as pleasant as what | have found here. And then | get into the quality of life and | think thatâ\200 \231s
it, you'll go on holiday, thatâ\200\231s it. Never again. But itâ\200\231s...how shall | put it...you
mentioned mom. Mom is what | call a chameleon.

Chameleon?

A chameleon, ja. She can pretty much adapt to anything. And | see my mom as the kind of person who believed in the work that dad did, and he needed to be in all of these strange and difficult places. And so | love the man, | believe in what heâ\200\231s doing, Iâ\200\231ll be there. Certainly was not easy at all. In th e good old
days of snail-mail, as we call it now, hearing from your family on the other side of the planet, every other month, isnâ\200\231t particularly pleasant. Her dad passed away when she couldnâ\200\231t even go home. So it wasnâ\200\231t easy. But at the same

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time mom found it perfectly natural. Never heard my mom complain in her whole life ever. And, ja, but there were doubts on her side of the family Iâ\200\231m sure. When my grandmother kept on saying that when she said sheâ\200\231d found the love of her life in Finland, she was expecting, when she went there, to see a tall blond blue-eyed Finn. When papa came out she was sort of, okay, not what | was expecting, but okay. And my gran absolutely loved dad and she came to Zambia, and she ended up being active in the anti-apartheid movement, and working with Danielle Mitterrandâ\200\231s foundation to get medicines down and those kinds of things, you know. And that connection with home as a consequence sort of remained. My motherâ\200\231s still an interpreter by profession. When we were in Zambia, she was a translator full-time for an organisation thatâ\200\231s now called COMESA, which at the time was called, Preferential Trade Area, (PTA). Which was hard work. | mean, | have memories of mom being in Heads of State conferences, translating until three oâ\200\231clock in the morning, coming home just in time to wash clothes in the bathtub, get us all up and ready, do a little bit of ironing and drop me off at school and go back to the office. When | see women being interviewed about working and raising children, and | hear the concept that your kids are completely screwed up if you donâ\200\231t spend at least twenty hours a day with them, | think...1 think Iâ\200\231m not that screwed up. | feel okay. Unless somebody i
s
not telling me anything. Seems just fine to me. What mom taught me is you believe in something you follow through. Strangely enough, | think more than dad. Just because she was always the silent, helpful, always there, sort of a strong secure rock. Always has been, always has been.

Wonderful. Khanya, the choice of being a lawyer at eight, how would you unpack that? Did you have role models? Did you have a sense of what the law could achieve? Did you feel that it could actually be an instrument of social justice?

Absolutely. Absolutely. | grew up with an image of lawyers being (Nelson) Mandela, Bram Fischer, Joe Slovo, OR (Oliver) Tambo. All of these individuals effected change in that way. All of these individuals, in my mind, | associated their work with their profession. And the more | grew up, the more l...1 used to dream...growing up in Zambia, you found out very, very soon that they sold condoms of lesser value. AS a consequence they used to tear constantly. And one of my dream cases was a culpable homicide on the manufacturers of condoms for Zambians, who at the time, | think there was a twenty-five percent the AIDS infection, towards the end of the eighties, or something to that effect. | used to dream about that. | literally had a â\200\230Il can change the worldâ\200\231 attitude. | literally did. There is a funnier slant however t
o
my choice of the law. The funnier slant is that | was apparently pushed in that direction because my father was very, very concerned that | was becoming an extremely argumentative child and that one has lawyer friends that | think | know how we might channel that positively (laughs). That is the funnier side. But | literally did think of it as, | can do things, | can make a difference.

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Itâ\200\231s interesting because when you came back to South Africa and started actually trying to pursue law, you chose law that related around child rights, family law, and that somehow connects to the condom story. Iâ\200\231m very curious about the choice of law that you pursued.

To be honest, it was a time where | was actually learning about the field of law, and figuring out for myself what | liked about it and what | didnâ\200\231t. | can tell
you that after the...my Masters thesis ended up being focused on child rape because | was steered in that direction by my professor in Coventry, because it was a contemporary issue. But after the two years of NPA (National Prosecuting Authority), for example, | swore | would never do criminal law ever again. And you couldnâ\200\231t ask me to do criminal law ever again. But after my year at NADEL (National Association of Democratic Lawyers) | always knew that | would love to work with regard to socio-economic rights of any kind. So it was a learning experience, more than anything else, it really was.

Coming to the Constitutional Court, what had your observations and experiences, if at all, of the Court or the people within the Court been, prior to actually joining it in 2003?

Well, my family had known Albie Sachs for a very long time, so | Knew him on a personal level. My family also had a strange connection to uncle Pius (Pius Langa). What | knew of the Court was, this is where, where actually making sure that Constitution is brought to life. And thatâ\200\231s how | thought of it. and |
thought when Iâ\200\231m going around with my questionnaires in those strange neighbourhoods, the point, the end result of all of this work is, at some point this Court is going to say something about the issues that the individuals Iâ\200\231m questioning feel is important to their existence. And thatâ\200\231s how | thought of it. It
was the centre, the hub. | also donâ\200\231t think | knew exactly what | was getting myself into when | came here. | honestly learnt while | was here, that all of these cases that we ended up dealing with, had...their sources began sometimes in the most banal commercial matter, and the only reason they ended being amazing cases is because lawyers raised points in those banal commercial matters that actually had some substance, and got them arguing here. | mean, you would not have thought, and | can think of New Clicks (Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others) . New Clicks (Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others) was about pricing of medicines. You wouldnâ\200\231t think now when you read that judgment, if you need to take your cue on basic realities of admin law, you have to know what New Clicks (Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others) says. The Rail Commuters (Rail Commuters Action Group v Transnet Ltd t/a Metrorail) also started with regard to disputes that had absolutely nothing to do with the principles that came out of them. So some of them obviously started with that goal in mind, whether itâ\200\231s Carmichele (Carmichele v Minister of Safety and Security), or Grootboom (Government of the Republic of South Africa and

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Others v Grootboom and Others), for example but many of them started in the most sort of random way. And as a consequence, what | learnt from that was, | love every single aspect of the law. | have to do everything, | have to figure everything out. It... walked in here thinking | was going to be, as | mentioned, at the hub, that | was going to be sort of at the end game of what Iâ\200\231d done for NADEL (National Association of Democratic Lawyers). And realised that, one, there was a lot more to it. Two, itâ\200\231s not as easy as it seems. Three, | learnt that...| learnt to think of the law as something that | can make my own. A great many lawyers have a tendency to think the law says, and therefore the law says. | learnt here to think, | want this. Now how can | get to that end result? Can |? And if | need to change x, or if | need to reinterpret y, it shall be done. And | still, to this day, think of it that way.

Iâ\200\231m curious, coming to the Constitutional Court, and what made you choose to clerk with Pius Langa?

You donâ\200\231t choose.

You don't?

You donâ\200\231t, you donâ\200\231t. The law clerks file their applications. The judge s choose
which of applicants they want to interview. And you get interviewed by as many judges as might be interested in you.

Interesting.

And they have a lovely little hierarchy of who gets to choose first. CJ (Chief Justice) first, then DCHA (Deputy Chief Justice), then there was a hierarchy amongst the judges. They get first pick, and they pick. You donâ\200\231t.

So did you get chosen by Pius (Langa) to be interviewed?

| got chosen by Pius (Langa) to be interviewed. Albie (Sachs), as well. | was interviewed by (Kate) Oâ\200\231Regan on behalf of (Zak) Yacoob and (Yvonne) Mokgoro, if | recall.

Right, okay. And how did the outcome, how did the decision get made? Did Pius (Langa) get first dibs because he was Deputy Chief Justice?

He got second dibs, ja. He got second dibs. And he chose me. And, ja, it was flattering. It was flattering.

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What was your interview like?

Oh, goodness. Pius Langa has one of the driest, most amazing senses of humour on the planet. And you get seriously taken aback by his sense of humour when you're not used to it. | walked into his chambers at the time they were still at Braampark, and | stood. And heâ\200\231s wandering around his office, heâ\200\231s looking at papers, heâ\200\231s not paying any attention to me. And after that he looks up, oh, you donâ\200\231t like to sit? he says. Well, Iâ\200\231d be happy to sit down.
Then by all means (/aughs). And we chatted about things that had absolutely nothing to do with the work of the Court. And he says, okay, so when will you be starting? Well, weâ\200\231ll let you Know. And he giggles. And he escorts me out. And | walked out of there thinking, that that was the weirdest job interview Iâ\200\231d ever had in my whole life (laughs). It was. It was. Definitely. | donâ\200\231t think...1 got the sense that it was more about who | was than what | knew or what | could do.

When you say, who you were, in terms of your personality, not your background?

Ja, personality and character. | think it really had more to do with that. But | mean, heâ\200\231s gained a reputation for that kind of thing. One of his other clerks, Irene de Vos, | think it was her first day or her second day, he asked for file x. She said she had no idea where it was. And he said, â\200\234youâ\200\231re firedâ\200\235. She believed him. She ran into her co-clerkâ\200\231s chambers crying. And from then on | think she got fired on a weekly basis just for the fun of it. But that was the kind of boss he was. And it really was more about the exchange and what you could bring to the table.

What was the atmosphere like in the chambers, in Pius Langaâ\200\231s chambers, compared to the other chambers?

Certainly not half as stressed as (Sandile) Ngcobo or (Zak) Yacoobâ\200\231s chambers, thatâ\200\231s for sure. A lot more relaxed. And a lot more, | called this, the listening chambers. (Pius) Langa as a judge, was a lot more appreciative of the value of consensus. So if he was drafting a judgment, you would get very often very, very detailed comments from people, like (Kate) Oâ\200\231Regan, for example. And my instinct was to claim ownership of this judgment and, no, we shouldnâ\200\231t accept x or y changes. And uncle Pius would say to me, does it change the substance of what we want to say? Iâ\200\231d say, she wants to change the whole structure! No, no, no, does it change the substance of what we want to say? Iâ\200\231d say, no. Then implement the changes. And that was his approach to things. Is, if weâ\200\231re all heading in the same direction, the fact that she thinks the structure needs to change, fine, letâ\200\231s do that, letâ\200\231s rework the judgment.
And so it was much more of a listening chamber | found. Whereas for example, | wouldnâ\200\231t have said that of (Zak) Yacoobâ\200\231s chambers, for example.

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Or of (Sandile) Ngcoboâ\200\231s chambers, for that matter. Very strong opinions. And he would draft dissenting judgments at the last flipping minute.

Who?

(Sandile) Ngcobo. He used to drive us nuts. The thing about uncle Pius (Langa) is he wasnâ\200\231t the kind to say, do this and do that. Figure out what he needs and get it done. If you donâ\200\231t get it done, he wonâ\200\231t yell at you. If youâ\200\231re under the illusion that he hasnâ\200\231t noticed you havenâ\200\231t done your work, you are in serious trouble. He has, he knows, he just will not treat you like a child and scold you, but he knows. And so it was very much up to us to make sure we got things done, and we figured out what he needed and when. You got to learn, for example, that the moment an application comes in the door, get a sense of what itâ\200\231s all about, because at the very next time that they have tea, the judges, theyâ\200\231re going to be discussing it. Be in a position to, in the three or five minutes it takes them to go from chambers all the way down to the tea room, say itâ\200\231s about this, the parties are, and this is probably the right position. And if you have half an hour to prep for that, then you have half an hour to prep for that. But if you didnâ\200\231t do it, heâ\200\231ll notice.

Did you find that you were listened to if you had an alternative viewpoint?

Absolutely. Absolutely. And we often did have alternative viewpoints. Specifically, one of the strongest viewpoints that | had was in the Volks v Robinson (Volks No v Robinson and Others). | always knew that his father was a Reverend, but he was raised a very religious man. And my family is quite the opposite.

When you said, his father, you mean?

Uncle Pius (Pius Langa). | come from two staunch, still believer, Communists, and as a consequence the concept of marriage for me is very, very different than the way he understands it, so when weâ\200\231re talking about a live-in couple that didnâ\200\231t get married, in my view, whether or not they had gone to church, or not, didnâ\200\231t make a difference. It was the quality of the relationship. And if she was in that relationship with that same idea in mind, she should have the same rights as a person who'd gotten married. And he obviously disagreed with that. There being a choice between the one status and the other. So we debated it, and | lost that argument. But in Modderklip, when | came to him and | said â\200\234The Supreme Court of Appeal was right, and | think the judgment should reflect itâ\200\235, he looked at me and he said, â\200\234okay, fine, draft the judgmentâ\200\235. Crap. What did | do now? (/aughs) That was my first reaction. But thatâ\200\231s exactly how we approached it, and you sat down and you debated. It was...

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So did you have to draft that judgment?

Ja (laughs).

And was it accepted fully or did Pius (Langa) then...?

It was ripped to shreds. | think | can still find one sentence thatâ\200\231s an origin
al
that | wrote (/aughs). It was completely ripped to shreds. The end result was
exactly what | had drafted, but when all eleven of them get to a judgment, the
likelinood of that first draft remaining intact is zero. It never will, it never ever
will.

Iâ\200\231m curious about your relationship with other law clerks...you were called law
clerks by then...and this probably was the first time you had to work in a
community of young lawyers, and Iâ\200\231m wondering what were the challenges for
all of you, what were some of the difficulties, and some of the positive rewards
of working at the Court?

We very soon realised that, depending on which judge you worked for you
had a very, very different pace of work. | very much felt sorry for the
Yacoobers. Because Zak (Yacoob) is a slave-driver. And you, to a certain
extent, envied those who worked for (Kate) Oâ\200\231Regan, because every recess
they got two weeks leave. And you also felt sorry for those who worked for
(Sandile) Ngcobo, because he doesnâ\200\231t believe in leave, and they wouldnâ\200\231
t get
any at all. So as a consequence, we all had a different experience of things,
and different pressures. But we all shared in those realities, in a sense that,
cite-checking, the one thing that law clerks had to do was cite-checking. Have
you had the process described yet?

No, | think Iâ\200\231d like that actually. Youâ\200\231re the first law clerk Iâ\200
\231m interviewing...

Cite-checking. When a judgment is done, as in itâ\200\231s done, the attorneys, the
parties have been called, on such and such a date you will get the judgment.
Law clerks have forty-eight hours to cite-check. Cite-check is, there are
specific formattings for every single judgment. The judgeâ\200\231s name has to be on
top of the page, the paragraphs have to flow even though there might be a
second judgment by a different judge. If the second judgment starts in the
middle of the page, then the header has to contain both judgesâ\200\231 names. The
footnotes have to restart numbering from one for the second judgment, but the
paragraph numbering has to stay the same. There always has to be two
spaces after a full stop, etc, etc. You have to check all of that. You have to
check that the paragraph is aligned, that the two spaces are after every single
full stop. And if thereâ\200\231s a quote, you have to check that it is the exact corre
ct
quote from the Government Gazette, for example, or from the Law Report,

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and not from that little booklet of the Constitutional Court. And each clerk would get an equal amount of pages of the judgment. First round you have to do all of the work, but over and above that, if there is a need, if there is a reference to a case, if there is a quotation, you have to photocopy the relevant page and attach it. And then you bring it back to the clerks of the judge whose chambers are drafting that particular judgment. You then get a second round, and you will get a different set of pages, with the previous clerk having photocopied whatever needed to be photocopied, and you double-check with the help of whatever there is. If theyâ\200\231ve missed a photocopy, you have to go ahead and do it. If theyâ\200\231ve missed a paragraph alignment, or spacing, or whatever the case might be, you have to go and change it. And you mark in red and you cross in the margins, and etc, etc. And that was...very often then after that weâ\200\231d have a final read-through as the clerks. The thing is, some judges, you could suggest changes, for example, if we felt a comma needed to be inserted in a sentence, you could suggest changes. Other judges, you knew, donâ\200\231t even suggest moving a comma, there is no point. The comma will not be moved (/aughs).

Is this the same as read-throughs or is that different?

Itâ\200\231s different because the read-throughs, when they deal with the read-throughs, they are dealing with substance. The clerks are literally dealing with the nitty and gritty of formatting, plain and simple. And we tried to influence substance to a certain extent. By that time we very rarely had anymore influence than perhaps adding a word here, moving a comma. Thatâ\200\231s about as much influence that you got at that stage. It...you rely on each other then. Because if in that first round people do a half of a job, that second round is ten times more work. If you see a typo in the South African Law Reports you know a law clerk messed up. Thatâ\200\231s it. Just Know one of the law clerks messed up and thatâ\200\231s how the typo got in. It gest to be such a way of thinking that it to ok
me years afterwards to stop cite-checking when | was reading judgments. Itâ\200\231s like you get into a habit of reading the judgment whilst thinking, are there two spaces after a full stop? It takes years to switch that off. And sometimes you had short and sweet judgments and you had just two paragraphs to deal with. | was so happy | was gone by the time they handed down New Clicks . Oh, god, that was unbelievably long, insane judgment. But other times...Kaunda. Kaunda was the judgment for me...it was during recess, it was the guys that were held in Zimbabwe allegedly on their way to Equatorial Guinea as mercenaries. And first the hearing had been amusing. Because counsel for these individuals had made one particularly major faux pas. He had, in his wonderful argument, very eloquently said to that Bench, you cannot imagine what it is like in the dead of winter to be in those khaki shorts of prisoners! To which (Dikgang) Moseneke very curtly responded, â\200\234yes, we have a very good idea, Mr Hudies, now please move onâ\200\235 (elicits laughter). Oops. Cite-checking on that one, exactly, oops, you messed up. | donâ\200\231t even know if you realised at the time exactly how badly heâ\200\231d missed up (/aughs). Oh, goodness. And cite-checking had to be done in a rush. It was (Arthur) Chaskalsonâ\200\231s chambers.

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The person responsible was Kate Hofmeyr, sheâ\200\231s now also at the Bar. And her computer crashed (/aughs) in the middle of cite-checking. And we had to recoup the entire judgment. | donâ\200\231t know how many nights she spent on that thing. It was...that was an interesting one, when you had to do it in a rush, because it was a...it didnâ\200\231t happen often, but geez, that judgment was hilarious.

Iâ\200\231m also curious, Khanya, besides working for Pius (Langa), who were your other favourite judges?

(Tholie) Madala, because he was sweet and funny. He once...he was diabetic, so he once had a problem with his leg. And he didnâ\200\231t sit on the Bench while his leg was messed up. And one of his clerks, Matseleng, asked him, â\200\234But | mean, youâ\200\231re here, you know, fine, so youâ\200\231re limpin g, why arenâ\200\231t
you going in there?â\200\235 And he says, â\200\234No, it will start to look ridiculous . One
doesnâ\200\231t have an arm, the other one is blind, and now the third one is limping (laughs), its a bit muchâ\200\235. He had that sort of warmth about him. Zak (Yacoob)...Zakâ\200\231s an inspiration. Aside from the fact that heâ\200\231s also a l ot of fun.
Heâ\200\231s...| mean, if people complain about what they can or cannot do in life, jus t
meet Zak Yacoob, please, and then be quiet. Heâ\200\231s...ja, taught a lot. One of the biggest problems...this building was a nightmare when we moved in.

So you were in Braampark...?

Ja.

And your memories of Braampark?

Office hallways. Dull, dull, dull. | mean, we moved in here in February...

2004?

Ja. First case that was heard...Gilbert (Marcus) was actually arguing...did he tell you about that particular first case?

Tell me about it...

(laughs) Skylights werenâ\200\231t particularly sealed. A lot of the stuff, they hadnâ \200\231t
finished building. So first they had to drag all of their papers through the mud because the African steps hadnâ\200\231t been paved yet. | remember Kameshni Pillay literally pulling her stuff in the mud. Second, it was raining, it was pouring rain, and as Gilbert (Marcus) gets up to argue, whilst heâ\200\231s arguing, he

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notices that thereâ\200\231s water drip drip dripping from the skylights onto his papers.
And so he looks down at it and he says, â\200\234Justices of the Court, | hope this is not an indication of what you think of my argument.â\200\235 It was a messy, messy time. Itâ\200\231s a beautiful building, but | think, first wnen we moved in, the architects
were there and you couldnâ\200\231t mess with their vision. It was a clerkâ\200\231s joke, donâ\200\231t
mess with their vision! Oh, no, the vision, no the vision will be impaired. | moved my desk, no, no, no, no, youâ\200\231re messing with the vision! Ja, the vision did not take into account the fact that there are no blinds on the windows, and the sun is coming straight into my computer screen, so | am going to move the frigging desk. The kitchen, there was only one kitchen on one floor. Ja, so you end up having kettles and things like that. The thing is this, | donâ\200\231t know if youâ\200\231ve noticed but the plugs in the floor, ja, also not a very brilliant idea. Walk
around, mug of tea, spill, wnoops! (/aughs) The carpets hadnâ\200\231t been put all over the place. So stilettoes were pretty much a bad idea. So were flying skirts (laughs), and then you drop a pen and then youâ\200\231d hear it go clink, clink, clink,
all the way down and go, crap, now | have to go three floors down to pick it up. Zak (Yacoob)particularly suffered. Because everything was open, he needs to listen. He sits next to Faatima (Mohammed), his PA. She will dictate back to him. Alternatively he has his computer speak back to him. And if he can hear whatâ\200\231s going on upstairs, next door, just he canâ\200\231t, he needs to be
able to focus. So it was one of his biggest complaints. The carpeting that ended up in the hallways was at Zakâ\200\231s request. There were no curtains. There were no blinds of any kind. The secretaries had no heating whatsoever. All of these little annoying realities that you had to live with. And at the time part of your job as a clerk was also doing the tour of the Court. Which Iâ\200\231m told stopped in (Sandile) Ngcoboâ\200\231s time because he found them disruptive. You would not have stopped it if Albie was still in the building, | guarantee it. But, you had to know where the paintings were in the first, obviously because you had to take through and describe the paintings. And in the first few months, they kept on moving them around to see where they might fit better. And it used to drive you nuts! The Blue Lady is here. No, crap, sheâ\200\231s moved. Whereâ\200\231s the Blue Lady? Oh, no, sheâ\200\231s over there. Okay. It was extremely frustrating. There was nowhere to get lunch. There was a cafÃ© at the Old Fort that made toasted sarmmies.

Which is no longer there...

Exactly. And you could walk to the BP (petrol station). Thatâ\200\231s it. There was nowhere. | mean, we were promised there would be a Ninos across the way, which never materialised. There was nowhere to get lunch. So you had to order. And you had to order; if you were sitting in Court, you had to order at the eleven oâ\200\231clock break so that it was delivered during lunch break. It was a pain, because we were sort of...the building was kind of alone in the middle of nowhere. The museums hadnâ\200\231t started yet. They werenâ\200\231t even remotely close
to start...actually if | recall correctly the museum only started, | think it was 2005. | think there was a whole year during which Number Four wasnâ\200\231t opened. Certainly the Womenâ\200\231s Jail wasnâ\200\231t. Commission for Gender Equality

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wasnâ\200\231t where they are now, that building was still under construction, etc., et c.
So it was a learning curve. Very much so.

| can imagine. Given your interest in socio-economic rights, Iâ\200\231m curious to hear from you about your sense of how socio-economic rights is adjudicated here in this Court?

Gosh. That is a heavy question. During my time or generally?

Well, you can do generally as well, of course.

Okay. During my time, Iâ\200\231m trying to think of the specific cases that we ended up dealing with that specifically focused on socio-economic rights. Port Elizabeth ((Port Elizabeth Muncipality v Various Occupiers) dealt with housing. | think when it comes to housing this Court has slowly but surely been heading in the same direction. | think it started with Grootboom ((Government of the Republic of South Africa and Others v Grootboom and Others) and it ends right now with Blue Moonlight ((City of Johannesburg Metropolitan v Blue Moonlight Properties 39 (Pty) Ltd and Another), and then just generally been going in exactly the direction you would want. Making absolutely sure...

And which is?

When it comes to housing, people have a right to it, and government has an obligation to make sure that that right is fulfilled, to the extent that now with Blue Moonlight (City of Johannesburg Metropolitan v Blue Moonlight Properties 39 (Pty) Ltd and Another, theyâ\200\231ve basically confirmed an obligation on the city that whenever, even a private landowner is going to evict, the city has a responsibility, thanks to the PE (Port Elizabeth) â\200\224(Port Elizabeth Muncipality v Various Occupiers) decision, to mediate, to be involved, and thanks to Blue Moonlight (City of Johannesburg Metropolitan v Blue Moonlight Properties 39 (Pty) Ltd and Another), as well, to provide emergency housing, and to take responsibility for any relocation that might need to take place. | think theyâ\200\231ve been consistent when it comes specifically to issues of health and housing. They havenâ\200\231t had to deal with a certain amount of socio-economic rights, in my view, very directly. They have a tendency â\200\224 and | think itâ\200\231s quite correct â\200\224 if they donâ\200\231t need to delve into something, if this isnâ\200\231t the
right case, or the right time, then they donâ\200\231t. But issues of environmental rights, | think, still need to be hashed out. And issues of discrimination generally have been brilliantly dealt with and consistently so. | think those are the issues that from day one this Court, as a whole, had a general sense of where they were heading. But | do believe that on what are called unfortunately by UN circles, the secondary rights, they havenâ\200\231t had an opportunity really to do a lot of work...

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And youâ\200\231d say a secondary right?

What Iâ\200\231d consider to not be socio, political rights. When it comes to right to a
clean environment, they havenâ\200\231t had an opportunity really to dive into it. When it comes to things broader than what Zak (Yacoob) and Albie (Sachs) refer to as basic services, they havenâ\200\231t had really a chance to dive into, so it will be interesting to see how...what they do with that. But | like the consistency, | like the fact that during those years, you could walk into this Court and you had a sense of what direction they might take. Now | suppose we'll just have to wait and see. | donâ\200\231t think thereâ\200\231s enough of a body of jurisprudence with t he new
judges to be able to know that. But thereâ\200\231s a great deal of value in having had that Bench there for a while, because you got to appreciate how they approached issues specifically. And that was worth something. Well, except for Zak (Yacoob). Zak (Yacoob) has always been unpredictable. | think he likes it (laughs).

Why do you say that?

Because he can take some of the most conservative views on some issues and some of the most progressive views on others. Itâ\200\231s strange. Heâ\200\231s fu ll of
contradictions.

For example? Conservative views and...

For example, he gave us the hardest time in the Thubelisha Homes ((Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others) matter. This is now, Iâ\200\231m at the Bar, Iâ\200\231m appearing in front of them.
Unbelievably scary. All eleven of them, and | was only a junior and | was shaking in my boots. And we were acting for the amicus curiae. And we were coming with an argument...itâ\200\231s the N2 Gateway Project that was the issue. So all of those shacks along the highway were supposedly going to be moved in order to build beautiful houses, and temporarily the inhabitants were going to be moved to Delft. And we were arguing that, yes, housing includes basic services, but housing also includes access to the means by which you earn a living. These individuals are next to the N2 and next to Langa (township), precisely because being in that particular location makes it possible for them to earn a certain living. They sell fruit on the side of the streets, so thereâ\200\231 s
traffic. The kids go to school. There is a community thatâ\200\231s lived there for a v ery
long time. If you send them to Delft, number one, youâ\200\231re basically recreating the townships way, way, way on the outskirts of town pattern. You're destroying a community and youâ\200\231re taking away socio-economic opportunities for that particular community. And it was Zak (Yacoob) who gave us the hardest time about...we were basically accused of going overboard as amici, as in an amicus is not supposed to go that far. That we were basically

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bringing a whole new argument without having based it according to his comments on our submissions, on the papers that were already before the Court. And he...between him and (Kate) Oâ\200\231Regan, they gave us absolute hell. Itâ\200\231s like, no, you canâ\200\231t do that, you canâ\200\231t do that! And we honestly thought that he of all people was going to give us the thumbs up. There was a nice mention about the usefulness of our submissions in the judgment. But he was the last person we expected to be aggressive about the position that we were taking.

And was the judgment in your favour?

Sort of (laughs). It landed up being one of those structured judgments where people have to come back in so many months to report, etc, etc. So the end result wasnâ\200\231t a hundred percent what we had wanted, at least what our clients had wanted, but...

Iâ\200\231m curious, that year, how did it equip you for life at the Bar? Did it equip you at all?

(laughs) Did it, hmm? | think it equipped me in the sense that | think about my cases and | think about my submissions in a particular way, thanks to the work | did here. And it didnâ\200\231t in the sense that | got the impression that having done the work that | did here | was ready for the Bar. No. First of all, the level of work here is not the same thing. You really need to get back to basics when you start at the Bar. Youâ\200\231re not doing eighty page heads of argument when you get to the Bar, itâ\200\231s just, you know, there are very few people who are brilliant enough to start doing that in their first year. And when it comes to work relationships itâ\200\231s different. The clerks here, like | said, you relied on each other. | mean, somebody didnâ\200\231t do their job, you did end up with a very, very long night. But at the Bar youâ\200\231re on your own, so thereâ\200\231s a very different...very, very different vibe. And youâ\200\231re brought back down to reality to a certain extent. You realise that not ever case is going to change the world. But what | love about it is that | discovered that | liked those cases whether they changed the world or not. | just...itâ\200\231s the thinking process that | love. Itâ\200\231s the apply your mind focus, thinking process.

So you continue to be at the Bar and you have appeared before the Court, as you mentioned, is it a frequent occurrence or have there been just a few?

Thereâ\200\231s been just a few. Iâ\200\231ve been at the Bar, Iâ\200\231m in my sixth year now. | appeared in...lâ\200\231ve appeared four or five times, thereabouts, ja. Always as a junior. The day | have to stand up on my own in front of all eleven of those guys Iâ\200\231m going to be trembling in my flipping boots. They are scary. But even as a junior theyâ\200\231re daunting. | appeared in Sidumo (Sidumo and Another v Rustenburg Platinum Mines Ltd and Others), which is the one time | appeared

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with Wim Trengove as my senior. And the only thing | love about that particular case was seeing Wim (Trengove) nervous. Itâ\200\231s like, oh, yes, even the most brilliant still get nervous. Oh, | feel so much better (/aughs). The nice thing about appearing before the judges that knew me, still Know me, is sitting down and getting a smile from the Bench, and a nod, and they still do acknowledge the whole, ah yes, there she is. Itâ\200\231s nice. Itâ\200\231s very nice. That must be said.

Since your time here as a law clerk, have you noticed differences, changes in the leadership and style of the Court, in the way judgments are handed down? Are there a lot of disparities from the time when you were here as a law clerk?

To be honest, | think, when (Pius) Langa became Chief Justice | donâ\200\231t think there was much of a change, just because heâ\200\231d worked with (Arthur) Chaskalson for such a long time, | think he just continued that kind of work. | think (Sandile) Ngcobo had brilliant ideas of what he was going to do for the Office of the Chief Justice in particular, and Iâ\200\231m glad to hear that that work has been continued. But he certainly had a different leadership style. To the extent that he has had an influence on the Court, to be honest, | haven't noticed that. | think he had an influence on the manner in which itâ\200\231s administered. | think the wonderful thing about having all eleven judges is that they really do have their own minds. One of the rules as law clerks was, you couldn't exchange ideas to the extent that you might jeopardise a judgeâ\200\231s independence. So if your judgeâ\200\231s position was x, you kept it to your darn self, and you didnâ\200\231t exchange memos so that each judge literally very, very separately and distinctly applied their minds to the case and you didnâ\200\231t find yourself in a situation where they influenced each other, before they actually had gotten their minds around it and decided what their positions were. So as clerks there were some things you could talk about and some things you couldnâ\200\231t talk about with each other. And the reality of it is, that having continued with that, no one individual is ever going to have that level of influence over the entire Bench. Which is why | would say that (Sandile) Ngcobo certainly changed the manner in which it was administered, but | donâ\200\231t think that the spirit of the Court and of the judges is ever going to change. | think whatâ\200\231s changing now is that the majority of the Bench are individuals who have recently been appointed, at least in the last couple of years, and that it will take a while to see whether or not theyâ\200\231re approaching things particularly differently. There was a time when...law clerks used to come here in...at a time in their lives when they already had had a certain amount of work experience. And a few years after | left, more and more they were sort of straight out of varsity. And | understand that there were some challenges, or so | heard. Just because, well, when you havenâ\200\231t developed your own work ethic itâ\200\231s a little bit harder. And when youâ\200\231re working, for example, for somebody like uncle Pius (Langa) whoâ\200\231s not going to yell at you if you donâ\200\231t do it, you think you can get away with blue murder, | think the pace also is...itâ\200\231s exhausting, itâ\200\231s absolutely exhausting. And | think that (Sandile) Ngcobo made sure that the Court was organised in such a way that it functioned seamlessly, and | think thatâ\200\231s a

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good thing. The constant...the relationship with the staff was always a little bit weird.

Administrative staff?

Absolutely. To the extent that we were employed, | mean, our judges decided if we got leave, and only our judges, separately. As a consequence, Victor (means Vick Misser), the director, had no say on whether or not we got leave. Martie (Stander) as the registrar...we couldnâ\200\231t go directly if we had a problem with, | donâ\200\231t know, the way the files were dealt with at the office; weâ\200\231d go to the judge. And so our lives literally were around our judges. Everything that happened was around the judges. So your interaction with the admin staff was very strange. It was...there was a bit of a, sort of, separation between the two worlds. There was. Besides the fact that there was a physical separation because they literally felt like they were on the other...they were on the other side of the hallway, so they literally felt like they were somewhere else. But you didnâ\200\231t go straight to them for anything. If we had problems with stuff like stationery and the photocopying machine, you talked to your judge. You donâ\200\231t go directly to Victor (Vick Misser). And sometimes that wasnâ\200\231t necessarily easy, just because it entirely depends again which judge youâ\200\231re working for.

Khanya, Iâ\200\231m aware of the time and | donâ\200\231t want to delay you for your next appointment, but what Iâ\200\231d like to do in terms of ending... what are your fears and concerns for the Constitution and the Constitutional Court, and for the future life of South Africa, if any?

Thatâ\200\231s also a big question. | suppose my first fear is losing sight of the novelty, the opportunity to create something. The Constitution in of itself should not ever be this stagnant document, and the wonders of this Court, in my mind, always had been that it was an opportunity to create a society from that Constitution. What Iâ\200\231m also worried about is | think weâ\200\231re starting to take a lot for granted in South Africa. Itâ\200\231s only been seventeen years, but | feel as though there are certain assumptions and we shouldnâ\200\231t lose sight of the fact that the society that we live in has been fought for, hardly so, with blood. And that we keep on needing to improve upon it, and not rest on our laurels and assume that the work weâ\200\231ve done so far is enough. It most likely never will be. | know that I'll never love living anywhere else but here, precisely because of that spirit of that idea that thereâ\200\231s still work to be done. And we can still have fun at imagining what we want it to be and see if we can make that happen. And my fear is the possibility of that being lost, truly. Aside from that, Iâ\200\231m just scared out of my mind that someday soon Iâ\200\231m going to be appearing in front of those eleven judges. And quite happy, | must say, that hopefully it will be after Zak (Yacoob) has left, because he has already promised me that should | do so before he leaves he will wait until | am on my feet to ask the most complicated imaginable question, just for the fun of it. Isnâ\200\231t that nice of him?
Yay. So there you go.

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Is there anything that Iâ\200\231ve neglected to ask you, which youâ\200\231d actually like
included in your oral history?

Hmm. Well, one thing, yes. When | mentioned the law clerks, | was talking about the law clerks that worked here at a particular time. | should mention the fact that there is an entire Alumni Association, and then when you walk out of these walls and you meet people who clerked for your judge, for example, at a later stage, there is that, oh, | know you, we know each other, kind of thing. And if you look at the individuals who clerked here and where theyâ\200\231ve ended up...look at Adila Hassim clerked for (Pius) Langa. Irene de Vos is up-and-coming, clerked for (Pius) Langa. If you look at those individuals, you sort of realise that thereâ\200\231s a type of human being that comes here and you end up feeling very, very privileged that youâ\200\231re amongst that group, thatâ\200\231s growing
bigger.

What type of human being is it?

Open-minded, very, very hard working, and very, very dedicated to making South Africa what we want. The ConCourt clerks Alumni Association is organising legal teaching workshops in Alexandra Township, for example. | mean, theyâ\200\231re going to teach community leaders about certain basic legal principles and make sure that those community leaders as a consequence are empowered to do that kind of work. Thatâ\200\231s the kind of human being that you will find having clerked in these hallways, for the most part. So thatâ\200\231s something, thatâ\200\231s something.

Khanya, thank you so much, | really enjoyed meeting you and what a great interview, thank you.

Thank you. Thanks for your time, it was a pleasure.