

BOOK REVIEW

Judge Dennis Davis

was educated at Herzlia School, Universities of Cape town (UCT) and Cambridge. He began teaching at UCT in 1977 and was appointed to a personal chair of Commercial Law, in 1989. Between 1991 and 1997 he was Director of the Centre for Applied Legal Studies of the University of the Witwatersrand. He held joint appointment at Wits and UCT 1995 - 1997. He was appointed a Judge of the High Court in 1998 and as President of the Competition Appeal Court in 2000. Since his appointment to the Bench, he has continued to teach constitutional law and tax law at UCT where he is an Hon. Professor of law. Dennis is a member of the Commission of Enquiry into Tax Structure of South Africa and was a Technical Advisor to the Constitutional Assembly where the negotiations for South Africa's interim and final constitutions were formulated and concluded. He hosted a TV programme, *Future Imperfect* which was an award winning current affairs programme between 1993-1998. He has been a visiting lecturer/professor at the Universities of Cambridge, Florida, Toronto and Harvard.

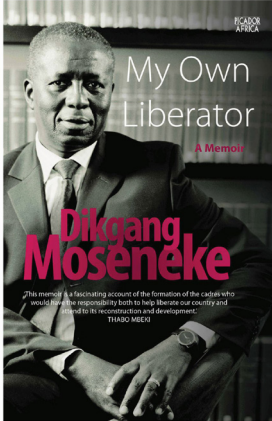
My Own Liberator: a Memoir: Dikgang Moseneke

Having recently finished a highly distinguished term as Deputy Chief Justice of the Constitutional Court, Dikgang Moseneke has released the first installment of his autobiography, My Own Liberator. Acclaimed High Court Justice Dennis Davis reviews this book and looks at the remarkable story of Moseneke's life taking in; his upbringing, the brutality of imprisonment of Robben Island and the inspiration behind and beginnings of one of South Africa's most influential legal careers. In this, Davis finds crucial lessons about democracy, activism and justice for contemporary South Africa.

It is difficult to read a book without taking account of the context within which it is read. Reading Dikgang Moseneke's memoir in South Africa 2017 is a truly uplifting experience. We live with the continuation of structural racism, daily reports of corruption which erode the ability of this country to use its public resources for the reconstruction of the society after apartheid, and a concomitant retreat into a form of identity politics which is not politics at all. A general erosion of confidence that an egalitarian society as prefigured in the Constitution can be attained within the foreseeable future is a central characteristic of the daily lives of 55 million South Africans.

Within this gloom, this book, which read holistically, makes out a compelling case for a process of liberation from a ghastly past which is less dependent upon public authority, constitutional institutions and far more on the ability of individual South Africans to lift themselves out of the present mire and into a future where the abhorrent characteristics of our apartheid past are finally put to bed.

Consider the life of Justice Moseneke for a moment as is so graphically documented in this book: He is born before the National Party came into power, introducing policies which are even more racist than those which had been implemented by previous white administrations. The education that he receives as a young boy takes place within the context of separate educational institutions, in which black South Africans received an insignificant percentage of the total resources devoted to education. Education is for white people and is not there to unlock the innate potential of the majority of the South African population! That lies at the heart of our racist past. Nonetheless, Moseneke receives an enlightened education from dedicated teachers. He obtains six distinctions in standard 6 which affords him an opportunity to attend a secondary school of considerable quality. Government intervention closes down the school. He returns to a school closer to home. But the



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political clouds are darkening even more than they did at the time of his birth. The Sharpeville massacre takes place in 1960. By 1963 young men like Justice Moseneke are attracted to the politics of Robert Sobukwe who has broken away from the ANC to start the PAC.

For a second time Moseneke's secondary education is interrupted, this time for a lengthy period. Together with a group of young men he is charged with sabotage, having joined the PAC in its plans for sustained resistance against the racist government which were to commence on 21 March 1963. His trial is presided over by the personification of an apartheid judge whom the National Party appointed to do their worst bidding: Peet Cillie. His reward was to become Judge President of the Transvaal Provincial Division of the then Supreme Court in 1969. Initially Moseneke and his co accused were represented by legendary lawyers, attorney Godfrey Pitje instructing Sydney Kentridge and Ivor Schwartzman. Notwithstanding that this was as good a legal team as anyone could possibly have hoped for, Judge Cillie had other ideas. When Kentridge asked for a postponement of a few weeks in order that he could consult all of the accused and develop a proper defence, Cillie offered a desultory couple of days. Understandably, Kentridge and the legal team withdrew as did Jack Unterhalter who was appointed thereafter.

Moseneke recalls how he was fascinated by law even as he was facing a lengthy term of imprisonment and, given that he was now left to defend himself. Perhaps the greatest triumph of it all was this, if any readers still recall the actions of Judge Cillie. Little was he to know that he was trying somebody who would become one of the great jurists of a democratic South Africa.

The reader will find a fascinating account of life on the island for a young 15 year old which combines the grimness of imprisonment with the manner in which prisoners such as Moseneke were almost able, to make light of the dreadful carceral system that was imposed upon them.

An equally significant part of the description of the trial turns on Moseneke's narrative of Mrs Hain, mother of Peter Hain later become an important anti-apartheid activist, Labour Minister and then Labour Peer. Mrs Hain provided young Moseneke with a meal each day and showed him a level of kindness which he records endearingly in his book. Cillie sentenced Moseneke to ten years of imprisonment on Robben Island.

The reader will find a fascinating account of life on the island for a young 15 year old which combines the grimness of imprisonment with the manner in which prisoners such as Moseneke were almost able, to make light of the dreadful carceral system that was imposed upon them. There are enthusiastic accounts of football matches, including praise for Jacob Zuma's football skills and their mutual organisation of the league. Sadly, this shared experience with Zuma did not prevent the latter from ensuring that Moseneke would not be elevated to Chief Justice many years later.

The account then documents how Moseneke obtained his matric and engaged in university studies while on the island. When he was finally released from prison he was in a position to become a lawyer. But remember South Africa was saturated with the racist filth of apartheid and it was not easy for a young black man, either to get articles of clerkship to become an attorney or to be admitted as an attorney. In 1976 he was able to become an article clerk at Klagbruns where Steven Klagbrun was his principal. Unlike other firms which Moseneke had approached for articles, Klagbrun was not at all phased by the fact that he had a clerk who had been

convicted of sabotage. Then Moseneke had to be admitted. Yet again he faced an obstacle. As he documents, the Law Society opposed his application. Significantly the Law Society was represented by Frank Kirk-Cohen and Meyer Joffe, both who became judges and were later joined on the Bench by Moseneke. Significantly, as is typical of the book, there is not a scintilla of expression of ill will to any of these people which make the narrative all the more powerful.

Moseneke describes how he, George Malauleke and Willie Seriti practised together as attorneys for five years. When Moseneke decided to be called to the Bar again the application raised controversy which finally ended with the Pretoria Bar abolishing its 'whites only' rule. The book ends with Moseneke having been elevated to the Constitutional Court in 2002 and ultimately to Deputy Chief Justice in 2005.

The narrative of his judicial career is left for another volume. Perhaps that is correct for the theme of this book, as I have indicated, is about how a young boy whose secondary education is cut short by a repressive regime transcends all of these obstacles so that 42 years later he becomes the Deputy Chief Justice of South Africa and more than that, the leading intellectual figure on the Constitutional Court.

When Justice Moseneke writes that he is his own liberator he could not have summarised his life story better. He also makes an important political point as befits a person who has a most keen understanding of the relationship between politics and law and the implications of the one for the other. Moseneke, in his closing chapter, notes that while courts can be the custodians of democracy and that other institutions of government can promote the democratic enterprise, the ultimate guardians of democracy are, 'we the people'. On his analysis, 'we' need to liberate ourselves. In other words, the theme of the book is that even within the context of a gloomy picture of failed governance, there is profound hope which is to be located in the irrepressible human spirit of the individual to rise way above the limitations imposed upon him or her.

Conclusion

In this, the book holds lessons for all, whether it be lawyers and judges seeking to continue Moseneke's work of crafting a legal system which can promote an inclusive society for 55 million people, activists demanding a vindication of constitutional rights, students and educators at universities faced with demands for a transformation of these institutions. One can only hope that Justice Moseneke will publish a second volume.