

**Draft Address by Justice Mahube Molemela, President of the Supreme Court of Appeal, on the occasion of The Godfrey Mokgonane Pitje Memorial Lecture Under the Auspices of the Black Lawyers Association
Emperors Palace – 14 November 2025**

Salutations

[1] President of the Black Lawyers Association, members of the Pitje family, Judges present here tonight, the President of the BLA and other members of its National Executive Committee, Trustees of the BLA-Legal Education Centre, members of all sectors of the legal profession, distinguished guests, members of the BLA Students Chapter who are aspiring to enter this noble profession, ladies and gentlemen, good evening.

[2] It is a profound honour to stand before you tonight, at the invitation of the Black Lawyers Association, to deliver this memorial lecture in the name of a true architect of our legal profession, Godfrey Mokgonane Pitje. This lecture presents all of us with an excellent opportunity to honour his legacy, celebrate his contributions, and reflect on the enduring impact he has had on the legal profession. I must say from the outset that Mokgonane's contributions are not merely historical footnotes; they are integral to the very foundation of the BLA, for Mokgonane was a founding member of that esteemed organisation. He was a torchbearer. His legacy is the very ground upon which many of us have built our careers. And who can claim not to know of the Black Lawyers Association? Speaking for myself, it is very difficult to imagine how my life's trajectory would have unfolded had it not been for the Black Lawyers Association. I held membership in the BLA from the time of my articles of clerkship, through my years of practice, and up until my permanent appointment to the bench. As a former member of this association, I understand deeply the commitment to excellence, community, and upliftment that G M Pitje so powerfully embodied.

[3] Much has been said and written about this legendary figure at events like this. While there may be little that has not been mentioned in the past, I believe I can still offer a somewhat unique perspective. My goal for this public lecture is to ignite a passion for the values championed by G. M. Pitje and to inspire the members of the BLA to uphold the exceptional standards he established. Everything I say must be understood in this context. The theme of my lecture is: *being denied a seat at the table*. I have divided this discussion into eight mini-titles or subheadings that resonate with this theme.

[1] Pitje the Scholar and Political Architect

[4] G M Pitje's story is one of intellect and determination. Born into a humble family in 1917 in a province then known as the Northern Transvaal, his academic talent opened the door to a broader world. He earned his Bachelor of Arts degree from the University of Fort Hare in 1944 and subsequently obtained advanced degrees in anthropology, education, and law. This relentless pursuit of knowledge was not for personal glory; instead, it was a deliberate preparation of the mind for the challenges that lay ahead.

[5] Mr. Pitje returned to Fort Hare as an anthropology lecturer in 1948, which marked the beginning of his political awakening. With encouragement from his friend Mr A.P. Mda, he helped establish a branch of the ANC Youth League at the university. Mr. Pitje succeeded the ailing Mr Mda as the national president of the ANC Youth League and joined the ANC's National Executive Committee. In 1951, Nelson Mandela, who would later become the first President of a democratic South Africa, succeeded G.M. Pitje as president of the Youth League.

[II] Pitje the Legal Pioneer: Forging a Path Where There Was None

[6] When the apartheid government introduced the Bantu Education Act in 1953, which introduced a racially segregated and inferior education system, Mr Pitje, like many principled educators, found the teaching profession morally untenable. He made a decisive turn to the law, a field where he could wage a different kind of struggle for freedom and justice. He chose to serve his articles at the firm of Mandela and Tambo, qualifying as an attorney in 1959. It was here, at a law firm dedicated to defending the oppressed, that Mr Pitje gained a first-hand, ground-level view of the immense injustices and inequalities faced by Black lawyers and their clients. For a young black man to see Godfrey Pitje, a scholar and former Youth League President, rolling up his sleeves in a law firm was transformative. He was not just practicing law; he was modelling a new reality. He was living proof that a black intellectual could navigate the complexities of the legal system and use it as a platform for resistance and advocacy.

[7] We know from the testimony of his peers, including my former principal and former President of the Black Lawyers Association, the late Jake Moloi, who later became my

colleague on the bench, that Mr Pitje's commitment to the attainment of justice extended to the most perilous cases of the time. During the apartheid years, he represented many stalwarts of the liberation movement. His practice at Mandela and Tambo placed him at the centre of the legal resistance, defending those the state was most determined to silence.

[8] For his anti-apartheid activities, he was banned and restricted by the state from 1963, a suppression that lasted until 1975. Yet, even in the face of such silencing, his commitment never wavered. His very presence in the profession, even under restriction, was a silent, powerful act of defiance.

[9] Tonight, we gather here in a different era in the grandeur of Emperors Palace, a symbol of a new, prosperous South Africa. Yet, we must acknowledge that beyond these walls, our nation navigates a complex and challenging environment. We operate in an era marked by profound socio-economic pressures, where poverty, inequality, and unemployment test the social fabric, and where the institutions designed to be the bedrock of our democracy face relentless strain. In these challenging times, public trust is a fragile commodity, and the immediate calls for visible substantive change and justice often raise questions about the existence of the constitutional project envisioned in our Constitution. This entails fulfilling the constitutional promise of utilising the Constitution as redress for historical inequalities, transforming the nation from a society traumatised by the horrors of apartheid into one that enjoys a democracy founded on human dignity, equality, and human rights. This is a challenging era in which the very principles of constitutional democracy are being put to the test.

[10] It is within this fraught context—a context far removed from open courtrooms—that we remember a jurist like Mokgonane, and it is within this context that his legacy finds its most urgent application. And so, ladies and gentlemen, we back-peddle to the sixties for context. If you open page 709 of the 1960 (3) South African Law Report, you will find a judgment of the Appellate Division, which was the highest court of that era. The cited case is *R v Pitje*,¹ none other than the stalwart we are celebrating today. As a candidate attorney at a law firm known as Mandela & Tambo, Godfrey Mokgonane Pitje was convicted by a magistrate for sitting in court at a table reserved exclusively for white practitioners and sentenced to a fine of five pounds or imprisonment for five days. Although he refused to pay

¹ *R v Pitje* 1960 (3) 709 (A).

the fine, someone paid it on his behalf. Aggrieved by his conviction, GM Pitje appealed against his conviction to the Transvaal Provincial Division, but his appeal was dismissed. Convinced that the dismissal of his appeal was unjustified, he appealed to the Appellate Division. That court dismissed the appeal in a judgment handed down on 20 September 1960.

[11] I interpose to mention that I am one of several Justices who, in condemning institutionalised gender discrimination, previously publicly criticised the reasoning of the same court in 1912 *Wookey v Law Society*.² This judgment held that a woman could not be enrolled as an attorney in the Province of the Cape of Good Hope. The Appellate Division held that the word ‘persons’ as stipulated in s 20 of the Charter of Justice included only male persons. Yes, the Appellate Division interpreted S 20 to mean that women were not included in the definition of the word ‘person’. I mention *en passant* that a 1909 Transvaal judgment,³ which reached a similar conclusion, was symbolically set aside during a ceremonial court sitting celebrating the centenary of the Women Legal Practice Act of 1923. The significance of that symbolic gesture was to correct a past injustice and acknowledge women’s role against discriminatory laws. So, lest I be criticised for ‘stigmatising’ the apartheid era courts, which, we are told, construed statutes that encroached on personal liberty *in favorem libertatis* (which means that the law must be interpreted in a way that favours individual liberty), I can do no better than to quote verbatim from that judgment for purposes of highlighting the flaw in its reasoning. Steyn CJ, with the concurrence of four Justices of that court *inter alia* stated as follows:

‘In the court in which the appellant was convicted, there were, in addition to the table for the prosecutor, two other tables, next to one another, one of them intended for European practitioners, and the other for non-European practitioners. The conviction arose from the failure of the appellant to observe an order by the magistrate to use the table indicated to him. It is contended on behalf of the appellant [Pitje] that the magistrate had no power to make such an order. I shall assume that notwithstanding the view in *Re Honeyborne*, 1876 Buch 145 at p. 150, it would be a good defence for the appellant to show that the order was invalid. It does not appear that these two tables were reserved for European and non-European practitioners, respectively, under sec. 2(1) of Act 49 of 1953. In terms of that section a reservation of that nature may be made by a person in charge or in control of public

² *Wookey v Law Society* 1912 AD 558.

³ *Schlesin v Incorporated Law Society* 1909 TS 363.

premises “in such a manner or by such means as he may consider most convenient for the purposes of informing all persons concerned”.

The record does not disclose whether or not anything was done to bring any reservation of these tables to the notice of all concerned. For the purpose of this appeal, I shall accept that no action was taken under this section. It would not follow, however, that the magistrate had no power to make such an order. A magistrate, like other judicial functionaries, is in control of his court-room and of the proceedings therein. Matters incidental to such proceedings, if they are not regulated by law, are essentially within his discretion. The only ground on which the exercise of that discretion and the legal competence of the order might in this instance be called in question, would be unreasonableness arising from alleged inequality in the treatment of practitioners equally entitled to practise in the magistrates’ court. But from the record it is clear that a practitioner would in every way be seated at the one table as at the other, and that he could not possibly have been hampered in the conduct of his case by having to use a particular table. Although I accept that no action was taken under the 1953 Act, the fact that such action could have been taken is not entirely irrelevant. It shows that the distinction drawn by the provision of separate tables in this magistrate’s court is sanctioned by the Legislature, and makes it more difficult to attack the validity of the magistrate’s order on the ground of unreasonableness. The order was, I think, a competent order.’⁴

[12] What stands out for me is that the court appreciated that (i) no reliance was placed on the provisions of the Reservation of Separate Amenities Act 49 of 1953, (ii) there was little evidence that the reservation was communicated effectively, and (iii) that a practitioner would be well-placed regardless of whether he was sitting at one end of the table or the other. Notwithstanding this, the court reached a unanimous judgment to dismiss the appeal, relying on the ‘separate but equal’ principle and asserting that the magistrate had the right to enforce apartheid arrangements in his court. While I respect the court’s decision, I cannot help but feel that the reasoning used to support the conclusion seemed somewhat tenuous. In my view, there was room to uphold the appeal or, at the very least, to justify a dissent. Instead, Mokgonane’s conviction was confirmed, thus saddling him with a criminal record.

[13] Surely, even back then, no one could have claimed not to know that racial segregation imposed a stigma of inferiority, which violated the core idea of equality. That being so, a question that immediately springs to mind is: how could anyone not know that racial

⁴ *R v Pitje* at 1960 (4) SA 709 at 710 A-F.

discrimination was repugnant to the principle of *in favorem libertatis*? Bearing in mind that segregation in a courtroom environment undermines the integrity of the entire justice system, one cannot help but ask the question: was reserving tables based on race not a form of institutionalised discrimination that is fundamentally opposed to the very spirit and application of the *in favorem libertatis* principle? Surprisingly, in an appeal argued at the Supreme Court of Appeal in 2004, a decade after the dawn of democracy, counsel apparently sought to rely on *R v Pitje* as authority for his proposition. The Supreme Court of Appeal refused to recognise that decision as a precedent on the basis that its reasoning was repugnant to the Constitution. It declared that its authority, 'in any context', was terminated.⁵

[14] With the benefit of hindsight, I realise that the 1960 appeal judgment confirming GM Pitje's conviction for sitting at a table reserved for European counsel was a significant turning point, paving the way for a series of challenging events that would unfold afterward. By way of context, it behoves me to mention that the incident that led to Mokgonane's conviction happened on 20 March 1958, two years after women had marched to the Union Building in protest against pass laws. The appeal judgment was handed down almost six months after the Sharpeville massacre, which happened on 21 March 1960. The country was still in turmoil. That was the political context of that era. What transpired politically in the period following the handing down of that judgment was an intensification of the South African apartheid system through more and more repressive legislation aimed at crushing internal resistance, and with that came astonishing court judgments. The well-known Appellate Division cases in which constitutional questions were raised, namely *Minister of Interior and Another v Harris and Others*⁶ and *Collins v Minister of Interior and Another*,⁷ are eye-openers that highlight the pitfalls of the parliamentary sovereignty system inherited from the colonial era. These cases challenged the validity of the Separate Representation of Voters Act, which aimed to remove 'Coloured' voters from the common or general voters' roll. We can only applaud Justice Schreiner, a true symbol of hope and justice, who, as a Judge of the Appellate Division, in the very context of apartheid, dared to be a lone dissent. This was similar to John Marshall Harlan's historic vote in 1896, where he was the sole dissenting voice in *Plessy v. Ferguson*, thereby refusing to endorse racial segregation.

⁵ *Magistrate, Stutterheim v Mashiya* 2004 (5) SA 209 (SCA) para 20.

⁶ *Harris and Others v Minister of Interior and Another* 1952 (2) SA 428 (A) and *Minister of Interior and Another v Harris and Others* 1952 (4) SA 769 (A).

⁷ *Collins v Minister of Interior and Another* 1957 (1) SA 552.

[15] In *Rossouw v Sachs*,⁸ a 1964 judgment penned by Justice Ogilvie Thompson, the Appellate Division, being the apex court, held that detainees held under Section 17 of Act 37 of 1963 were entitled only to necessities, not to comforts such as writing materials. In the 1979 judgment of *Goldberg v Minister of Prisons*,⁹ the Appellate Division followed the same reasoning to reach the same conclusion. Notably, Corbett JA (as he then was) dissented, reasoning that a sentenced inmate retained all the fundamental rights of an ordinary citizen except those taken away from him by law. Well aware of the increasing repressive laws and the advent of the declaration of the State of Emergency in July 1985, the Appellate Division disregarded prevailing precedent pertaining to the *audi alteram partem* rule and accepted that fundamental rights recognised up to that stage in terms of the common law were excluded unless expressly provided for in terms of a statute. It was during that decade that many left the country with the intention of securing freedom for many.

[16] From 1976 onwards, almost every academic year was interrupted by student protests, and the universities would often close before examinations due to student uprisings. Many intellectually capable students lost their bursaries because they could not provide their sponsors with good results, simply because they did not write the exams. Their academic journey took a hit; the dream of graduating in record time slipped away, with countless students unable to complete their degrees due to lost opportunities.

[17] By the 1980s, the reputation of South African courts regarding fundamental rights had declined, and the Appellate Division was not exempt from this decline despite its excellence in other areas of law. It was against the backdrop of that decline that GM Pitje and other practitioners of his ilk stepped into the breach. They did so in challenging times when advocating for freedom was a huge sacrifice. It would cost you either your liberty, your life, or the lives of your family members in that depressing era of unwarranted detentions and banning orders, the names Mandela, Tambo, and Pitje (to mention but a few), words like 'struggle,' phrases like 'skipping the country,' and a radio station known as 'Radio Freedom' were mentioned in hushed tones.

[18] During that era, the most remarkable aspect was that individuals who had the courage to take a stand, such as Rolihlahla Mandela, Oliver Tambo, and Mokgonane Pitje, who were members of a revered law firm, did so without expecting any personal gain in

⁸ *Rossouw v Sachs* 1964 (2) SA 551 (A).

⁹ *Goldberg v Minister of Prisons* 1979 (1) SA 14 (A).

return. That was during that admirable era of volunteerism. Let's be realistic here: Mr Pitje knew he would lose. He had to know. The likelihood was that courts in 1960 were unlikely to rule against apartheid's segregation. Yet he fought anyway. He spent his own time and energy fighting for a principle. Not because he thought he would win, but because some fights are about what comes after. Many struggles serve as powerful reminders that change is possible, lighting the way for future generations. They are about standing up for what is right, regardless of the outcome; it is a beacon that says to posterity: 'See, we always knew it was wrong.'

[19] By way of illustrating the calibre of lawyers that followed in Mokgonane's footsteps in the leadership of the BLA, I remember vividly that during Jake Moloji's leadership of the BLA, there was a push to transform the Law Society, which at that stage was called the Association of Law Societies. A meeting of all Free State lawyers was convened to nominate the forthcoming executive committee. The vast majority of registered attorneys in attendance were White. It was a very tense meeting. When Jake took to the floor to explain why we were advocating for what was then called 'the 50:50 principle' instead of elections based on the "one person one vote" principle, he inter alia mentioned that given South Africa's demographics, black attorneys would have been in the majority had it not been for apartheid and its institutionalised discrimination against black people. This statement was met with vociferous dissent from the majority of the house, with one attorney boldly stating that he knew that, even without apartheid, the ratio would have remained the same — no prizes for guessing what he meant. The response from some of the attendees was derisive laughter. Of course, we were appalled by their reaction! When it became evident that any attempt to convince them otherwise would be futile, Jake stood up, and we all stood up and followed behind him in a beeline as he staged a powerful walkout (which he had warned us about before the start of the meeting). This seemed to catch them by surprise, because the room fell into complete silence until the last one of us had exited the room. Two remarkable things happened thereafter: we were later informed that the remainder of the attendees had continued with the meeting and submitted nominations for the new leadership. Jake was the only black attorney elected to the leadership position. Why? His competence as a lawyer was indisputable; he was, undoubtedly, one of the best litigators of that time. The second remarkable thing is that Jake rejected the nomination on the basis that it was made by a body lacking legitimacy. Like GM Pitje, he was not prepared to sit at an untransformed table. Those were the calibre of leaders the BLA had, leaders who fought for principle.

[20] Indeed, true courage is not just about triumph; it's about fighting even when loss is inevitable. In honour of Mokgonane, I want to recognise another activist, Mpho Desmond Mashoeng, my classmate at Albert Moroka High School from 1979 to 1981, and later my neighbour. Tragically, he was ambushed by askaris near the eSwatini border in February 1989. On the eve of that tragic event, I saw him leave with a traveling bag that night and casually said goodbye, unaware it would be the last time I would see him. Sadly, there are so many unsung heroes of the apartheid struggle. We must never take our hard-won freedom for granted.

III Pitje, the Institutional Architect: His presidency of the BLA

[21] According to reliable sources, Mr. Pitje was a founding member of the Black Lawyers Association. It was reported that in an interview, GM Pitje mentioned that he founded the Black Lawyers Association in 1977 as a result of the difficulties faced by Black practitioners of that era. He called black practitioners together to make common representations to the authorities, seeking permission to have offices in town and to be exempt from influx control and pass laws. Black Lawyers moved around daily with their admission certificates, much like passbooks, because many magistrates did not believe that they were attorneys. The lawyers used to meet in his office. Sometimes, there would be three, four, or five. The number gradually increased, so that by 1978, with the admission of the now-retired Deputy Chief Justice Moseneke, there were more than ten black practitioners. Mr Pitje's leadership was not merely ceremonial; it was foundational. He understood that individual success was meaningless without collective progress, and that the isolated struggles of black lawyers against a hostile system required a unified voice. The BLA, under his guidance, became that voice—a crucial vehicle for advocacy, solidarity, and the strategic advancement of Black professionals within a profession that was, both in its demographics and culture, overwhelmingly white and exclusionary.

[22] A clear-eyed vision of transformation characterized his presidency. He was under no illusion that the fight was not merely for a seat at the table, but for the power to reshape the table itself. The BLA, under Mr Pitje, challenged the Law Societies on their discriminatory practices, advocated for more equitable briefing patterns from both the state and private sectors, and, most importantly, created a network of support that countered the profound isolation felt by many Black attorneys. He built an institution that was both a shield against professional marginalisation and a sword to dismantle the barriers to entry and

advancement. This work laid the essential administrative and political groundwork for the legal landscape we navigate today.

IV The Enduring Legacy: The Mentor and the Beacon

[23] It is in his later years that Mr Pitje's role as a direct inspiration to young black legal practitioners crystallized most powerfully. After his presidency, he continued to serve as the second director of the Black Lawyers Association – Legal Education Centre (BLA-LEC), a role that perfectly merged his passion for law and education. In this capacity, he was no longer just a symbol; he was an active architect of futures. He moved from being a figure to be admired from afar to a hands-on mentor, guiding, nurturing, and opening doors for the generation that would inherit a new South Africa. He was also a founding member of the Sechaba Medical Solutions group, demonstrating his holistic commitment to black economic and professional advancement.

[24] His life exemplified remarkable resilience and reinvention. He thrived as an academic, politician, attorney, and corporate leader, showcasing the power of versatility. His deep commitment to learning clearly shaped him into the open-minded individual he became, inspiring us all to embrace growth and change. I was truly inspired to discover that Ms. Desiree Finca, the pioneering African woman to be admitted as an attorney in South Africa, started her career with GM Pitje and ultimately became a partner in his esteemed law firm – an undeniable testament to mentorship right there! This trailblazer was clearly ahead of his time. He understood something fundamental: access without capacity is tokenism. That you can open all the doors you want; still, if people are not equipped to walk through them, you have not really achieved much. How admirable that Mokgonane Pitje championed gender equality during a highly patriarchal era, an era in which female lawyers were often seen as intruders and were perceived to belong everywhere, except in a courtroom. In that very stifling environment, Mokgonane opened a door for an African woman to claim her place at a table previously reserved for men, ameliorating the pain of her daily serving of triple oppression based on race, class, and gender! For young lawyers trying to find their place in the profession, Mr. Pitje's career serves as a roadmap, illustrating various paths toward a destination of impact and service, and teaching us that we must lift as we rise.

V Why Representation Matters: The Unfinished Work

[25] Regrettably, to this day, speaking an uncomfortable truth comes at a cost. With that having been said, today, the legal profession is being called upon, as never before, to step up to the plate and become the primary guardians of our constitutional order, a task which post-apartheid courts have fulfilled with distinction. The bench and the bar cannot be silent spectators when the legitimacy of our constitution is being second-guessed. We are summoned, by the oath we have taken and the history we inherit, to be the active defenders of the rule of law. This means fearlessly litigating against state overreach, providing robust and independent judicial oversight, and holding all power, whether public or private, accountable to the supreme law of the land. Our courtrooms must remain the ultimate arenas where reason, evidence, and constitutional principle triumph over populist rhetoric and the abuse of power.

[26] This text reflects the ongoing struggle that defined Godfrey Pitje's life. While he fought against a legal system designed to exclude and oppress, we now contend with forces that aim to weaken and corrupt the mechanisms intended to promote inclusion and liberation. Therefore, an independent and accessible legal profession is vital for upholding the rule of law and advancing constitutional democracy. By advocating for independence, ensuring equitable access to justice, and mentoring a new generation of lawyers with strong ethical principles, we not only honour G. M. Pitje's legacy but also uphold the independence that has always been fiercely protected in the legal profession. Recruiting Judges from a skilled and independent cohort of legal professionals will undoubtedly lead to an equally independent judiciary.¹⁰

[27] I will now briefly touch on a topic that may unsettle many of us—indeed, it should make all of us uneasy. Statistics indicate that by May 2025, there were 33,929 practising attorneys in South Africa. According to these statistics, only 17%¹¹ of the total number of attorneys are Black women – a figure of 17% being Black women in a country where Black women make up a significant portion of the population is deeply concerning. We know that some women experience immense difficulty entering the profession, while others do enter but soon discover that they gained access through a revolving door to a profession in which they cannot sustain their practices due to existing barriers, and would soon have to leave

¹⁰ In this context, it is important to emphasise that as early as 1952, in the case of *Minister of Interior v Harris and Others* 1953 (4) SA 769 at 789, van den Heever JA unequivocally asserted that the independence of the judiciary stands as a fundamental pillar for the security and well-being of the State. This principle cannot be overstated; a robust judiciary is not just important, but essential for upholding the values and stability of our society.

¹¹ These statistics were obtained from the [Legal Sector Charter Council](http://lsc.org.za); <http://lsc.org.za>.....

for greener pastures. Unquestionably, the imperative for representation that drove Mr Pitje and the founders of the BLA is as critical today as it was two decades ago. Then, the fight was against codified exclusion and against statutes and regulations that explicitly barred full participation. Today, the battle is often against the more insidious forces of unconscious bias, entrenched economic disadvantage, and cultural gatekeeping that persist long after the formal barriers have fallen. Thus, 67 years after Mokgonane's fight to sit at a racially neutral table and decades after he allowed a female lawyer to be a partner in his law firm, there are still subtle and, perhaps, not-so-subtle barriers to women's entry into the profession. Does that not amount to being denied a seat at the table?

[28] Clearly, the project of transformation is as urgent now as it was back then, though its focus has necessarily evolved. The transformation of the 1990s was about opening the doors - about ensuring the legal profession was no longer a preserve of one race. The transformation we must champion today is about ensuring that once those doors are open, the path to the highest echelons of the profession is equally accessible. It is about transforming the culture of our law firms, our bar councils, and our state attorneys' offices. It's all about creating equitable opportunities, fostering transparent appointments, and embracing a judiciary that draws strength from its diversity. Any effort that falls short of this is a futile attempt to normalise an abnormal situation. Undoubtedly, the noble work of the BLA will not be complete until every legal practitioner can sit at the table, because a legal profession that does not reflect the racial, gender, and cultural composition of the society it serves cannot fully command the trust of that society. Until every competent woman has access to her desired table, we shall continue to say it's not yet Uhuru. When a young person enters a courtroom and sees no one on the bench or at the senior counsel's table who looks like them, this may convey a message that this system does not include them or perpetuate a false narrative about intellectual capabilities. Therefore, representation that reflects the demographics of the community is not just a matter of political correctness; it is crucial for ensuring legitimacy and justice. We must all continue to strive for the achievement of those ideals. This important work is what defines Mr. Pitje's remarkable legacy.

VI A Legacy in Action: Turning Inspiration into Impact

[29] The path that Mr. Pitje paved has empowered today's jurists to thrive. Mokgonane's life story is a rich foundation, filled with experiences and insights that continue to inspire us all. His journey from an articled clerk at Mandela and Tambo to a partner in a law firm and

to the head of the BLA and BLA-LEC finds its echo in the judicial journeys of many today, including my own from a prosecutor to an articulated clerk and ultimately to the President of the Supreme Court of Appeal. He paved the way for me. When I joined the BLA in 1989, there was not a single Black Judge in South Africa. Today, black Judges are in the majority. Mokgonane inspired us to believe that what we never imagined possible in South Africa is within reach.

[30] A true advocate for education, GM Pitje changed careers at a relatively late age, demonstrating a commitment to lifelong learning. Like Oliver Tambo, who switched from science to law in order to become an agent of change, Mokgonane switched from teaching anthropology to law for the same reasons. This serves as a powerful example of perseverance, showing the younger generation that it is never too late to pursue their dreams and that having multiple career options, along with the courage to take a leap of faith, may yield significant dividends. Take heart from the African proverb that says: 'However long the night, the dawn will break.'

[31] Mokgonane believed that education had the transformative power to serve as an equaliser, aligning with the core principles of human dignity, equality, and freedom. This philosophy is one we should all embrace and pass on to our students, candidate attorneys, and newly appointed legal practitioners who look to us for guidance. It is against that background that I mention a 2016 appeal judgment of the Free State High Court, *Tsoaeli v S*, in which three erstwhile members of the Black Lawyers Association (coram Molemela, JP, *et* Moloji and Lekale JJ) set aside the convictions of 94 community health-workers who were protesting their dismissal. In this judgment, the Free State High Court, on appeal, quashed the convictions of the appellants who had been convicted of contravening s 12(1)(e) of the Regulation of Gatherings Act 205 of 1995 because they had picketed outside the workplace without securing prior permission for the gathering. The judgment highlighted the essential importance of the right to freedom of assembly in a constitutional democracy. The court acknowledged that the appellants' criminal records could have a significant impact on their future employment prospects. The court held that interpreting section 12(1)(e) in a way that criminalises mere attendance at peaceful protests for which no approval was granted would undermine the spirit of the Constitution. I should think that this is the very ethos G M Pitje fought for from his desk at Mandela and Tambo when defending those who stood against an unjust system. It is noteworthy that the 2018 unanimous judgment of the

Constitutional Court in *Mlungwana and Others v S*¹² endorsed the reasoning of the *Tsoeli* judgment.

VII The Pitje Perspective: A Vision for the Next Decade

[32] Mokgonane's journey on this earth came to an end in 1997, just three years after the birth of democracy in our beloved country. How fortunate we are that he witnessed this incredible leap towards political freedom! As we celebrate the enduring legacy of G M Pitje, we can envision him reflecting on his time in the hallowed courtrooms where he, Mandela, and Tambo courageously fought for justice, as well as the founding of the BLA. Today, I believe he would take great pride in the strong constitutional framework we have created and the strides we have made in judicial representation. However, he would also probably voice a sincere concern. The economic disparities in the legal profession still linger, and we all see the sentinel that stands guard and limits access to top-tier firms and senior counsel positions. Mokgonane would remind us that our journey has entered a new and exciting chapter: while we have secured our right to enter the profession, our next goal is to empower ourselves to lead and transform it. He would passionately emphasise that a profession lacking in economic inclusivity for all its members cannot claim to be genuinely transformed. Let us take this message to heart and work together towards a more equitable future!

[33] Looking to the next decade, G M Pitje's focus would be unerringly clear. He would call for a decade of targeted, strategic economic empowerment within the law. His vision would demand a dual focus: first, on aggressively dismantling the old boys' networks that dictate briefing patterns by championing and mandating equitable briefing for black and women-owned law firms and advocates. Second, he would insist on a revolution in mentorship, moving beyond guidance to the active sponsorship and transfer of complex, high-stakes work to the next generation. He would want the BLA to be not only a moral voice but a powerful economic negotiator for its members, ensuring that the promise of 1994 is realised not just in our Constitution, but also in the financial success of Black legal practitioners.

VIII Conclusion: The Charge that G M Pitje Leaves Us

¹² *Mlungwana v S* [2018] ZACC 45; 2019 (1) BCLR 88 (CC); 2019 (1) SACR 429 (CC).

[34] I sincerely hope that our collective reflection on the life of Godfrey Mokgonane Pitje tonight was not merely a revisitation of history. Instead, it should be regarded as a heartfelt clarion call to action, which will, hopefully, be heeded by all of us. This call inspires us to see our roles not merely as jobs, but as powerful platforms for fostering representation. We have an opportunity to be visible and approachable mentors, ensuring that the next young woman from a rural village or the next young man from a township perceives in us the very essence of what G. M. Pitje stood for: a door that was once closed, now wide open.

[35] We have taken note that Mokgonane Pitje began his journey with humble beginnings, yet through brilliant intellect and unwavering principles, he played a pivotal role in shaping the future of our nation, becoming a beacon of hope for aspiring lawyers everywhere. I wholeheartedly commend your organisation, the Black Lawyers Association, for your dedication to honouring his legacy, and your unwavering commitment to empowering your members. This encourages all of us to become the exceptional legal professionals that Mokgonane always believed we could be. Let us ensure that his legacy is not just a story told in books but a vibrant and dynamic force in every case we present, every judgment we write, and every aspiring mind we guide. Let us embody the representation he fought tirelessly for. Your organisation will not lose relevance as long as the challenge of gender inequality persists. Until then, the marginalised will need a voice that will ensure that their stories are told without putting a spin on anything. I align myself with the African proverb that says: 'Until the lion learns how to write, every story will glorify the hunter. Therefore, let us continue to write the story and debunk false narratives. Together, we can forge ahead, securing the democratic future for which he and countless others sacrificed so much.

[36] At a personal level, I am proud not only of having been a member of the Black Lawyers Association throughout my career, but also of having served as a Trustee of the BLA Legal Education Centre and as a trainer at its Trial Advocacy Seminars post my appointment as Judge and continuing to participate despite the challenging period of the COVID-19 pandemic, when gathering in groups was a serious health risk. Mokgonane's legacy will spur me on to be a better version of myself. Being here tonight brings back fond memories of significant years gone by. Our discussions during the BLA AGM would often go late into the night, but of course, we always made sure to set aside a few hours for socialising. How can I not say that I am proud to have been a member of the BLA, when today a baby sister of mine who served articles at our all-female partnership firm whose partners are now Judges of the superior courts, Judge Mbhele, is seated at my table not

only as a Deputy Judge President of the Free State Division of the High Court, but is also currently the Acting Judge President of that court. It is through the legacy of GM Pitje that we, together with other female Judges, have a seat at the table.

[37] Undoubtedly, the BLA has provided many young practitioners, including us, with a sense of purpose and direction; we felt a profound sense of belonging. As with every organisation, self-reflection is necessary to ensure that the organisation stays true to its values; regular reviews help prevent misalignment. Of importance is that legal ethics cultivate trust within both the legal community and the public it serves, making their importance paramount. It is for this reason that members of the legal profession must, without fail, ensure that they adhere to legal ethics. It is truly impressive to see an organisation that was founded 48 years ago still thriving and making an impact today. This longevity speaks volumes about its resilience and commitment. My plea is that, in the name of G. M. Pitje, the BLA should do everything in its power to ensure that its reputation remains untarnished and that the conduct of its members is beyond reproach. Please keep this in mind as you elect new leadership at your meeting tomorrow.

[38] As for us, the Judges of this era, we remain cognisant of the fact that our job is to find justice, no matter how elusive she may seem, because justice is the reason why law exists. Being ever so mindful of the doctrine of separation of powers, we align ourselves with Justice Albie Sachs' *dictum* in *Prince v Law Society*,¹³ where he aptly stated that 'undue judicial adventurism can be as damaging as excessive judicial timidity.' Reflecting on the legacy of this gentle giant on whose shoulders we stand, it is not hard to imagine what his impact could have been if the judiciary had transformed earlier. What a remarkable Judge he would have been! I think he would urge us always to be mindful that our judgments will forever be available for scrutiny in law reports, both in print and digitally. He would most probably advise us to choose our words carefully in our judgments and use them to heal, rather than to wound; to build, rather than to condemn. Nonetheless, he would still expect us to fearlessly uphold the rights enshrined in the Constitution without compromising our principles.

[39] Therefore, we, as members of the judiciary, unconditionally accept that the judiciary should not be immune to robust scrutiny; it must be held accountable. Still, we plead that all allegations against members of the judiciary be backed by substantiating facts, as

¹³ *Prince v President of the Law Society and Others* [2002] ZACC 1; 2002 (2) SA 794; 2002 (3) BCLR 231 (CC); 2002 (1) SACR 431 (CC).

contemplated in s 14(3)(b) of the Judicial Service Act 9 of 1994. In *Bernert v ABSA*¹⁴, the Constitutional Court cautioned as follows: ‘As we held in *Basson II*, a mistake on the facts, even if correct, is not ordinarily sufficient on its own to give rise to a reasonable apprehension of bias.’ Judicial officers are not super-human beings who do not make mistakes. That is why there is an appellate process to correct mistaken findings on law or facts.’ Echoing the same sentiments at the Ruth First memorial lecture, Deputy Chief Justice Moseneke said: ‘In some instances, judges get the facts or the law wrong. That tells us nothing about their judicial probity. Our democratic system, like most in the world, readily acknowledges judicial fallibility and arrests that risk by creating a hierarchy of courts with appellate responsibility.’¹⁵ In the absence of any substantiated facts to suggest otherwise, the errors in our judgments should be understood in that light.

[40] The fact of the matter is that, whether we like it or not, the next generation will scrutinise our judgments in the same way I have examined those of my predecessors in the Appellate Division tonight. Regarding the interpretation of our Constitution, as guardians of the Constitution, we shall strive to ensure that the fundamental principles and values enshrined in our Constitution are never betrayed. This by no means suggests that the law should be developed through a Judge’s perception of the popular will at any given moment. But still, we should always be mindful of the Constitution’s true identity and purpose. There is this well-known phrase: *quis custodiet ipsos custodes*, which means: ‘who will guard the guardians’? We can only hope that history will not judge us harshly.

Boora-Pitje, re ya le leboga gore le re tsaletse sekgathamela masisi, mogale, mogaka o re sa ntseng re ipela ka ene go itlhella gompiono.

I thank you.

¹⁴ *Benert v ABSA bank Ltd* (2011) (4) BCLR 329 (CC): 2011 (3) SA 92 (CC)

¹⁵ This was stated by retired DCJ Dikgang Moseneke at the 2012 Ruth First Memorial Lecture.