

25. The relationship between the judiciary and media

Chief Justice Pius *Langa*

It is a privilege to be here, and to have this opportunity to discuss with you, the relationship between the media and the judiciary in South Africa today. I have 20 minutes to speak and shall use them to make two points, which I believe are very important for every South African, and indeed for very many Southern Africans.

The first point is this. These two institutions - the judiciary and media - are of inestimable significance for the current and future well-being of this country. In the past 15 years, we have taken bold steps into a new political regime, and we should all rejoice that we have left behind many of the evils of apartheid. But, as we all know, much is left to be done and the future of our country is not certain. The Constitution is aimed at guaranteeing dignity, equality and freedom to every South African but, if we are honest, we must acknowledge that we are still far from achieving that ideal.

“the media and judiciary exist in an unusual relationship of mutual dependence and symbiosis”

If we wish to continue to travel along that road - the long walk to freedom, as it were - we must ensure that the government, by which term I refer to both the administration and executive, acts in a way that is accountable, open, honest, and efficient, and treats every South African with equal concern and respect. The Constitution requires nothing less. Which is not to lose sight of the very great responsibilities resting on non-governmental and private elements of society in our long walk. But as a starting point, it is important to emphasise the very great need for open and accountable government.

The media and the judiciary are crucial in South Africa today, because they play a central role in keeping our government in check and holding it accountable for the exercise of its mighty power. The independence of the judiciary and freedom of expression are two of the pillars of an open and democratic

society. The judiciary bears the responsibility of upholding the rule of law and ensuring that the government respects and promotes our fundamental human rights. The media bears the responsibility to report what has in fact happened and to provide the context within which that information can be thoughtfully evaluated and interpreted by ordinary South Africans. If the media and judiciary fail to fulfil these duties, it is very unlikely that we will keep to our path. The dream of a society of dignity, equality and freedom for all would remain an illusion.

The second point I wish to make is this. These vitally important institutions - the media and judiciary - stand in a relationship characterised by mutual responsibility and while they are at the same time completely independent of one another. Each depends upon the other to function well. Each can justifiably look to the other for support.

Let me, however, hasten to say - this relationship or independence must not and cannot take the place of a critical and honest appraisal of the work of each one. The courts do not want a media that is uncritical and that is over-respectful. That is because we have a judiciary of men and women, all imperfect creatures, trying very hard to deliver justice to an imperfect world, using imperfect implements. Likewise the media; you are fallible human beings, make mistakes, sometimes horrible ones, since you use imperfect sources and other tools.

Let me, however, consider this relationship from both points of view. First, what responsibilities does the judiciary have in respect of the media? Well, it is the job of judges to protect the freedom of expression of the media. Free speech is essential to enable members of the public to receive and impart information, and to enable us all to monitor the exercise of governmental and private power. All of that, in turn, is essential to ensure democracy. The media is important and deserves protection, because it acts as the eyes and ears of society; because it constitutes the market-place of ideas where we communicate with one another and engage in public discourse; and because it serves as a public watchdog that ferrets out corruption and reveals dishonest or inept administration and abuses of power. For all these reasons, the courts should jealously protect the media's exercise of their freedom of expression.

However, this freedom is not totally unfettered and unrestricted; it has its justifiable limits and is accompanied with responsibilities, including the duty to respect the reputation and dignity of all South Africans. So too, the judiciary has to decide whether and when the media has breached the limits of acceptable freedom of expression. In this way, the judiciary both supports the media, and disciplines it by keeping it within

acceptable bounds.

Exactly what are the acceptable bounds of freedom of expression? That is a very difficult question, whether considered in the abstract or in a specific case, and reasonable people may disagree about any particular answer. Nevertheless, it falls to the courts to provide an answer. Judges - who are human - are obligated to decide, for example, whether and when expression harming someone's reputation or inciting violence or infringing privacy might nevertheless be justified in the public interest. It is up to the judiciary to draw the boundaries of defamation, hate speech, fair comment, and privilege. It is undeniable that these boundaries are controversial and contested; but it is also undeniable that they must be drawn, for the good of society as a whole.

This simultaneous controversy and necessity of judicially-drawn limits to media freedom is perhaps an apt point at which to turn to consider the opposite side to the relationship under discussion. In what way does the judiciary depend on the media? What duties do the media owe to the judiciary?

I have already mentioned the media's general responsibilities to provide accurate information, and to provide the context within which that information can be interpreted and evaluated thoughtfully by the public. That responsibility is all the more important when it comes to reporting the decisions of the courts, which itself has two aspects. The first aspect is that the media should report courts' decisions accurately. The second aspect is that the media should provide the forum for criticism and debate about what the courts should decide.



Robin Sewlal with Chief Justice Pius Langa

Let me dwell on those two aspects a little further, starting with the second. Because the courts have to decide so many controversial questions, including those relating to the boundaries of legitimate freedom of expression, it is imperative that their decisions be subject to public scrutiny. There is a powerful need for constructive dialogue and criticism about the substance of the judiciary's decision-making. Only if we engage in dialogue about the difficult problems that our society faces are we likely to reach shared understandings acceptable to many. I cannot stress enough the importance of vigorous and informed

debate about what the limits and requirements of our newly established freedom and equality should be. The media must provide the forum for that debate, and should engage in the exchange of ideas.

Returning now to the first aspect of the media's responsibility to courts, I must emphasise that it is extremely important for the media to provide a balanced and fair account of what has taken place in court and what courts say. There is significant danger in selective, inaccurate or misleading reporting of judicial work. My view is that good journalists do not consider only what will sell their newspapers; they place far greater weight on whether a story is fair, balanced and sensitive in the broader context.

Misreporting can be harmful in a number of ways. It will undermine the public's understanding of the work and role of the judiciary. Where reporting is misleading in a negative or critical way, public confidence in the integrity and competence of judges is unjustifiably weakened. Unfair or intemperate attacks on judges undermine their independence and weaken respect for law. Misreporting will of course also prevent a proper understanding of the reasons courts advance for their decisions, which in turn will undermine the public dialogue and debate concerning the substance of those decisions. Finally, and perhaps most simply, inaccurate reporting can be unfair or harmful to ordinary people.

One example will suffice, taken from a recent criminal case concerning the shooting of a farm worker by a farmer. I shall say nothing more about this matter other than this. It was reported in the media that the farmer's defence was that, when he fired his gun, he had mistaken the deceased for a baboon. That, however, was not true. Instead, his defence was that he fired a gun into the bush in an attempt to scare off baboons. This distinction, while perhaps subtle, is important and should have been reported accurately.

I freely admit that good legal journalism is difficult. The law is complex and not infrequently esoteric, and legal journalists must be able to distil what is important about a case and to deliver it in an understandable way. But these difficulties can be no excuse. I assure you that judging, too, is difficult. We should not ask for sympathy. We should rather make sure we do our jobs as best we can. We should use available resources properly, in upgrading our standards of competence.

Let me sum up the two points I have made. The first was simply to emphasise how vital both the media and the judiciary are in South Africa today. I believe that the future well-being and prosperity of our country depends to a large extent on how well these two institutions fulfil their responsibilities. The second point was that the media and judiciary exist in an unusual relationship of mutual dependence and symbiosis. It is largely up to the courts to protect and promote media freedom, while the media are in a position to enhance public understanding of the courts and to engage in dialogue about the controversies judges must settle. Finally, let me make this obvious point. The right to freedom of expression and of the media is not really designed for the benefit of the media. It is for the people of South

Africa. I would like to conclude my address by emphasising this final point. I really do hope that journalists and editors such as yourselves are aware just how much the judiciary depends on fair and balanced reporting by the media. Justice, after all, must both be done and be seen to be done.
Thank you.

This address was delivered by Chief Justice Pius Langa on 20 April 2008 at the invitation of DUT Journalism and the South African National Editors' Forum, KwaZulu-Natal. It was held at the Hotel School, Durban University of Technology. The audience comprised members of the legal profession, media, captains of industry, university management, staff and students.



25 March 1939 - 24 July 2013

Pius Nkonzo Langa was admitted as an advocate of the Supreme (now High) Court of South Africa in 1977. He participated in many significant political trials, and was a founding member of the National Association of Democratic Lawyers (NADEL) ascending to its presidency in 1988. With the establishment of the Constitutional Court in 1994, Justice Langa was appointed as one of its first judges. He became deputy chief justice in 2001 and was installed as chief justice by President Thabo Mbeki in 2005, a position that he occupied until his retirement in 2009. Chief Justice Langa was bestowed with honorary doctorate of law degrees by several universities, and in 2008, he was awarded the Order of the Baobab in Gold for “his exceptional service in law, constitutional jurisprudence and human rights”.