

## **Tribute to Arthur Chaskalson for Sunday Independent 9 December 2012**

**Edwin Cameron**

<http://www.iol.co.za/sundayindependent/chaskalson-was-a-pillar-of-strength-in-my-battle-against-hiv-aids-1.1437794#.UMXTp-TFXIZ>

Arthur Chaskalson was a formidable man. He could be severe. To those he opposed, he could be intimidating. But he also had a tender side. That was mostly reserved for his beloved wife, Lorraine, and his sons Matthew and Jerome, and their families.

But those who worked closest with him also saw it.

I did. Arthur was a mentor to me when I was an advocate. The first time I came close to invoking that tender side was when I first considered confiding in him about my HIV status.

I had to argue an appeal about a young man whose doctor betrayed his trust by telling two colleagues on a golf course that he had tested positive for HIV.

I had fought a gruelling trial before a hostile Judge who had ruled in favour of the doctor. The plaintiff, Barry McGeary, died during the trial. But these tragedies were immeasurably complicated because, as an advocate, I was fighting a cause whose agent was coursing through my own bloodstream.

I had HIV myself.

Almost no one knew. The stress of the trial, combined with the anguish of my own condition, made me fear that I might botch the appeal.

I asked Arthur, the founder and head of the Legal Resources Centre, and the country's most distinguished public interest lawyer, to lead me in arguing the appeal.

Typically Arthur – he did not say Yes or No immediately. He first asked for the trial record, and for the written argument I had prepared. Then he called me in. We sat at the plain wood table in his sparsely yet elegantly furnished office at the LRC. He told me he would not do the appeal. “Your written argument is fine, Edwin”, he said “you have this in hand. You have no need of me.”

I felt devastated. But Arthur was right. My fears did not stem from the legal principles, or the facts, for these were on our side. My fears stemmed from the dread secret I was carrying in my blood: that I had HIV myself, which I feared would spill out in the court room in Bloemfontein, as I so often feared it might spill out in the bloody battles of the trial.

Why did I not tell Arthur, then, that I needed his strength and succour and stature because I was scared that, like the plaintiff, I was going to die myself? I could have told him. I should have told him. I came close to doing so, but the internalised stigma that seems to be the greatest burden that many of us living with HIV carry muted my words.

I went to Bloemfontein without Arthur. We won the appeal.

Some years later, I did speak to Arthur about my HIV. It was September 1994. President Mandela had just appointed him the first head of the country's first Constitutional Court. I had been nominated to become a judge in the High Court.

I felt anguished about whether I should publicly state my HIV status. I was a campaigner for rationality and justice in the epidemic. But only a tiny handful of family and close friends knew that I was campaigning also for myself. Were the public, the Judicial Service Commission (JSC) and President Mandela not entitled to know that I was myself living with HIV?

I cast myself upon Arthur. I made an appointment to see him in the new Court's temporary accommodation in Braamfontein. He knew only that it was a personal issue. Gravely, he bade me sit down. Without ado, I told him that I had HIV.

His reaction was immediate distress and concern. He asked feelingfully, intently, about my health and prognosis. I told him there was no cure, and no treatment, and that it seemed certain that, at some point, I would die of AIDS. I was still well but my CD4 count (the marker of my body's resistant strength) was slowly tracking down.

Could I take appointment as a judge? And could I do so without public intimation?

After some thought, Arthur was firm. I should accept appointment. I had years of productive service ahead of me. It was important for me to become a judge.

And I need make no public statement. Since my health was still good, my HIV status was of no concern to the JSC or to the President.

I left relieved. I was not ready to speak publicly. The dreadful burden of fear and inhibition that those of us with HIV internalise still weighed too painfully on me.

But I knew this was only another step in time.

The next step came three years later. In 1997, the disease at last caught up with my bodily frailty. I fell severely ill with AIDS. By that time, drug combinations had become available to treat AIDS. Miraculous stories did the rounds of people on their deathbeds rising up and resuming a vigorous life.

This exquisite joy befell me. From crippling incapacitation with the disease's worst opportunistic afflictions, I was restored within only weeks to vigorous health.

Of all this I kept Arthur informed.

A year later, in December 1998, Gugu Dlamini, who spoke openly of her HIV, died at the hands of her fellow residents in a Durban township.

I could not longer remain silent. It was more and more obvious that I should speak out. But how? And when?

Again, I confided in Arthur. I had been nominated for a position on the Constitutional Court. Over the Easter weekend of 1999, he invited me to lunch at his home.

Arthur sketched out his plan. I should seize the moment, and the advantage, and make a public statement with maximum effect by announcing my HIV status, and my successful treatment, before the JSC.

It was breath-takingly bold. But it was right. And it was perfect Arthur. The hard-headed moralist, the wily legal strategist, and the caring friend.

My public statement had a beneficial impact, in South Africa, in Africa and elsewhere. For me, it was an enormous release. And still today I am boosted by the public affirmation and affection lavished on me.

Arthur's advice, and his timing, were perfect.

Three years later, Arthur presided over the case that is perhaps our democracy's most signal test – the Treatment Action Campaign Nevirapine case. In the face of President Mbeki's hostile scepticism, the Constitutional Court ordered government to start making antiretroviral treatment available.

Within 30 months, a national, publicly-provided treatment program began for all who needed treatment for AIDS.

It was the Court's bravest, and perhaps finest, moment. The judgment was written by all the judges. But it embodied Arthur's finest qualities. And when the judgment was announced, I knew that for Arthur there was a deeper dimension and a profounder commitment than legal principle alone can afford.

He knew the epidemic and he understood its power. And he had engaged his whole heart with it.

He understood the fears it engendered. And the need to deal with them with all the rationality and calm the law affords us.

Our country has lost a very great man, a very great jurist and a very great constitution-builder.

Our mourning is lessened by the power of the legacy he leaves behind. But not very much.