

come before Parliament, does allocate the responsibility for the administration of judicial functions to the Chief Justice, but it seeks to retain, at least in respect of courts other than the Constitutional Court, the historical system where the Director-General of the Department is accountable for the financial administration of the judiciary.

In this so-called 'executive model' the Executive retains control over court administration and, through the Minister, accounts to the legislature. However, Cachalia does point out on the other hand that what is referred to as the 'Constitutional Court Autonomous Model' operates in that court, which determines its own needs and is supported by its own staff, and therefore has

a measure of autonomy (albeit that consultation with the Minister on the matters in question is prescribed).

Cachalia records that several countries, notably Australia and Canada, have established independent agencies to administer the affairs of the judiciary at arm's length from the executive. He concludes that there is no reason why in this country the Department or the Ministry should have any responsibility for the judiciary's budgetary and staffing requirements. These matters should be in the hands of the judiciary itself.

I align myself with Cachalia's sentiments, I commend them to you and I trust that when the occasion arises the Bar will support same. 

## *Slices* Mtshaulana SC on life at the Bar – and beyond



Patric Mtshaulana SC, founding member of the Duma Nokwe Group in Johannesburg and former chairman of the GCB, appears to have been the subject of the well-known Chinese curse. He has certainly lived in very interesting times. Patric spoke to **Jean Meiring**, Johannesburg Bar.

'I come from a family of five children. My parents had difficulties bringing us up. So, most of us were given to relatives. At age four, I went to an aunt.

'It was a life-changing experience. My aunt was married to an older man, who wanted her to continue teaching. So, I learnt that it is normal for a wife to work. He and I stayed at home caring for the babies. There, I learnt the value of a family.

'After five years, in the middle of the night, I left. I went home – 30 kilometres far – and told my parents I wanted to stay. They said: "But those people are better than us. Look at your clothes." I replied: "I'd like to share with you what you have."

'I was educated in the old Bantu education system. Most of the teachers were well trained in terms of methodology, but didn't have much knowledge.

'I come from a religious background. My grandmother taught us there are good people and bad people. Bad people end up in jail. When I was in Standard 6, my mother wrote me a letter from Johannesburg: She'd been in jail, arrested for a pass offence. It had a terrible impact on me. I struggled with the idea

that my mother was a bad person. I tried to discuss this with my teacher but to no avail. What is this pass? I tried to reason with him. Is there no other way in which people could be controlled, because I understood that people *would* go to Joburg? I also wanted to go to Joburg.

'Another time, a teacher accused us of not concentrating in class, of not asking questions. You're not like white children, he said. They are observant and ask questions. I said to him: "But what do you mean white children are better than us?" He replied: "They can do many things you can't do." I asked: "Like what?" He said: "You can't drive a train." I'd never seen a train, but said to him: "I bet you if you taught me how to drive a train, I could learn." I was very upset by this.

'Yet, I was thinking: What's wrong? Why is there this differentiation between white and black? In town, I saw white children playing in beautiful schools. Where we played, it was always dusty. I couldn't explain those things. Only later, at university, I learnt about the Black Consciousness Movement. Then, I realised the problem was politics.

'When studying for Matric, because my parents didn't have money, I didn't think I'd go to university. After Matric, I immediately came to Joburg. An uncle got me a job in Soweto at a butcher's.

'But when my mother got my results, she sent me a telegram: come home immediately. She'd managed to get a loan of R100. Fort Hare had admitted me and had given me a loan of R200.

'It was the first time I'd travelled as far as King Williamstown and it was the first time I was in a truly intellectual environment. It was overwhelming.

'I'd promised my parents I wouldn't get involved in politics. I didn't want to disappoint them.

'From the start, what really fascinated me was the library. For the first time, I could read from politics to literature, law, everything. I didn't stop.

'In 1973, there was a strike at Fort Hare. It was one of those things: fate almost. Many people were expelled.

'I didn't join a political organization, but I'd go to meetings and sit at a distance, as if I was drinking tea, and listen to what they were discussing. I was torn.

'While at Fort Hare, I got a scholarship from Anglo American, of R800 a year, a lot of money for me. I supported my family – and bought a radio. I listened to Radio Freedom, from Lusaka, and got to know more about the ANC and the Struggle.

'At the end of my studies, it was difficult for me to decide whether to leave for exile or to remain and find work.

'Eventually, I decided I'd rather contribute to society by being a lawyer uprooting crime. I saw that as a problem as well.

'In February 1976, I started prosecuting. Soon, it became clear to me that injustice was ingrained in society. The Soweto uprising had a deep impact on me: I realized that life in South Africa would be difficult from then on, that I must be part of that process.

'The weekend I went home, to say goodbye to my parents, I didn't tell them I was going into exile. My mother said to me: "My child, things are bad, don't get involved in politics." She gave me a list of people who had been arrested in the village.

'On 1 September 1976, I left the country to go to Swaziland and then Mozambique. I was arrested crossing the border illegally. They thought I was a South African spy. I explained myself and proceeded to a refugee camp in Gaza Province. Eventually, in November 1976, I went to Tanzania, from where I was taken to Angola for military training.

'In Angola, I underwent basic military training for six months – shooting, explosives and a bit of ballistics.

'Then, I became a political instructor, teaching the ANC cadres about the Freedom Charter, about a society in which all South Africans would live together.

#### On the Legal Practice Bill

'When I was chairman of the GCB, I travelled to Hong Kong where I met a Fijian lawyer who told us a story that sent shivers down my spine. There had been a coup in Fiji, the constitutionality of which was challenged. The statute governing the legal profession in Fiji put the disciplining of lawyers in the hands of the State. On the day of the hearing, the Government served the counsel acting in the matter with suspension orders: "You're suspended pending a disciplinary enquiry. You can't represent your clients in this matter."

'The independence of the profession can be fatally compromised if the discipline of the profession is not in the hands of the profession itself.

'I hope the Bar will continue to insist that we have a right to practise the profession of *advocacy*, not the profession of legal practitioner. Once the Legal Practice Bill begins to move towards the destruction of the advocates' profession – whether that happens through a council in which attorneys dominate advocates or otherwise – I run mad. I want to die an advocate. I don't want to die a legal practitioner: I don't know what profession that is.'

#### On professional discipline

'The way we're conducting our disciplinary regime at the moment is pathetic. The professional committee is too overloaded. We need to improve the way the professional committee functions.

'We've got to address our weaknesses so that those of us prepared to face society and explain ourselves to the people don't have skeletons we can't explain.'

'I was deployed in Angola: first, in Benguela; then, in the north, in a camp training those preparing to enter South Africa. I was in Angola until 1980. 'From Angola, I was sent to a so-called party school, in East Germany. I frequently visited Berlin, for lectures.

'There, I began to wonder: Is this the sort of (socialist) society I want to live in?

'They taught us about how the system works, but they didn't want us to communicate directly with the other workers where we worked. I was very close to our interpreter: I'd walk with her and ask people questions, and she would translate their answers. One day, she cautioned me. I thought: "We could be told all these things, yet the people here may not actually like them."

'I had a German friend at the party school who was a telecommunications specialist. He told me that while he loved East Germany and the system, he hated the fact that, as an intellectual, he knew his house was bugged. That people didn't believe he was patriotic enough.

'After Angola, I was chosen to go to the Solomon Mahlangu Freedom College, which the ANC had set up in Tanzania, to teach and to keep the student community together.

'When I got there, the school was in a mess. There was a crèche, primary and secondary school. I was the boarding master, and I taught them the history of the ANC.

'The ANC realised it didn't have science teachers, so it brought foreigners to teach. My wife came from Holland to teach mathematics. That is how we met.

'When her contract was over, we decided I should go to study in Holland, where she would at least be at home.

'I got a place at the Free University of Amsterdam, and did a year-long Dutch course before I started the degree *Meester in de Rechten*, a combination of our LLB and LLM.

'My time studying in Amsterdam was something else. One of the things about exile – about being in the camps – that destroyed many people was that intellectually one becomes starved. All you have are political books. If you're not interested in Marx, it's difficult to find stimulation.

'In Holland, I spent my time in a really big library. I learnt there was a thing called a computer. I became young again. Also, seeing how a democracy worked was very stimulating.

'In Tanzania, the government had wanted us to stay in the camps. They were afraid that if we mixed with their people, when South African came to bomb us, their people would also be killed. Sometimes, people did leave the camps to mix with the local people.

'Once they (Tanzanians) arrested one of us and said: "This is the last time. If we arrest another one, you're out of this country." The ANC leadership was shocked. They put the man in a small room. He died and everybody wanted to know what had killed him.

'The doctors said it was malaria and pneumonia. But the youth wanted to know the real reason, afraid this might happen to them too.

'I was sent to ask the leadership what had killed the man. They responded: "Whose side are you on? Are you with us or with them?" But, I just wanted to know.

'It was a difficult time for me because my legal training came back to me: you're innocent until proven guilty.

'On the other hand, there was the question: when you're in a war situation, how ought delinquents to be dealt with?

'And I started thinking: How will South Africa be? How will we deal with criminals? Holland showed me how problems of this nature are resolved by society.

'In 1986, my parents came to see us. It was the first time in ten years I had seen them. My leaving the country had been traumatic for them.

'My wife and I visited South Africa in 1992 – I took her to my home in the Transkei and to Cape Town – and in 1993, we came back to South Africa to stay. Our children were five and eight.

'I became a lecturer at the University of the North. But I soon became disillusioned. The university was built on the wrong foundation. Students were more interested in money than in really practising law.

'Luckily, Mathew Chaskalson called me to suggest I should apply for a clerkship with his father. So, in 1995, I worked for Justice Chaskalson at the Constitutional Court.

'It was there that I realized that the best thing for me would be to be an advocate. Justice Chaskalson was such a good advocate and teacher.

**On the future of the Bar**

'I've been begging the leaders of the Bar that we should return to the Bar as it used to be: one building and one common room. The different groups are beginning to form traditions of their own and we're losing some of the Bar's traditions.

'The Bar's separation into groups also means that other groups find it difficult to sustain and keep black people. Because there is a group of very successful black practitioners in Duma Nokwe, the temptation is always for black advocates to come here.

'If we go back to the old Bar, we have the chance to promote more integration than now.'

'Entering practice was quite an interesting experience. For more than ten years, I hadn't seen South African law books. I'd obtained a very good education in Holland and I basically thought in Dutch. When I was confronted with a problem, the first thing I did was to open my Dutch books, which I knew best.

'But it wasn't difficult to get into commercial work because not that much had changed since I'd left. The year I'd spent at the Constitutional Court served as a good introduction to constitutional and administrative law. But in other areas, with every new problem, I had to do more research than other people. Yet, I coped.

'After a while at the Bar, I realized that there weren't many black people here. I was

worried that if we don't groom future black judges, the same will happen as in Zimbabwe: one day the politicians will realize they need black judges. If no independent practitioners have been groomed, they'll pick any lawyer who's available and make him a judge. Those lawyers will feel indebted to the politicians; you'll have an executive-minded judiciary.

'For me, with all my experiences in the ANC – I know its strengths, its weaknesses – an executive-minded judiciary is a nightmare.

'So, I decided that I needed to prepare black people for the future, to build a group of black intellectuals, who aren't indebted to anyone, except to their society.

'That is why I formed Duma Nokwe, in 2003. To form a group of black practitioners who realize that every matter has two sides, that every litigant has a right to be heard, whether he's white or black.' 

# Clarence van Buuren onder die loep

Deur Jean Meiring, Johannesburg Balie



Vir maande was die koerante van Clarence van Buuren se enigmatiese bakkies vol. Gepantser agter sy donkerbril het hy alleen die geheim bewaar van wat met die mooi jong Pinetownse nooi Joy Aken gebeur het.

Haar lyk, wat deels deur toedoen van die sener Nelson Palmer in 'n sloot langs die kus gevind is, het 'n verhaal van wrede verinking vertel.

Al was dit gemene saak dat Clarrie, soos Joy hom genoem het, haar kort voor haar dood saam met

hom in sy Angliatjie gehad het, was sy verduideliking die volgende: Terwyl hy in 'n nabye hotel aan't drink was het iemand anders haar gedood. En haar lyk in sy motor agtergelaat ...

Min mense het Van Buuren geglo.

In Junie 1957, op 35 jaar, is die doodsvonnis op hom voltrek. Tog het Van Buuren lank ná sy dood by Chris Marnewick, wat tydens die verhoor nog 'n bloedjie was, bly spook.

Toe hy as jong afgestudeerde 'n aanklaerspos op Pinetown betrek, het Marnewick in die einste Van Buuren se spore begin stap. En telkens daaraan gedink om die Van Buuren-legende te boekstaaf.

Maar vir lank het die nodige middelle ontbreek.

Toe Marnewick langs ompaai uiteindelik die joernalis Gehri Strauss se tas, propvol knipsels en notas oor die saak, asook die saakrekord and -dossier ontdek, was dit 'n uitgemaakte saak: Van Buuren se grieselrige verhaal moes vertel word.

Die produk is 'n koevoet van 'n boek *Clarence van Buuren – die man agter die donkerbril*, wat vroeër vanjaar by Protea Boekhuis verskyn het. Die Engelse weergawe, wat tans geredigeer word, sien later vanjaar ook die lig.

Marnewick, wat vir lank 'n lid van die Durbanse Balie was,