



**TRIBUTE TO
JUDGE NEELS CLAASSEN**
by Judge Roland Sutherland

On 13 June 2021 our revered colleague Neels Claassen died, three days short of his 76th birthday. A long, full and fruitful professional career as advocate, judge, arbitrator and mediator ended. A gregarious, exuberant and caring mensch whose infectious enthusiasm and laughter delighted and entranced his colleagues, has passed on to secure the place that his Christian faith promises.

He was a product of a distinguished legal family. His father, and brother Roger, were also advocates and judges in Transvaal/Gauteng. Claassen *pere* was Judge-President of the SWA Division from 1953 to 1958 and is the compiler of *Claassen's Dictionary of Legal Words and Phrases*. Neels' maternal grandfather was Roger Dyason, a founder of the distinguished Pretoria attorneys' firm Dyasons. Neels' son Gerhard is an attorney in Cape Town, the fourth generation to practise law.

Neels was educated at Affies and at Tukkies. He obtained a B.Com (1965) and, as destiny dictated, an LLB *cum laude* (1968). He lectured Mercantile Law at Tukkies and at RAU from 1969 to 1970. In 1995, he graduated LLM in Human Rights and Constitutional Practice at RAU.

He practised at the Johannesburg Bar from 1969 to 1995, taking silk in in 1989. He, along with Anton Mostert, Richard Goldstone, Lewis Goldblatt, Percy Blieden, all later to become judges, was a founder member of Group 444, Innes chambers, later known as The Bridge Group, when during the migration of

the Bar to Sandton from 1999 to 2001, its membership was both in the city and in Sandton thus "bridging the gap".

He specialised in Construction law and was a member of the IBA Committee for Construction law from 1986 to 1991. In the 1980s, he was a lead counsel in the Soweto Electrification contractual dispute, a gargantuan matter; the preparation lasted for years and was eventually resolved by arbitration.

He was active in Bar affairs. He served as Honorary Secretary of the General Council of the Bar from 1987 to 1994.

He early-on developed an interest in arbitration and mediation, an aspect of his career that was to loom large, even after retirement from the bench. In 1986 he was at Queen's College, London studying international arbitration. He was GCB representative on ADRASA, a pioneer of mediation in civil disputes, later merging with the Arbitration Foundation of South Africa (AFSA). He was a fellow of the SA Association of Arbitrators from 1991 to 1994.

On 1 January 1995, Neels was among the first batch of judges selected by the newly minted Judicial Service Commission (JSC), to serve on the Gauteng Bench.

Neels presided, in 2012, over the remarkable trial of Henry Okah for acts of terrorism in financing anti-government bombings in Nigeria. This was the first and only time the extra-territorial criminal jurisdiction of a South African court had been invoked.¹

Neels chaired the High Court library committee from 2007 to 2014. He championed the library and was outspoken about the state's neglect of its facilities. This provoked a scandalous riposte from the spokesman for the Department of Justice, who accused Neels of lying. Equally scandalous, the leadership of the judiciary, despite knowing the facts, remained silent. It was left to fellow-judge, Kathy Satchwell, to publicly rebut this attack on Neels, who weathered his condemnation with grace.² Despite the rancour, his efforts were rewarded. The refurbishment was achieved.³ He also chaired the Judges' Education Committee, perhaps the most valuable enterprise after the library.

His judgments displayed an empathy and awareness of real-world problems. For example, In *S v Huma*, he ordered that *pro deo* counsel be provided with a ballistics expert, at state expense, to conduct an effective defence, the first ever such order to be made.⁴ In *Oakdene Square Properties v Farm Bothasfontein (Kyalami)* he authored a leading authority on the 2008 Companies Act, holding that the test for the "reasonable prospects" of a business rescue, was something less than a "reasonable probability", a proposition upheld in the SCA.⁵ He presided in the Full Court which dismissed the application by Justices Nkabinde and Jafta, related to their complaint that Hlope JP tried to subvert them to find in favour of President Zuma. The critical issue was whether the JSC

disciplinary rules could have retrospective effect.⁶

Neels did not confine himself to the courtroom. On circuit in Piet Retief, whilst inspecting the local magistrate's court cells, he uncovered appalling conditions. His visit and the stink he made, triggered the building of better facilities.

After retirement in 2014, Neels became deeply involved in the work of the South African Medico-Legal Association. He was chair from 2014 to 2019, and hereafter Honorary President. He co-drafted the Code of Conduct for medico-legal practitioners. He invigorated its activities, leading in the advent of a faculty to train medico-legal meditators and in the securing of a post-graduate course at UCT in medico-legal practice. He served on a ministerial task team in 2016, mandated to address the multitudinous medical malpractice claims against health departments.

He was active elsewhere too. He acted as arbitrator and mediator in several disputes. In 2017 he chaired the board of enquiry into the national Police Chief, Riah Phiyega's, fitness to be SA Police Commissioner, finding that she lied to the Marikana commission and should be dismissed. In March 2021, in Suzanne

Walter's action to secure judicial sanction for assisted suicide, he heard evidence on commission from witnesses who were not expected to live long enough to testify at the trial.⁷

Neels was an open and committed Christian. Like his father, he had been a member of *Moral Rearmament*. He was for 20 years engaged with *Mercy Ships*, who like *Doctors without Borders*, provided care for body and for soul, by visiting ports all around the world. He served on boards of charities, including the Abraham Kriel Maria Kloppers Childrens' Home and the Refilwe Orphanage and Aids Clinic.

Neels was a rounded personality. A bibliophile. A singer and long-time member of the Randburg Male Voice Choir. He served on the board of the Field Band Foundation, an organisation devoted to developing the youth through music. He was also a lover of the veld and the bush.

In April 2021, his voice was heard in an interview on Radio RSG, sharing his insights on the judicial process, the propriety of and limits to a judge speaking out, the struggle for objectivity in adjudication, the inappropriateness of reviving the death sentence and expounding with grace, the case for why English should be the sole language of record in court proceedings,

a pragmatic policy, which understandably is embraced with some sadness by many South Africans.

He was troubled by bouts of ill health, which he endured stoically, but was never diverted from approaching life with a positive disposition.

Neels' abiding achievement and legacy is to leave a memory of a splendid human being and a huge space where once he stood. His colleagues knew him as an ever-accessible mentor, adviser and friend. His judicial colleagues have gathered tributes to him to present as an anthology to his family: his widow, Marietjie, their twin sons, Corneels and Gerhard, and daughter Elize-Marie, and the grandchildren. Expressions of affection and admiration abound. All who knew Neels will miss him and share his loss with the Claassen family. *Vaarwel ou vriend, Hamba Kahle!*

Notes

- 1 2016 (1) SACR 1 (SCA); *Mail & Guardian*, 26 March 2013.
- 2 *Mail & Guardian*, 9 November 2010.
- 3 This saga is addressed by Kathree-Setiloane J, Neels' successor in the chair: *Advocate*, 2016 April, 44.
- 4 1995 (2) SA SACR 7 (W).
- 5 2012 (3) SA 273(GSJ); 2013 (4) SA 539 (SCA).
- 6 *Nkabinde and another v JSC* 2016 (4) SA 1 (SCA).
- 7 GroundUp: 2021 03 05 (www.groundup.org.za).

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