

WORLD INTELLECTUAL PROPERTY DAY: 26 APRIL 2020

THE REGISTERED TRADEMARK: THE APARTHEID MUSEUM®

CONSTITUTIONAL COURT JUSTICE ALBIE SACHS

UNIVERSAL DECLARATION OF HUMAN RIGHTS

AFRICAN NATIONAL CONGRESS IS DEPRAVED

JUDICIARY: PART OF A DEPRAVED REGIME

The World Intellectual Property Organisation, as the name implies, is a United Nations effort, aimed primarily at harmonisation of IP law worldwide. The Advisory Committee on Enforcement of WIPO met in Geneva on 28 June 2004, where the Honourable Mr. Justice Louis Harms, Judge of Appeal, Supreme Court of South Africa is invited. His subject:

THE ROLE OF THE JUDICIARY IN ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS; INTELLECTUAL PROPERTY LITIGATION UNDER THE COMMON LAW SYSTEM WITH SPECIAL EMPHASIS ON THE EXPERIENCE IN SOUTH AFRICA

Justice Louis Harms begins by contextualising South Africa

“Although classified as a developing country within the WIPO, South Africa is otherwise regarded as a developed country. Apart from this dichotomy, it is in part a highly industrialised country and in part one where the majority of its people does not share in its wealth. The contrast between the ‘first’ and ‘third’ world, between rich and poor, between educated and uneducated, is stark.”

Harms confirms intellectual property as **a basic human right**, and proudly explains enforcement under the post 1994 Constitution of the Republic of South Africa. He informs us that the first trademark case in South Africa was *Mills v Salmon* in 1863. This summarised contribution to World Intellectual Property Day, less than one percent of the entire record, draws only on salient points to bring world attention to NINETEEN YEARS of litigation, in the case of the registered trademark **THE APARTHEID MUSEUM®**. The conclusion is that nothing, in **one hundred and fifty-seven years** of South African law, compares to the scale of judicial corruption of statutory law that, in turn, spawns’ gross human rights violations.

CONSTITUTIONAL COURT JUSTICE ALBIE SACHS

President Nelson Mandela appointed Advocate George Bizos SC, to the Judicial Services Commission in 1994. Albie Sachs, after passing the questioning panel at the JSC was appointed to the Constitutional Court. Sachs, born 1935, to Jewish parents, who fled Hitler's Nazi Regime in Lithuania, was a member of the ANC living in exile in Mozambique, when the White Supremacist community, in 1988, instructed their death squads to murder him. Their murder plot failed but their car bomb shattered his right hand at the elbow.

Retired Justice Albie Sachs and others gathered to celebrate the 70th Anniversary of the Universal Declaration of Human Rights. (10 December 2018). On this occasion Sachs drew media attention when he spoke of his own efforts thirty years earlier. Focused on the criminal, violent, apartheid regime, retired Justice Albie Sachs reminded dispossessed Afrikaners of our lived experience under colonial apartheid racism. Justice Sachs explained that he went through the task of studying the Universal Declaration of Human Rights: **“line by line, word by word”**. At the completion of this arduous task, Justice Albie Sachs concludes that Apartheid South Africa had: **“violated every single one, every single one of the clauses in that declaration”**. The significance of Albie Sachs on this score has special meaning when read with his closing nine words: **“except for one, it's the right to intellectual property.”**

Albie Sachs, invited by the South African Jewish Board of Deputies, also speaks in glowing terms about our Constitution which he helped draft. The Jewish audience, gathered on the day were pleased because according to the Jewish Report of 18 April 2019, the event was:

“Infused with Pesach stories, traditions, and foods, the SAJBD presented a memorable seder. The event aligned the struggles of South African freedom fighters with those of the Jewish people, not least the story of Pesach itself, in which we fought to free ourselves from slavery in Egypt”.

Herewith selected legal points taken from his speech in a single paragraph.

SACHS: *“All constitutions are based on the tension between aiming for perfection and guarding against corruptibility. We built into our constitution a whole series of potential constitutional corrections against abuses of power. Ours is the only constitution in the world that has a chapter called ‘Institutions for the protection of democracy’. The rule of law takes longer, but it is more lasting. If people have behaved like crooks and stolen and lied under oath, if they violated the law, then the law must deal with them. But the law can deal with them only if the people in charge of the legal apparatus are themselves not implicated. They need to be people of integrity, of skill, who are guided by the principles of the constitution. I am proud of our constitution and the checks and balances we built into it. There’s reinforcement of positivity, and great public support for the judiciary, which plays a huge role in our society.”*

My (limited) research revealed only two trademark infringement cases that have reached the Constitutional Court since 1994: The Apartheid Museum® (Stainbank v The South African Apartheid Museum at Freedom Park) and Carling Black® (Laugh it off Promotions CC v South African Breweries.) Justice Harms explains why: *“Statistics about cases in the lower courts are not available but an educated guess is that there are hundreds per year and that, at that level, **right owners are generally successful**”*. This is so, not only because statutory protection of trademarks is written in clear language, but also because, in one hundred and fifty-seven years, High Court deliberations, bound by the legal principle of *stare decisis* are favoured with ample domestic and international judicial precedent.

Deputy Chief Justice Dikgang Moseneke delivered the unanimous judgment in favour of Laugh it off CC and, to his credit, Justice Albie Sachs thankfully added insightful perspectives on parody as an art form and an essential part of free speech.

THE APARTHEID MUSEUM®

The first trademark The Apartheid Museum®, registered in 1990 and renewed in the year 2000, under the new Trademarks Act, was recorded in Part A of the Register. Certificate:1990/03560, Class 41 SERVICES. In 1998, the second trademark The Apartheid Museum® Certificate:1998/13337, Class 35 – SERVICES. Both trademark certificates are issued in the name of Arnold Michael Stainbank - better known as Mike Stainbank.

On 02 December 2001, the Sunday Times published a major story written by Journalist Charlotte Bauer. The pertinent paragraph reads as follows.

“The Apartheid Museum was conceived by business tycoons Solly and Abe Krok, as a carrot to be dangled before the Gauteng Gambling Board in the hope of securing a gambling licence for the Gold Reef City Casino”

The twins Solly and Abe Krok were born in 1929 to Jewish parents who fled Hitler's Nazi regime in Lithuania. As principal financiers of Gold Reef City Casino, they had the same press release distributed worldwide AFTER they had studied my 48-page full colour prospectus in which my trademark The Apartheid Museum® is mentioned seventy-five times. Published in 1998, we had printed five thousand copies and distributed most free of charge across the length and breadth of South Africa. We also distributed to all mainstream media, major corporations, Parliament, Politicians, all nine Provinces and foreign embassies in South Africa. On 24 February 2000, twenty one months BEFORE Gold Reef City Casino issued that press release to the world, the Bloemfontein Local Transitional Council, after interrogating us on our prospectus, passed a resolution to build The Apartheid Museum® in Bloemfontein at an estimated cost of R1Billion. In nineteen years of litigation – not one judgment makes mention of this evidence, filed in court. In nineteen years, not a single judgment refers to the vision and mission of The Apartheid Museum as outlined in our prospectus.

Every part of this contribution to World Intellectual Property Day 2020 is focused on just ONE averment, in the Gold Reef City Casino answering affidavit in Case No. 26295/2002 TPD. Most importantly, said affidavit is dated 01 November 2002.

*“The business known as Gold Reef City Casino, which is operated by my company, does not trade or operate as “The Apartheid Museum”. The organisation which operates as “The Apartheid Museum” is a company registered in terms of Section 21 of the Companies Act with (UNIQUE) registration number 2001/019108/08, by the name of “**The South African Apartheid Museum at Freedom Park**”, which is not a party to this application. In the premises a separate application for such expungement has now been launched by the said Section 21 Company under case number 32237/2002, which I propose should be heard simultaneously with this application as the same facts are applicable to both applications.”*

In 1988, the Krok brothers *successfully* challenged the registration of the company named Hollywood Curl (Pty) Ltd, because it infringed their trademark “HOLLYWOOD” which they had been using to manufacture skin whitening creams for Black people. Advocate Brian Southwood instructed by Attorney Owen Salmon, represented the brothers Krok, in the matter of Hollywood Curl (Pty) Ltd vs Twins Products. Justice Corbett, in the Bloemfontein Appellate Division, integrated three statutory reasons for protecting registered trademarks:

*“It should also be borne in mind that the protection afforded by Section 10 of the Company’s Act is additional to, and not in substitution of any **statutory protection of trademarks** and the common law remedies relating to passing-off. Hollywood Curl (Pty) Ltd will be prevented from using that name to describe its business and goods. For these reasons I conclude that the judge a quo correctly found that Twins was entitled to relief under s 45(2).”*

In educating on Section 41 of the Companies Act 61 of 1973; **Names of companies not to be undesirable**, the Registrar of Companies Practice Note: No.2 GN 978 of 1995 explains that a company name would, in terms of statutory law, be undesirable if: “*words pertaining to a trade mark are contained in a name which will be used in regard to a business which relates to the class of goods or services in which the trade mark is registered while the applicant has no proprietary rights in respect of such trademark, nor the written consent of the said proprietor to use such words in a name*”. In continuing education, the Registrar of Companies again reminds both public and legal practitioners: “*Are you aware that enterprise registration does NOT give you protection to use your enterprise/company name as a TRADEMARK? To protect your trademark, you need to lodge a separate application for a trademark registration.*”

Fifteen years after the binding judicial precedent set by Corbett JA, on FRIDAY 20 June 2003, Justice Brian Southwood listened as Advocate Owen Salmon, explained that this company, **initiated by their former clients**, should be allowed to use its name as a trademark. Justice Brian Southwood, against statutory law and precedent, decided that the “The South African Apartheid Museum at Freedom Park” has the requisite *locus standi* and proceeded to expunge my Class 41 registered trademark: The Apartheid Museum®.

The Registrar of Companies resisted our every effort for two years until the office of the Public Protector eventually intervened. On 07 May 2012, the Registrar released the full inception file for The South African Apartheid Museum at Freedom Park, UNIQUE Company Registration Number: 2001/019108/08. Said file, as it turns out, proved to be a cut, paste and photocopy from an earlier file, a PALPABLE FORGERY. Points worth mention. Advocate George Bizos SC is listed as one among other directors of this non-existent company. The obligatory CM5 Form does not exist. The Special Power of Attorney reflects just one company name. The registration details of this bogus company have never been passed on to SARS. “The South African Apartheid Museum at Freedom Park” has NEVER EVER traded.

Gold Reef City Casino confirmed under oath that “The South African Apartheid Museum at Freedom Park” was initiated by Solly and Abe Krok. Herewith a pertinent extract from Case Number: 90/4016 Central District Court California:

“At the centre of this massive fraud was defendant Solomon Krok, a South African citizen who conducts his affairs outside South Africa through dozens of shelf companies scattered across the globe. Mr. Krok owns EPI through a Lichtenstein shell admittedly ‘totally owned and controlled by him’. Although he has tried from time to time to conceal his control over EPI (such as by holding corporate office under an assumed name) the record shows that at all relevant times Mr. Krok served as EPI’s Chairman and Chief Executive Officer, drawing more than \$2 million annually for – in the words of Stephen Ross – serving as its ‘Godfather’. The notes of EPI’s outside auditors strongly suggest that Mr. Krok was the architect of this fraud perpetrated on the bank and the record shows that he personally benefited from it to the extent of at least \$20 000 000.”

THE AFRICAN NATIONAL CONGRESS IS DEPRAVED

‘You know, every time I see you, I see money,’ Mandela said. ‘Give me more money, Solly.’

It was as though somebody had tickled the puny Krok twin; he giggled and promised that he would give more money. *Sometimes there is a Void - Memoirs of an Outsider* published in 2011, is written by world renowned South African author and playwright, Professor Zakes Mda. He begins: *One morning I got a call from Reuel Khoza. We have an urgent meeting at Nelson Mandela’s house in Lower Houghton this afternoon,’* he said.

My own book was print-ready when I happened upon Zakes Mda at Exclusive Books. Pages 464/5/6 capture all the reasons why the title of my own book has been vindicated.

We look at White people and we think Oh! MY GOD!

The **TRUE** story of two racist White men and the Apartheid Museum.

Zakes Mda, innocently so, captures a small part of his life. Unbeknown to him, Khoza had invited him to participate in a crime. The brothers Krok, *correctly* so, figured that if Nelson Mandela, could endorse their criminality, nobody in the world will believe otherwise. Mandela knows what is at stake because barely two months earlier on 29 January 1999 he wrote:

Dear Mr Stainbank: *“I would like to take this opportunity to wish you all the best with The Apartheid Museum initiative. Clearly the concept has much potential to contribute to nation building in our country.”*

Herewith a shortened account of other pertinent points documented by Zakes Mda:

*I was drafted on to the committee that was planning the Apartheid Museum at Gold Reef City Casino. This was a project of a gaming company called Akani Egoli and it was created in order to win a bid for a casino licence in the area. The major movers in this company were the identical Krok twins, Solly and Abe, who had made their billions manufacturing skin lightening creams for black people who were eager to be white during the days of apartheid. I had written about the damage of skin lightening creams in my earlier play, *And the Girls in their Sunday Dresses*, and I found it odious to be working with these super-rich characters who had caused such damage in the name of profit. We sat in one of the living rooms of Mr Mandela's mansion and he joined us while Zelda le Grange hovered around. It was not the whole committee that met, but just a handpicked few. **They were all white** except for me and John Kani, I sat next to Solly Krok as he outlined to Nelson Mandela the plans for the Apartheid Museum. Although I had no idea what the agenda for this meeting was, it became clear at once that Solly Krok wanted Mandela's endorsement. The impression was being given to Nelson Mandela that I was an important cog in the Apartheid Museum project. Yet I was not. I was just one of the many irrelevant committee members. **The movers and the shakers of the project were all white. I was a black face who was merely a front** to show the great man that black folks were participating actively in the project.*

President Mandela was one among thousands, who had received our prospectus, distributed from September 1998. Many others had responded with similar compliments. Our front cover is a striking black and white image of four bronze sculptures: Nelson Mandela, Chris Hani, Robert Sobukwe and Steve Biko.

A quotation from Ronald Segal on a full page prepares the reader: ***“I continued to believe then however as I believe now, that a people with a past infused by oppression and suffering is charged with a special responsibility to remember and remind: to redeem that past with a creative meaning; to recognise and insist that we must treat one another as equally human beyond difference of race or nationality, religion or culture if we are not to become mere beasts of talk.”***

Pity the aesthetic impact of our prospectus is diminished without all the full-colour images, which included a photograph of our six-metre model of The Apartheid Museum Complex. Nevertheless, herewith selected texts fused into a single paragraph.

*The Apartheid Museum bears little resemblance to any other museum. It is not academic nor is it dependent on trinkets, trivia and memorabilia to sustain it. By telling this story, we seek to bring our people to a cognitive appreciation of their trauma and hopefully, with the recognition and acknowledgement of pain, closure will come. The story is told true to history in every detail. The Apartheid Museum shall act as a catalyst in restoring the psychological health and balance of a people destroyed by apartheid. This need for psychological redress is the **primary challenge** facing The Apartheid Museum. Healing cannot be achieved by someone else on our behalf. We cannot view our history at arms-length. We must look at our pain, examine it and process the effect on our lives. Then, and perhaps only then, can we move forward. The Apartheid Museum will relate our history in the hope that we may experience a catharsis - the healing of psychological wounds that bleed into our daily lives.*

JUDICIARY: ONE PART OF A DEPRAVED REGIME

There is clarity now; a clearness that is disturbed only by a sentient inclination that refuses to believe that human beings, no matter their station in society, can be as impaired and as violent as the worst among us. Fascist twins Solomon and Abraham Krok saw the opportunity for the South African Jewish Board of Deputies to add more to the vulgarity that underpins the publication **Jewish Memories of Mandela**. The moment the brothers Krok made their wants known to the African National Congress, all three spheres of this purportedly constitutional democracy, came to lend legitimacy to another of their brutal atrocities against Black people.

And then it comes to pass that Constitutional Court Justices Dikgang Moseneke and Albie Sachs, assisted by the Ahmed Kathrada Foundation decide to launch their books at Solly and Abe Kroks Apartheid Museum. Albie Sachs, in ***We, the People***, Dikgang Moseneke in ***My Own Liberator*** bring to the history of racist oppression an obscenity that is not so apparent in the criminal dispossession itself. Black property has been dispossessed for 400 years. Depravity is in the twenty years of violence, destitution and imprisonment that Acting Judge Raylene Keightley thought, ought to be made more severe by an added three months.

If the audience gathered on Saturday 28th January 2017 had looked more closely, they would have seen Justice Louis Harms, Deputy Judge President Phineas Mojapelo and Chief Justice Mogoeng, sitting alongside Sachs and Moseneke pontificating much of the same on justice. If they had listened to journalist Niren Tolsi, they would also have heard Charlotte Bauer and others who claim to be noble in their duty as journalists.

On our experience, there is only one-point Sachs made to the SAJBD that is true: *“Millions of South Africans want a just, fair society. They do not want lies, cheating, or shenanigans. They want truth, honesty, and directness. People can put up with a lot of hardship if they feel that they’re getting the truth.”* It may never occur to Albie Sachs that those millions are Black people who, after twenty-six years are still waiting for ***a break with our past***.

THE OATH

I, Arnold Michael Stainbank, better known as Mike Stainbank, do hereby make oath and state that; I am a South African adult male, born into the cruel inhumane, violent White colonial aberration of apartheid racism. I am a Black person as defined in the lexicon of the Black Consciousness Movement. Black people are those who are, by law or tradition, politically oppressed, economically exploited and socially discriminated against and who identify as a unit in the struggle toward their aspirations to create a free and egalitarian society. My South African citizenship, under the United Nations Charter of Member States, entitles me to every protection enshrined in the Universal Declaration of Human Rights as readily as it entitles me to protection from racist and unlawful dispossession of property under the Constitution of the Republic of South Africa. While I stand to be corrected on the number of trademark infringement cases heard at the Constitutional Court, the balance of this affidavit is, to the best of my knowledge and belief, both true and correct.

I am the natural person responsible for the incorporation and affairs of; The Apartheid Museum (Pty) Ltd and The Apartheid Museum Foundation. I am the Founder, CEO and one among other Trustees of The Es'kia Institute Trust.

THIS AFFIDAVIT IS AVAILABLE AFTER SIGNING AT THE COMMISSIONER

DEPONENT: ARNOLD MICHAEL STAINBANK

I CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at _____ on this _____ day of _____ 2020, the regulations in Government Notice No:R1258 dated 21 July 1972 and R1648 dated 19 August 1977 as amended having been duly complied with.

COMMISSIONER OF OATHS